



December 5, 2018/Calendar No. 10

M 180507(C) ZSM

IN THE MATTER OF an application submitted by Cherry Street Owner LLC and Two Bridges Apartments, L.P. for modification to the previously approved large scale residential development (CP-21885) to update the previously approved plans and zoning calculations to reflect a proposed as-of-right mixed use development on property located at 247 Cherry Street (Parcel 4A/4B - Block 248, Lots 15, 70 and 75), Borough of Manhattan, Community District 3.

WHEREAS, on June 22, 2018 the applicant, Cherry Street Owner LLC and Two Bridges Senior Apartments, L.P., submitted an application (M 180507(C) ZSM) seeking a modification to the previously approved large-scale residential development (LSRD) (CP-21885) that would facilitate development of a new approximately 80-story, approximately 501,518 square feet residential building and the enlargement of an existing building with approximately 2,393 square feet of new ground-floor retail space located at 247 Cherry Street (Block 248, Lots 15, 70 and 75), in a C6-4 Zoning District, Borough of Manhattan, Community District 3; and

WHEREAS, on August 28, 1985 the City Planning Commission approved (N 850737 ZAM) an authorization pursuant to ZR Section 78-311(e) to locate Building 4-3 without regard for height and setback regulations that would otherwise apply along Rutgers Slip, a street wholly within the LSRD, to allow development of a 10-story affordable senior building at 80 Rutgers Slip; and

WHEREAS, on March 17, 1986 the City Planning Commission approved an authorization pursuant to ZR Section 78-41 (N 860727 ZAM) to allow four permitted accessory off-street parking spaces to be located without regard to lot lines; and

WHEREAS, the site is currently developed with three buildings that have a total floor area of 334,585 square feet, 15 accessory surface parking spaces, and 43,920 square feet of private open

space; and

WHEREAS, the applicant proposes to construct a new building totaling approximately 501,518 square feet with 25 percent of the residential floor area reserved for affordable housing, and to enlarge an existing building with approximately 2,393 square feet of new retail space on land that is currently improved with surface parking, and a one-story portion of the 10-story building; and

WHEREAS, the total proposed building bulk and floor area are permitted by the underlying zoning district; and

WHEREAS, this application (M 180507(C) ZSM) 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 City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead agency is the City Planning Commission. The designated CEQR number is 17DCP148M; and

WHEREAS, this application (M 180507(C) ZSM), along with separate but concurrent private applications for proposed developments seeking the same modification action within the same LSRD with similar construction schedules (M 180505(A) ZSM, M 180506(B) ZSM, N 180498 ZCM), undertook a joint Environmental Impact Statement (EIS) to ensure that all cumulative and project-specific potential impacts were identified and could be addressed through the public process mandated by the New York State Environmental Conservation Law; and

WHEREAS, it was determined that the proposed actions may have a significant effect on the environment, and that an EIS would be required. A Positive Declaration was issued on March 27,

2017, and distributed, published and filed, and the applicant was asked to prepare a Draft EIS (DEIS). Together with the Positive Declaration, a Draft Scope of Work for the DEIS was issued on March 27, 2017. A public scoping meeting was held on May 25, 2017, and comments were accepted by the lead agency through June 8, 2017. A Final Scope of Work was issued on June 22, 2018; and

WHEREAS, a DEIS was prepared and a Notice of Completion for the DEIS was issued on June 22, 2018. On October 17, 2018 (Calendar No. 17), a public hearing was held on the DEIS pursuant to SEQRA and the CEQR procedures. Over 175 public comments were received on the DEIS via individuals, organizations, and petitions. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on November 23, 2018; and

WHEREAS, the FEIS identified significant adverse impacts with respect to public elementary schools, publicly funded child care facilities, open space, shadows, traffic, transit, and pedestrians, as well as traffic and noise during the construction period. These impacts and measures to minimize or eliminate these impacts, where feasible and practicable, are described below:

Public Elementary Schools

The community facilities analysis conservatively assumes that the 200 affordable units that the developers' intend to be exclusively for seniors are instead affordable units for families. If this were to be the case, the proposed projects could result in an increase of more than five percentage points over the No Action condition and elementary school utilization would be just over 100 percent. Therefore, the proposed projects could result in a significant adverse impact on public elementary schools in Community School District (CSD) 1.

The Restrictive Declarations for the proposed projects require the applicants to fund the increase in school seat capacity in CSD 1, if required. The Department of Education (DOE)

and School Construction Authority (SCA) would continue to monitor trends in demand for school seats in the area. With the funding provided by the applicants, DOE and SCA responses to identified demand could take place in stages and include administrative actions and/or enlargement of existing schools. Mitigation measures may include, but are not limited to, relocating administrative functions to another site, thereby freeing up space for classrooms; making space within the buildings in the school study area available to DOE; and/or restructuring or reprogramming existing school space within a district. Absent the implementation of such measures, if needed, the proposed projects would have an unmitigated significant adverse impact on public elementary schools.

Publicly Funded Child Care Facilities

The community facilities analysis conservatively assumes that the 200 affordable units that the developers' intend to be exclusively for seniors are instead affordable units for families. If this were to be the case, the proposed projects could cause child care facilities in the study area to operate over capacity and the increase in the utilization rate would be over five percentage points. Therefore, the proposed projects could result in a significant adverse impact on child care facilities.

The Restrictive Declarations for the proposed projects will require the applicants to work with New York City Administration for Children's Services to consider the need for additional capacity within the 1½-mile study area and the implementation of measures to provide additional capacity, if required, to mitigate the significant adverse impact to publicly funded child care facilities. Absent the implementation of such mitigation measures, if needed, the proposed projects would have an unmitigated significant adverse impact on publicly funded child care facilities.

Open Space

The proposed projects would result in reductions in the total, active, and passive open space ratios in the study area, resulting in significant adverse open space impacts based on the quantitative analysis of indirect effects, as set forth in the *CEQR Technical Manual*.

As partial mitigation for the open space impact, the existing approximately 15,868 square feet (approximately 0.36 acres) of private open space on Site 4 (4A/4B) would be dedicated as publicly accessible open space. In addition, the renovation of existing open spaces in the vicinity of the project sites has been identified as a practicable mitigation measure. Coleman Playground, Captain Jacob Joseph Playground, and Little Flower Playground have been proposed as potential resources to be reconstructed, as described below in “Open Space.” Given that these improvements would improve the quality but not quantity of open space available in the study areas, the significant adverse impacts on open space would not be fully mitigated and therefore the proposed projects would result in unmitigated significant adverse impacts on open space.

Shadows

Two sunlight-sensitive resources would experience significant adverse shadows impacts: the Cherry Clinton Playground and the Lillian D. Wald Playground. These open space resources contain basketball courts, handball courts, playground/fitness equipment, seating areas, trees, and landscaping.

Proposed mitigation measures include dedicated funding for enhanced maintenance at the Cherry Clinton Playground and the Lillian D. Wald Playground to mitigate the significant adverse impact to the users and the trees of the Cherry Clinton Playground, and the users of the Lillian D. Wald Playground. With the implementation of these-mitigation measures, the impacts would be considered partially mitigated. As the significant adverse shadows impact would not be fully mitigated, the proposed projects would result in unmitigated significant adverse shadows impacts to these resources.

Transportation – Traffic

The proposed projects would result in potential significant adverse traffic impacts at multiple locations in the traffic study area. Based on a detailed assignment of project-generated vehicle trips, 31 intersections were identified as warranting detailed analysis for the weekday AM, midday, and PM peak hours. The detailed analysis concluded that in the future with the proposed projects, there would be significant adverse impacts at six intersections during the weekday AM peak hour, five intersections during the midday peak hour, and 10 intersections during the PM peak hour. While most of the impacts could be mitigated, the significant traffic impacts at two of the study intersections would be unmitigated.

The following intersections could be fully mitigated in one or more peak hours:

South Street and Pike Slip

The significant adverse impact at the southbound left-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by shifting one second of green time from the eastbound/westbound phase to the southbound phase.

South Street and Clinton Street

The significant adverse impacts at the eastbound approach of this intersection during the weekday PM peak hour could be fully mitigated by shifting four seconds of green time from the northbound/southbound phase to the eastbound/westbound phase.

Madison Street and Pike Street (East and West)

The significant adverse impacts at the eastbound approach of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the eastbound/westbound phase.

Madison Street and Montgomery Street

The significant adverse impact at the northbound approach of this intersection during the weekday PM peak hour could be fully mitigated by shifting one second of green time from the eastbound/westbound phase to the northbound/southbound phase.

East Broadway and Pike Street (East and West)

The significant adverse impacts at the northbound left-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by restriping the eastbound approach from one 11-foot moving lane, one five-foot bike lane, and one 10-foot parking lane to one 11-foot moving lane, one five-foot bike lane, and one 10-foot right-turn lane; prohibiting parking (installing “No Standing Anytime” sign) on the south curbside of the eastbound approach for approximately 100 feet from the intersection; and shifting two seconds of green time from the northbound/southbound phase to the northbound phase.

The significant adverse impacts at the northbound left-turn lane group and eastbound approaches of this intersection during the weekday midday peak hour could be fully mitigated by undertaking the above restriping and curbside regulation changes, and shifting one second of green time from the northbound/southbound phase to the northbound phase.

The significant adverse impacts at the northbound left-turn lane group and eastbound approaches of this intersection during the weekday PM peak hour could be fully mitigated by undertaking the above restriping and curbside regulation changes, shifting one second of green time from the northbound/southbound phase to the northbound phase, and shifting one second of green time from the northbound/southbound phase to the eastbound/westbound phase.

Division Street and Market Street

The significant adverse impact at the northbound approach of this intersection during the weekday midday peak hour could be fully mitigated by shifting one second of green time from the westbound phase to the northbound phase.

Canal Street and Allen Street

The significant adverse impact at the eastbound approach of this intersection during the weekday PM peak hour could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the eastbound/westbound phase.

Allen Street and Delancey Street

The significant adverse impacts at the westbound left-turn lane group of this intersection during the weekday midday and PM peak hours could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the westbound phase.

Division Street and The Bowery

The significant adverse impacts at the westbound left-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting two seconds of green time from the northbound/southbound phase to the westbound phase.

East Broadway and Chatham Square

The significant adverse impact at the southbound left-turn lane group of this intersection during the weekday midday peak hour could be fully mitigated by shifting one second of green time from the westbound phase to the northbound/southbound phase.

The significant adverse impacts at the northbound right turn and southbound left-turn lane groups of this intersection during the weekday PM peak hour could be fully mitigated by shifting two seconds of green time from the westbound phase to the northbound/southbound phase.

Worth Street and Centre Street

The significant adverse impact at the westbound through lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting one second of green time from the northbound phase to the eastbound/westbound phase.

The following intersections are unmitigated in one or more peak hours:

South Street and Montgomery Street (North and South)

An unmitigated significant adverse impact could occur on the southbound approaches of this intersection during the weekday AM peak hour. Additionally, an unmitigated significant adverse impact could occur on the westbound, northbound and southbound approaches of this intersection during the weekday PM peak hour.

Chatham Square and Worth Street/Oliver Street intersection

An unmitigated impact could occur at the eastbound approach and southbound shared lane of this intersection during the weekday AM, midday, and PM peak

hours. Additionally, the significant adverse impact at the westbound right-turn lane of this intersection during the weekday PM peak hour also could not be mitigated.

Transportation – Transit

Subway station circulation elements and control areas were analyzed for the East Broadway-Rutgers Street station (F line) for the weekday AM and PM peak hours. The proposed projects are expected to result in significant adverse subway stairway impacts at this station's S1 stairway at the northwest corner of Rutgers Street and Madison Street during both the weekday AM and PM peak hours, and the P3 platform stairway for the weekday AM peak hour.

The mitigation measures identified for the proposed projects include building a new subway entrance (street-level stairway S2) at the south end of the subway station on the northeast corner of Rutgers Street and Madison Street and widening the (P3) platform-level stairway and adjoining mezzanine level stairway (ML7). These measures would fully mitigate the identified significant adverse impacts.

Coupled with these stairway improvements would be two new elevators that would make the station compliant with the Americans with Disabilities Act for vertical circulation. These elevators would be located at the north end of the station as the platform at the south end has a column structure that precludes the elevators being built next to the new street and mezzanine stair.

Transportation – Pedestrians

Pedestrian conditions were evaluated at 18 sidewalks, 16 corners, and 12 crosswalks for the weekday AM, midday, and PM peak hours. The proposed projects would result in significant adverse pedestrian impacts at one sidewalk (north sidewalk of Madison Street between Rutgers Street and Pike Street) during the weekday AM and PM peak hours, two

crosswalks (Rutgers Street and Madison Street north crosswalk and west crosswalk) during the weekday AM peak hour, one crosswalk during the weekday midday peak hour (Rutgers Street and Cherry Street south crosswalk), and two crosswalks during the weekday PM peak hour (Rutgers Street and Madison Street north crosswalk and Rutgers Street and Cherry Street south crosswalk).

The new street-level stairway and subway entrance proposed as mitigation to the significant adverse impacts related to transit is expected to result in a shift of pedestrian paths leading to/from the East Broadway-Rutgers Street subway station. As a result, the identified significant adverse impacts at the north sidewalk of Madison Street between Rutgers Street and Pike Street, and the north and west crosswalks of the Rutgers Street and Madison Street intersection would also be mitigated.

To accommodate the new stairway, the north sidewalk on Madison Street between Rutgers Street and Jefferson Street would need to be widened. With increased pedestrian flow on the east side of Rutgers Street to/from the new S2 stairway, a new significant adverse impact was identified for the east crosswalk of the Rutgers Street and Madison Street intersection. The potential pedestrian mitigation measures consist of signal timing changes and crosswalk widening, and widening the width of the north sidewalk at the northeast corner of Rutgers Street and Madison Street (in connection with the proposed transit mitigation) to facilitate increased pedestrian space.

Construction – Traffic

The following significant adverse traffic impacts were identified during the construction AM peak hour and the construction PM peak hour:

Construction AM Peak Hour

— East Broadway and Pike Street – northbound left-turn movement; and

- Allen Street and Delancey Street – westbound left-turn movement.

Construction PM Peak Hour

- South Street and Pike Street – southbound left-turn movement;
- South Street and Clinton Street – eastbound left-through lane group;
- South Street (South) and Montgomery Street – southbound left-through lane group;
- Madison Street and Montgomery Street – northbound approach; and
- Chatham Square and Worth Street/Oliver Street – eastbound Worth Street approach.

The same or similar traffic mitigation measures identified to mitigate the operational impacts could be implemented early at the discretion of the NYC Department of Transportation (DOT) to mitigate the temporary impacts during construction. The construction traffic impacts at the two intersections identified as unmitigated in the With Action conditions (South Street and Montgomery Street (North and South) and Chatham Square and Worth Street/Oliver Street would, also remain unmitigated during the peak construction periods.

Construction – Noise

The detailed modeling analysis contained in the FEIS concluded that construction of the proposed projects has the potential to result in construction noise levels that exceed *CEQR Technical Manual* noise impact criteria for an extended period of time at the façades of residences facing the project sites on Cherry Street: the eastern, southern, and western façades of 64 Rutgers Street: 80 Rutgers Slip: the northern, eastern, and a portion of the southern façades of 82 Rutgers Slip: a portion of the northern façade and the eastern and western façades of 265 and 275 Cherry Street: residences immediately adjacent to Site 6A, portions of the northern and western façades of 286 South Street: and portions of the northern and eastern façades of the residences west of Site 4 (4A/4B).

No practicable mitigation measures have been identified that would fully mitigate the construction-period noise impacts. The construction-period noise impacts would remain unmitigated.

WHEREAS, to avoid the potential for significant adverse impacts to occur, the proposed actions include an (E) designation related to noise (E-489) would be assigned to the parcels, as detailed below:

Noise

To ensure an acceptable interior noise environment, the building façade(s) or future development at the project sites must provide minimum composite building façade attenuation as shown in Table 17-9 of the *Two Bridges LSRD EIS* in order to ensure an interior L₁₀ noise level not greater than 45 dBA for residential and community facility uses or not greater than 50 dBA for commercial uses. To maintain a closed-window condition in these areas, an alternate means of ventilation that brings outside air into the buildings without degrading the acoustical performance of the building façade(s) must also be provided.

The requirements of a previously assigned (E) designation (E-312) related to hazardous materials in connection with prior approvals would continue to apply, as detailed below:

Hazardous Materials

As a part of the environmental review for the Two Bridges/HealthCare Chaplaincy project CEQR no. 12DCP157M) formerly proposed for Site 5, Lot 2 was assigned (E) Designation E-312 for hazardous materials. This designation requires that prior to any new construction entailing subsurface disturbance, the applicant submit to the New York City Office of Environmental Remediation (OER), for review and

approval, a Phase I ESA and sampling protocol (for any additional subsurface investigation). A report documenting the subsurface investigation findings along with a Remedial Action Plan (RAP) setting out procedures to be followed prior to, during, and following construction (e.g., for soil management, dust control, air monitoring, health and safety, and vapor controls for the new building) is then submitted for OER review and approval. Documentation that the RAP procedures were properly implemented is required by OER before New York City building permits allowing occupancy can be issued.

WHEREAS, this application (M 180507(C) ZSM) was referred to Community Board 3 by the Department of City Planning on June 25, 2018 in accordance with the procedures for non-Uniform Land Use Review Procedure (ULURP) matters; and

WHEREAS, Community Board 3 held a public hearing on this application (M 180507(C) ZSM) on August 14, 2018, and on September 28, 2018 adopted a resolution recommending disapproval of the application; and

WHEREAS, on September 26, 2018 (Calendar No. 5), the City Planning Commission scheduled October 17, 2018 for a public hearing on the DEIS (17DCP148M). The hearing was duly held on October 17, 2018 (Calendar No. 17); and

WHEREAS, there were 19 speakers in favor of the application at the public hearing and 60 in opposition; and

WHEREAS, during the public hearing for the DEIS, speakers in favor included representatives and members of JDS Development; representatives and members of L+M Development Partners and CIM Group, representatives and members of Starrett Development; the Settlement Housing

Fund; a retail business owner within the LSRD; the Service Employees International Union Local 32BJ; a laborer for a construction services company; and an advocate for disabled persons; and

WHEREAS, during the public hearing for the DEIS, speakers in opposition included the City Council Member representing District 1; the Borough President of Manhattan; the N.Y. State Senator for New York's 26th Senate District; the N.Y. State Assemblymember for New York's 65th Assembly District; representatives and members of Community Board 3; representatives and members of tenant associations within the LSRD; a retail tenant within the LSRD; Henry Street Settlement; the Metallic Lathers and Reinforcing Ironworkers Local 46 union; representatives and members from civic organizations including CAAAV: Organizing Asian Communities, Good Old Lower East Side, Lower East Side Organized Neighbors, and Tenants United Fighting for the Lower East Side; and local neighborhood residents; and

WHEREAS, the applicants and their representatives testified in support of the applications and described the proposed buildings' programs and designs, affordable housing obligations, potential project-related significant adverse impacts, project components related to the environment that would enable the projects to preclude certain significant adverse impacts, proposed mitigation measures, and the applicants' responsibilities associated with the implementation of mitigation measures; and

WHEREAS, a representative of the Settlement Housing Fund spoke in support of the proposed project at 247 Cherry Street and stated that its sale of land and unused development rights for use by the development would result in new permanent affordable housing units and a significant investment in the existing 100 percent affordable senior building at 80 Rutgers Slip. The representative stated that 82 Rutgers Slip and 80 Rutgers Slip would remain in the ownership of Settlement Housing Fund and would remain affordable; and

WHEREAS, a local retail business owner in operation for 30 years spoke in support of the proposed project at 260 South Street and stated that he worked with the property owner to secure a new long-term lease in the enlarged retail space proposed for that site; and

WHEREAS, an advocate for disabled persons spoke in support of the proposed projects and stated that the addition of elevator access from the street to the platform level at the East Broadway subway station, which is unlikely to receive an elevator through other means in the foreseeable future, would allow disabled individuals to be more independent and remain in the area; and

WHEREAS, three other speakers spoke in support of the proposals. Two members of the Service Employees International Union Local 32BJ stated that the proposed developments had committed to roughly 50 permanent building service jobs that would pay prevailing wages. A representative of a construction services company stated that the proposed development at 260 South Street has proposed significant local hiring plans for its project; and

WHEREAS, a representative for JDS Development, the applicant at the 247 Cherry Street site, clarified that a lawsuit by Little Cherry LLC, the tenant at 235 Cherry Street, does not challenge the right of the Commission to consider the proposed project; and

WHEREAS, multiple speakers expressed concern that the minor modification process did not allow for adequate public input and review of the proposed projects, potential impacts, and proposed mitigation measures; and

WHEREAS, multiple speakers expressed concern that the DEIS did not adequately analyze residential and retail displacement; the strains on mass transit, including subways and buses; open space; shadows; sewage treatment and storm drainage; resiliency; and construction; and

WHEREAS, multiple speakers opposed the classification of the proposed actions as minor modifications to the existing LSRD and requested that the applications be reviewed pursuant to the ULURP; and

WHEREAS, multiple speakers expressed concern that the proposed projects could not meet the authorization or special permit findings enumerated in ZR Section 78-313; and

WHEREAS, multiple speakers expressed concern that the scale of the proposed projects is inconsistent with the existing neighborhood context and does not perpetuate the Two Bridges urban renewal plan that expired in 2007; and

WHEREAS, multiple speakers expressed concern about the displacement of seniors and elimination of existing senior units at 80 Rutgers Slip due to the construction of the proposed building at 247 Cherry Street; and

WHEREAS, multiple speakers expressed concern that the projected 694 affordable units produced as part of the proposed projects would not be sufficient or affordable to area residents; and

WHEREAS, rent-stabilized tenants alleged harassment by their landlords and multiple speakers expressed support for additional services to address tenant harassment; and

WHEREAS, a member of Community Board 3 expressed concern regarding the loss of rent-regulated units and the number of eviction cases filed in the area; and

WHEREAS, multiple speakers requested that the vote on this application be delayed until a proposed text amendment to the LSRD by the City Council Member representing District 1 and

the Borough President of Manhattan can be completed, referred for public review, have its public hearings, and return for a vote; and

WHEREAS, a representative of Two Bridges Townhouse Condominiums, located on Parcel 6B within the LSRD, argued that the applications should not be allowed to proceed in the absence of a written owner's authorization from the residents of those condominiums; and

WHEREAS, a representative of Little Cherry, LLC, which holds a lease on a portion of Parcel 4 within the LSRD, requested that the Commission not consider the application for the proposed development at 247 Cherry Street pending resolution of litigation on the extent of its property interests under the lease; and

WHEREAS, two members of the Metallic Lathers and Reinforcing Ironworkers Local 46 union stated that a study should be conducted regarding the effects of the proposed developments on wages, working conditions, and worker safety; and

WHEREAS, this application (M 180507(C) ZSM) 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 30, 2013 and by the New York State Department of State on February 3, 2016, 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 16-085. This action was determined to be consistent with the policies of the WRP; and

WHEREAS, the Commission notes that the public review process included four voluntary public sessions administered by the applicant team, a public scoping meeting, three public meetings held by Community Board 3, and a public hearing on the DEIS held by the City Planning Commission followed by a 10-day written comment period; and

WHEREAS, the Commission notes that the EIS analysis is consistent with the CEQR Technical Manual guidelines and that responses to written comments and the testimony heard at the public hearing are addressed in the Response to Comments section of the Final EIS; and

WHEREAS, the Commission carefully considered the analysis and public comments in determining the appropriate mitigation measures, detailed above, regarding potential impacts in the categories of community facilities, open space, shadows, transportation, and construction; and

WHEREAS, the Commission concurred with many of the mitigation measures that were identified in the DEIS and explored further following publication of the DEIS based on community input, such as testimony at the DEIS public hearing and written comments, and through consultation with City and State agencies; and

WHEREAS, the Commission determined that additional open space mitigation was necessary, and required that the open space on Parcel 4 be made public and designed in consultation with the Department; and

WHEREAS, the Commission notes that the applicant commits to establish a community construction task force as a forum for coordination with members of the community regarding the proposed projects' construction schedule and activities; and

WHEREAS, the applicant's request for a modification to the previously approved LSRD must comply with the underlying zoning and is subject to the Commission's determination that the findings made for previously granted authorizations and special permits within the LSRD remain valid; and

WHEREAS, the Commission notes that no new zoning actions, no new waivers, and no other modifications are being sought; and

WHEREAS, the Commission acknowledges that a review of the record supporting the Commission's adoption of the LSRD indicates that there are no special considerations that would render an as-of-right development a major modification of the LSRD, which would require a new ULURP; and

WHEREAS, the Commission acknowledges that the proposed projects, while large in scale, include proposed uses and floor area that are permitted as-of-right in a C6-4 Zoning District; and

WHEREAS, the Commission believes that the findings made for previously granted authorizations and special permits within the LSRD remain valid; and

WHEREAS, the Commission notes that the Two Bridges Urban Renewal Plan (URP) was adopted in 1967 to address the deteriorating conditions in the area, and that from 1972 to 1995 buildings were constructed to fulfil the objectives of the URP before it expired by its own terms in 2007; and

WHEREAS, the Commission notes the varied built context of the area, which generally steps up block by block from East Broadway to the East River, consisting of a lower-rise area, characterized by tenement and pre-war buildings generally ranging in height from one to 10 stories, that is ringed by tower in the park building clusters, ranging from 16 to 21 stories, with the buildings beyond, and closest to the East River, ranging from one to 27 stories within the LSRD and with a 13- and a 78-story building adjacent to the LSRD; and

WHEREAS, the Commission notes that there would be no loss of senior units at 80 Rutgers Slip due to the proposed projects and that the relocation of any units or residents would be subject to a regulatory agreement approved by the U.S. Department of Housing and Urban Development; and

WHEREAS, the Commission is aware that 25 percent of the residential units will be permanently affordable through a combination of the R10 Inclusionary Housing program and regulatory agreements with the NYC Department of Housing Preservation and Development (HPD), which it strongly believes is essential as a means of maintaining neighborhood character; and

WHEREAS, the Commission has determined that to ensure completion of the permanently affordable residential units, it would require that applicant not accept a building permit issued by the Department of Buildings pursuant to a new building application authorizing construction of the project until applicant has entered into an affordable housing regulatory agreement with HPD; and

WHEREAS, the Commission notes that units will be available to a range of income levels between 40 and 120 percent of the area median income; and

WHEREAS, the Commission understands that the proposed projects will produce up to 694 permanently affordable units through unsubsidized development on private property, which represents one of the largest affordable housing projects in the City's history; and

WHEREAS, the Commission notes that HPD will instruct the Mayor's Office's Public Engagement Unit to engage with 17 buildings in Community District 3 that have been identified as at risk for tenant harassment to determine whether tenants have received buyout offers in an illegal manner, whether tenants are aware of their rent stabilization status, and whether there are any concerns that intentional actions to displace tenants are occurring; and

WHEREAS, the Commission believes that it would be inappropriate to intentionally delay a completed application for the purpose of allowing another, incomplete application to be completed, referred, heard at a public meeting, and then voted on at the same time; and

WHEREAS, the Commission understands that the condominium owners, located on Parcel 6B within the LSRD, have refused to provide a written “statement of awareness” for the proposed applications, but notes that the “statement of awareness” requirement for LSRDs is intended to provide notice to other property owners but is not intended to create a legal interest that enables an owner to demand payment to enable a proposed development on an unrelated site to proceed; and

WHEREAS, the Commission notes the Department’s determination that the “statement of awareness” requirement has been satisfied since the condominium owners have made their awareness of the proposed projects known, and the proposed applications do not affect their property interests or zoning interests; and

WHEREAS, the Commission notes that the litigation concerning Little Cherry, LLC does not affect the ability of the Commission to consider the applications before it; and

RESOLVED, that having considered the FEIS (17DCP148M) for which a Notice of Completion was issued on November 21, 2018, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met:

1. Consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the Proposed Action adopted herein is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to

the maximum extent practicable through the implementation of mitigation measures, which form part of the action, consisting of:

- a. payments per public elementary school seat as deemed appropriate by the NYC School Construction Authority;
- b. payments per publicly funded child care facility slot or providing on-site space for the operation of a publicly funded child care facility as deemed appropriate by the NYC Administration of Children's Services;
- c. the establishment of two new on-site public open spaces and improvements to neighborhood parks as deemed appropriate by the NYC Department of Parks and Recreation;
- d. a per park payment for a 10-year period for plant maintenance as deemed appropriate by the NYC Department of Parks and Recreation;
- e. traffic signal timing adjustments, lane restriping, and crosswalk widenings as deemed appropriate by NYC Department of Transportation; a new stairway entrance, stairway widenings, and new elevators compliant with the Americans with Disabilities Act at the East Broadway subway station as deemed appropriate by the Metropolitan Transportation Authority; and
- f. the placement of (E) designations for noise and hazardous materials.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic, and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, the City Coastal Commission 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 that based on the environmental determination, and the consideration and findings described in this report, the application (M 180507(C) ZSM) submitted by the applicants for the grant of a modification to the previously approved LSRD (CP-21885) that would facilitate development of an approximately 501,518 square feet residential building and the enlargement of an existing building with approximately 2,393 square feet of new ground-floor retail space located at 247 Cherry Street (Block 248, Lots 15, 70 and 75), in a C6-4 Zoning District, Borough of Manhattan, Community District 3, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (M 180507(C) ZSM) 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., filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Received Date</u>
Z-001.00	LSRD Zoning Analysis	2018-06-19
Z-002.00	LSRD Site Plan	2018-06-19
Z-003.00	Zoning Lot Analysis	2018-06-19
Z-004.00	Zoning Lot Site Plan	2018-06-19
Z-005.00	Ground Floor Site Plan	2018-06-19
Z-006.00	Existing Waivers Plan Diagram	2018-06-19
Z-007.00	Zoning Sections	2018-06-19
Z-008.00	Zoning Section B-B and C-C	2018-06-19
Z-009.00	Zoning Section D-D	2018-06-19
Z-030.00	Neighborhood Character Diagram	2018-06-19
Z-031.00	Neighborhood Character Diagram	2018-06-19
Z-032.00	Zoning Lot Elevations	2018-06-19

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. No development pursuant to this resolution shall be permitted until the Restrictive Declaration attached as Exhibit A, as same may be modified with any necessary administrative or technical changes, all as acceptable to Counsel to the Department of City Planning, is executed by Cherry Street Owner LLC and Two Bridges Senior Apartments, L.P. or its successor, and such Restrictive Declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

The above resolution, is duly adopted by the City Planning Commission on December 5, 2018 (Calendar No. 10).

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, ESQ., *Vice Chairman*

ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III,

JOSEPH DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, HOPE KNIGHT,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*

MICHELLE DE LA UZ, ANNA HAYES LEVIN,

RAJ RAMPERSHAD, *Commissioners*, voting “No”

Exhibit A

[EXECUTION VERSION]

RESTRICTIVE DECLARATION

DATED AS OF _____, _____

**NEW YORK COUNTY
BLOCK 248, LOTS 15, 70 AND 76**

**RECORD AND RETURN TO:
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP
ONE NEW YORK PLAZA
NEW YORK, NEW YORK 10004
ATTN: DAVID M. KARNOVSKY, ESQ.**

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RESTRICTIVE DECLARATION

THIS RESTRICTIVE DECLARATION (this "**Declaration**"), dated as of _____, _____ and effective as of the Effective Date (hereinafter defined) by **CHERRY STREET OWNER LLC**, a Delaware limited liability company having an address at 104 Fifth Avenue, New York, New York 10011, **TWO BRIDGES SENIOR APARTMENTS, L.P.**, a New York limited partnership having an address at 275 Cherry Street, New York, New York 10002 and **TWO BRIDGES SET HOUSING DEVELOPMENT FUND COMPANY, INC.**, a New York not-for-profit corporation having an address at c/o Settlement Housing Fund, Inc., 247 West 37th Street, 4th Floor, New York, New York 10018 (collectively, "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Manhattan, County, City of New York and State of New York, designated for real property tax purposes as: Block 248, Lots 70 and 76 (collectively, the "**Declarant Property**") on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A-1** annexed hereto;

WHEREAS, Two Bridgeset Associates, L.P. and 2BT Housing Development Fund Corporation are the fee owners of certain real property located in the Borough of Manhattan, County, City of New York and State of New York, designated for real property tax purposes as: Block 248, Lot 15 (together with the Declarant Property, collectively, the "**Subject Property**") on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A-2** annexed hereto;

WHEREAS, the Subject Property is designated as Site 4 (4A/4B) of the "large scale residential development" (the "**Large Scale Residential Development**"), as defined in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time (the "**Zoning Resolution**"), established by the Commission (herein defined) on May 17, 1972 (CP-21885);

WHEREAS, Declarant has filed an application (ULURP No. M 180507(C) ZSM) (the "**Application**") to modify the site plan and zoning calculations of the Large Scale Residential Development to allow the development of a mixed-use, predominantly residential building at the Subject Property in compliance with the use and bulk regulations of the underlying C6-4 zoning district (the "**Proposed Development**");

WHEREAS, in addition to the Application, Two Bridges Associates, L.P., HP Cherry Street Housing Development Fund Company, Inc., 265-275 Cherry Street (NY) Owner, L.P. and LE1SUB LLC (including Declarant, collectively, the "**Two Bridges Applicants**") have filed concurrent applications to modify the site plan and zoning calculations of the Large Scale Residential Development to allow the development of mixed-use, predominantly residential buildings at Site 5 (ULURP No. M 180505(A) ZSM) and Site 6A (ULURP No. M 180506(B) ZSM) of the Large Scale Residential Development in compliance with the use and bulk regulations of the underlying C6-4 zoning district (including the Proposed Development, collectively, the "**Proposed Two Bridges Developments**");

WHEREAS, in connection with the Proposed Two Bridges Developments, DCP (herein defined), acting on behalf of the Commission, as lead agency for the City Environmental Quality Review Application No. 17DCP148M, conducted an environmental review of the Proposed Two Bridges Developments 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 issued a Notice of Completion for the Final Environmental Impact Statement (the “**FEIS**”), dated November 23, 2018, prepared in connection with the environmental review of the Proposed Two Bridges Developments;

WHEREAS, the FEIS analyzed the potential effects of the three (3) concurrent applications to modify the site plan and zoning calculations of the Large Scale Residential Development;

WHEREAS, at the time of the Commission’s approval of the Proposed Two Bridges Developments the Commission found, as required pursuant to SEQRA, pursuant to that certain report of the Commission, dated December 5, 2018 (the “**Findings Statement**”) that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable by incorporating as conditions of the decision those mitigative measures that were identified in the FEIS as practicable;

WHEREAS, to ensure that the Proposed Development is consistent with the analysis of the FEIS upon which the Commission has made its findings pursuant to the Findings Statement, and that the Proposed Development incorporates certain (i) requirements for mitigation of significant adverse environmental impacts (“**Mitigation Measures**”) and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS (“**PCREs**”), Declarant has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration;

WHEREAS, Declarant desires, on the terms and conditions herein, 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 the land, including the land owned by the City, lying within a one-half mile radius of the Subject Property;

WHEREAS, _____ has certified that, as of _____, 2018, the “parties-in-interest” (as defined in subdivision (d) of the term “zoning lot” in Section 12-10 of the Zoning Resolution) to the Subject Property are set forth in the certification as **Exhibit B** annexed hereto and made a part hereof (each, a “**Party-in-Interest**”);

WHEREAS, all parties-in-interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instruments in substantially the same form as the waiver, annexed hereto as **Exhibit C**, which instruments are intended to be recorded simultaneously 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

1.01 Definitions. For purposes of this Declaration:

“ACS” shall mean the City Administration for Children’s Services or any successor to its jurisdiction.

“Additional Exceedances” shall have the meaning set forth in Section 3.02(a)(ii) of this Declaration.

“Alternative PCREs” shall have the meaning set forth in Section 3.10(a) of this Declaration.

“Alternative Open Space Mitigation Scope” shall have the meaning set forth in Section 3.03(a)(iv) of this Declaration.

“Alternative Open Space Mitigation Work” shall have the meaning set forth in Section 3.03(a)(iv) of this Declaration.

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

“Assessment Property” shall have the meaning set forth in Section 9.08(a) of this Declaration.

“Association” shall have the meaning set forth in Section 9.02 of this Declaration.

“Association Members” shall have the meaning set forth in Section 9.05 of this Declaration.

“Association Obligation Date” shall have the meaning set forth in Section 9.03 of this Declaration.

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

“**Business Day**” shall mean 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.

“**CCTF**” shall have the meaning set forth in Section 3.01(i) of this Declaration.

“**CEOR**” 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.

“**Child Care Funding Obligations**” shall have the meaning set forth in Section 3.05(a)(i) of this Declaration.

“**Child Care Proportionate Share**” shall have the meaning set forth in Section 3.05(a)(ii) of this Declaration.

“**Child Care Study Area**” shall have the meaning set forth in Section 3.05(a) of this Declaration.

“**City**” shall mean the City of New York.

“**Coleman Playground Scope**” shall have the meaning set forth in Section 3.03(a)(ii) of this Declaration.

“**Coleman Playground Work**” shall have the meaning set forth in Section 3.03(a)(ii) of this Declaration.

“**Commission**” shall mean the City Planning Commission of the City or any successor to its jurisdiction.

“**Construction Commencement**” shall mean the issuance of the first Building Permit by DOB to Declarant for the commencement of work to develop the Subject Property, in whole or in part, with the Proposed Development, or any portion thereof.

“**Construction Drawings**” shall have the meaning set forth in Section 3.07(c)(ii) of this Declaration.

“**Construction PCRE Default Notice**” shall have the meaning set forth in Section 3.01(h) of this Declaration.

“**Construction PCRE Violation**” shall have the meaning set forth in Section 3.01(h) of this Declaration.

“**Construction PCREs**” shall have the meaning set forth in Section 3.01(g)(i) of this Declaration.

“**CPI**” shall mean and refer to Consumer Price Index for all Urban Consumers, U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics.

“Day Care Assessment Request” shall have the meaning set forth in Section 3.05(a) of this Declaration.

“DCP” shall mean the 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.

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

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

“Delay Notice” shall have the meaning set forth in Section 4.01 of this Declaration.

“DEP” shall mean the City Department of Environmental Protection or any successor to its jurisdiction.

“DOB” shall mean the City Department of Buildings or any successor to its jurisdiction.

“DOE” shall mean the City Department of Education or any successor to its jurisdiction.

“DOT” shall mean the City Department of Transportation or any successor to its jurisdiction.

“DPFs” shall have the meaning set forth in Section 3.01(c)(i)(B) of this Declaration.

“DPR” shall mean the City Department of Parks and Recreation or any successor to its jurisdiction.

“Effective Date” shall mean the date on which Declarant receives approval of the Application by the Commission.

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

“Elevator Work” shall have the meaning set forth in Section 3.07(a) of this Declaration.

“Elimination or Reduction of PCRE Measures” shall have the meaning set forth in Section 3.10(b) of this Declaration.

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

“FEIS Requirement” shall mean any measure set forth in the FEIS that must be incorporated into the Proposed Development in order to mitigate or avoid significant adverse environmental impacts.

“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.

“Findings Statement” shall have the meaning set forth in the Recitals to this Declaration.

“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 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) failure of a Governmental Authority to provide its review, comments and/or approvals within the timeframes specified pursuant to the Open Space Design Development Agreement, Transit Mitigation Agreement or the NYCHA Improvement Agreement, or to provide access to sites, as necessary, to perform work pursuant to such agreements; (vi) undue material delay in the issuance of approvals by any Governmental Authority, including delays in execution of agreements required pursuant to the Declaration, provided that such delay is not caused by any act or omission of Declarant; (vii) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (viii) fire or other casualty; (ix) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (x) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (xi) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xii) 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; (xiii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiv) 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 the implementation of any PCREs or Mitigation Measures. 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 IV.

“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.

“hp” shall have the meaning set forth in Section 3.01(c)(i)(B) of this Declaration.

“Impacted Playground” shall have the meaning set forth in Section 3.04(a) of this Declaration.

“Individual Assessment Interest” shall have the meaning set forth in Section 6.03(a) of this Declaration.

“Large Scale Residential Development” shall have the meaning set forth in the Recitals to this Declaration.

“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.

“Liaison” shall have the meaning set forth in Section 3.01(i)(i) of this Declaration.

“Little Flower Playground-Captain Jacob Joseph Playground Scopes” shall have the meaning set forth in Section 3.03(a)(iii) of this Declaration.

“Little Flower Playground-Captain Jacob Joseph Playground Work” shall have the meaning set forth in Section 3.03(a)(ii) of this Declaration.

“Low-Income Units” shall mean residential units that are affordable to persons or families with incomes at or below limits prescribed in a regulatory agreement(s) with the Department of Housing Preservation and Development.

“LPC” shall mean the City Landmarks Preservation Commission or any successor to its jurisdiction.

“Mitigation Measures” shall have the meaning set forth in the Recitals to this Declaration.

“Monitor” shall have the meaning set forth in Section 3.01(g)(i) of this Declaration.

“Monitor Agreement” shall have the meaning set forth in Section 3.01(g)(ii) 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 have the meaning set forth in Section 3.01(b)(i) of this Declaration.

“MTA” shall mean the Metropolitan Transportation Authority, New York City Transit or any successor to its jurisdiction.

“New Cure Period” shall have the meaning set forth in Section 3.01(h) of this Declaration.

“Notice of Final Completion” shall have the meaning set forth in Section 3.03(f)(ii) of this Declaration.

“**Notice of Substantial Completion**” shall have the meaning set forth in Section 3.03(f)(i) of this Declaration.

“**NYCHA**” shall mean the New York City Housing Authority or any successor to the jurisdiction thereof.

“**NYCHA Construction Drawings**” shall have the meaning set forth in Section 2.02(b) of this Declaration.

“**NYCHA Improvements**” shall have the meaning set forth in Section 2.02(a) of this Declaration.

“**NYCHA Improvement Agreement**” shall have the meaning set forth in Section 2.02(a) of this Declaration.

“**NYCHA Scope**” shall have the meaning set forth in Section 2.02(a) of this Declaration.

“**NYCHA Site**” shall have the meaning set forth in Section 2.02(a) of this Declaration.

“**On-Site Public Space**” shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

“**On-Site Public Space Plans**” shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

“**Open Space Design Development Agreement**” shall have the meaning set forth in Section 3.03(b) of this Declaration.

“**Open Space Plans**” shall have the meaning set forth in Section 3.03(b) of this Declaration.

“**Open Space Scope of Work**” shall have the meaning set forth in Section 3.03(a)(iii) of this Declaration.

“**Open Space Work**” shall have the meaning set forth in Section 3.03(a)(iii) of this Declaration.

“**Party-in-Interest**” shall have the meaning set forth in the Recitals of this Declaration.

“**PCO**” shall mean a permanent certificate of occupancy issued by DOB.

“**PCRE**” shall have the meaning set forth in the Recitals of this Declaration.

“**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 9.08(d) of this Declaration.

“Preliminary Sensitivity Analysis” shall have the meaning set forth in Section 3.02(a)(ii) of this Declaration.

“Proposed Cure Period” shall have the meaning set forth in Section 3.01(h) of this Declaration.

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

“Proposed Modifications” shall have the meaning set forth in Section 3.02(a)(ii) of this Declaration.

“Proposed Two Bridges Developments” shall have the meaning set forth in the Recitals to this Declaration.

“Punch List” shall mean a list prepared at Substantial Completion of items remaining to be completed or unsatisfactorily performed.

“Register’s Office” shall mean the City Register’s Office, New York County.

“SCA” shall mean the City School Construction Authority or any successor to its jurisdiction.

“School Seat Payment” shall have the meaning set forth in Section 3.06(a) of this Declaration.

“School Mitigation Interested Parties” shall have the meaning set forth in Section 3.06(b)(i) of this Declaration.

“School Mitigation Notice” shall have the meaning set forth in Section 3.06(b)(i) of this Declaration.

“School Seat Proportionate Share” shall have the meaning set forth in Section 3.06(a) of this Declaration.

“Schools Study Area” shall have the meaning set forth in Section 3.06(a) of this Declaration.

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

“Senior Housing” shall mean the residential units developed pursuant to the Affordable Independent Residences for Seniors program.

“Shadow Mitigation Payments” shall have the meaning set forth in Section 3.04(b) of this Declaration.

“Site 5” shall mean the property within the Large Scale Residential Development that is located at 260 South Street in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 247, Lots 1 and 2.

“**Site 6A**” shall mean the property within the Large Scale Residential Development that is located at 259 Clinton Street in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 246, Lots 1 and 5.

“**Stair and Entrance Work**” shall have the meaning set forth in Section 3.07(a) of this Declaration.

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

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

“**Substantial Completion**” or “**Substantially Complete**” shall mean improvements that have been constructed substantially in accordance with the plans therefor, and have 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.

“**TCO**” shall mean a temporary certificate of occupancy issued by DOB.

“**Transit Mitigation Agreement**” shall have the meaning set forth in Section 3.07(b) of this Declaration.

“**Transit Mitigation Measures**” shall have the meaning set forth in Section 3.07(a) of this Declaration.

“**Two Bridges Applicants**” shall have the meaning set forth in the Recitals to this Declaration.

“**Two Bridges Development Sites**” shall mean, collectively, the Subject Property, Site 5 and Site 6A.

“**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**” shall have the meaning set forth in Section 9.08(a) of this Declaration.

“**Wind Conditions Consultant**” shall have the meaning set forth in Section 3.02(a)(iii)(A) of this Declaration.

“**Wind Conditions Report**” shall have the meaning set forth in Section 3.02(a)(ii) of this Declaration.

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

ARTICLE II.

DEVELOPMENT

2.01 Development of the Subject Property. If the Subject Property is developed, in whole or in part, with the Proposed Development, or portion thereof, Declarant covenants and agrees that the PCREs and Mitigation Measures set forth in Article III shall be implemented in accordance with the provisions of this Declaration.

2.02 Improvements to the NYCHA Site.

(a) **Building Permits.** Declarant shall not accept the issuance by DOB of a Building Permit for the Proposed Development until Declarant has entered into an agreement ("**NYCHA Improvement Agreement**") with NYCHA, which shall further set forth the terms and conditions with respect to the design process and construction requirements for certain improvements (the "**NYCHA Improvements**") to the building at 286 South Street, Manhattan (Block 245, Lot 1; the "**NYCHA Site**") described in the scope of work (the "**NYCHA Scope**") attached hereto as **Exhibit D**, provided that if either or both of the other Two Bridges Applicants have already executed a NYCHA Improvement Agreement then Declarant may accept issuance of a Building Permit upon executing the NYCHA Improvement Agreement as an additional party. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to executing a NYCHA Improvement Agreement.

(b) **NYCHA Agreement Terms.** The NYCHA Improvement Agreement shall include but not be limited to standard insurance and indemnification requirements for work on NYCHA buildings as well as the following terms:

(i) **Construction Schedule.** A construction schedule developed in consultation with the NYCHA describing the phasing of work and permitted work hours.

(ii) **Design Development.** Process, requirements and schedule for the preparation of construction drawings (the "**NYCHA Construction Drawings**") for the NYCHA Improvements. The NYCHA Construction Drawings shall be developed pursuant to the NYCHA Scope and the NYCHA Improvements Agreement and shall be subject to approval by NYCHA. If design and construction drawings are submitted in phases, then NYCHA may only disapprove design and construction drawings if they do not substantially conform to the previously approved design drawings. Any design or construction drawings which NYCHA does not approve or provide comments on within twenty (20) days shall be deemed approved.

(iii) **Performance of Work.**

(A) Declarant, individually or in conjunction with the other Two Bridges Applicants, will contract with a construction manager or general contractor to perform the NYCHA Improvements, substantially as outlined in the NYCHA Scope and subject to coordination with NYCHA, up to a total project cost (hard and soft costs, inclusive of the general contractor's overhead and fees) of twelve million five hundred thousand dollars (\$12,500,000). No overhead

or profit for overseeing this work by the development teams will be included in the twelve million five hundred thousand dollar (\$12,500,000) budget.

(B) The NYCHA Scope outlines the work in order of priority and therefore in the sequential order of execution. Any changes will be made only with joint approval of NYCHA and all of the Two Bridges Applicants that executed the NYCHA Improvement Agreement. Each item of the NYCHA Scope will be estimated, once the relevant testing and design work is done, prior to beginning work on that item to make sure that it can be completed within the twelve million five hundred thousand dollar (\$12,500,000) budget. If, based on the estimate, a subsequent item of the NYCHA Scope cannot be completed without exceeding the twelve million five hundred thousand dollar (\$12,500,000) budget, then NYCHA shall either (i) reduce the scope of such item so that it can be completed without exceeding the twelve million five hundred thousand dollar (\$12,500,000) budget; or (ii) direct Declarant to complete the next item of the NYCHA scope that can be completed without exceeding the twelve million five hundred thousand dollar (\$12,500,000) budget.

(C) The work will be done on an open-book basis, allowing NYCHA to track the cost of the work performed and ensure that the full twelve million five hundred thousand dollar (\$12,500,000) commitment is spent on NYCHA Scope items.

(D) To the extent that the total twelve million five hundred thousand dollar (\$12,500,000) cost limit is reached before all of the NYCHA Scope items are constructed or no additional items of the NYCHA Scope can be completed without exceeding the twelve million five hundred thousand (\$12,500,000) cost limit, work will cease upon completion of the NYCHA Scope items for which construction has commenced, and Declarant's obligations with respect to the NYCHA Improvements will be considered fulfilled. To the extent all the scope items are constructed and the twelve million five hundred thousand dollar (\$12,500,000) limit is not reached, work in the "Additional Alternate" category set forth on **Exhibit D** will be added to the NYCHA Scope and completed up to the point when the full twelve million five hundred thousand dollar (\$12,500,000) is spent.

(E) Declarant's obligations will terminate as soon as all evidence is provided that twelve million five hundred thousand dollars (\$12,500,000) have been spent by Declarant individually, or in conjunction with the other Two Bridges Applicants, on the items set forth in the NYCHA Scope in the order of priority.

(F) Work on the NYCHA Improvements will begin no later than the beginning of construction work on the Transit Mitigation Measures. Certain soft cost spending on testing and design may begin sooner, at Declarant's discretion.

(iv) **Maintenance, Repair and Replacement.** Declarant shall not be responsible for the maintenance, repair or capital replacement of any NYCHA Improvements.

(v) **Warranties.** Declarant shall require contractors and subcontractors to provide commercially standard warranties for the NYCHA Scope items and shall pass-through or assign to NYCHA all such warranties, it being understood that Declarant does not warrant and shall not have any obligation to provide warranties with respect to the NYCHA Improvements.

(c) **Certificates of Occupancy.** Declarant shall not accept the issuance of a TCO for the Proposed Development until Declarant's architect has certified to NYCHA and DOB that the NYCHA Improvements required pursuant to Section 2.02(b)(iii) have been completed consistent with the NYCHA Construction Drawings.

(d) Declarant shall comply with requirements necessary to implement the NYCHA Improvements described in this Section and in the NYCHA Improvement Agreement. To the extent that NYCHA deems the NYCHA Improvements to be unnecessary or otherwise disapproves their construction, Declarant shall have no further obligations under this Declaration relating in any way to the NYCHA Improvements.

(e) Construction of the NYCHA Improvements and execution of the NYCHA Improvement Agreement may be undertaken by Declarant alone or in conjunction with all Two Bridges Applicants.

2.03 Regulatory Agreement. DOB shall not issue, and Declarant shall not accept, a Building Permit pursuant to a new building application authorizing construction of the Proposed Development until Declarant has entered into an affordable housing regulatory agreement with the Department of Housing Preservation and Development. Such regulatory agreement shall provide that Declarant shall develop and provide in the Proposed Development permanently affordable housing units equal to twenty-five percent (25%) of the total number of housing units within the Proposed Development. Notwithstanding the foregoing, Declarant may file a building permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to executing the regulatory agreement.

ARTICLE III.

ENVIRONMENTAL PROTECTION MEASURES

Declarant shall implement the following PCREs and Mitigation Measures in accordance with the FEIS, and as further set forth in this Article III, for any development of the Subject Property pursuant to Section 2.01 of this Declaration, as such PCREs and Mitigation Measures may be modified in accordance with the provisions of Section 3.09 and Article VII.

3.01 Project Components Related to the Environment Related to Construction.

(a) **Hours of Work** shall conform with the hours of work for construction related activities as set forth in Chapter 19 of the FEIS.

(b) **Maintenance and Protection of Traffic Measures.**

(i) Prior to Construction Commencement, Declarant shall prepare a Maintenance and Protection of Traffic Plan specifying measures to be implemented at the Subject Property to ensure the safety of the construction workers and the public, including, but not limited to, the proposed temporary curbside lane, street and sidewalk closures, safety signs, safety barriers and construction fencing, which shall be necessary during work associated with such development phase (the "**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 (e.g., site preparation work that does not require a Building Permit), 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 in all material respects to the provisions of the MPT.

(c) **Construction Air Emission Control and Reduction Measures.**

(i) Prior to Construction Commencement, Declarant shall (x) develop an air emissions reduction program and (y) thereafter implement a plan for the reduction of construction air emissions from construction-related activities during the development of Subject Property, which shall contain the following measures in all substantial respects:

(A) **Clean Fuel.** Ultra-low sulfur diesel shall be used exclusively for all diesel engines throughout the Subject Property;

(B) **Best Available Tailpipe Technologies.** Non-road diesel engines with a power rating of 50 horsepower (“hp”) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including, but not limited to, concrete mixing and pumping trucks, shall utilize the best available tailpipe technology for reducing diesel particulate matter emissions. Diesel particulate filters (“**DPFs**”) have been identified as being the tailpipe technology currently proven to have the highest reduction capability. Construction contracts shall specify that all diesel non-road engines rated at 50 hp or greater will utilize DPFs to the extent practicable, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by the United States Environmental Protection Agency or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used;

(C) **Utilization of Newer Equipment.** To the extent practicable, all diesel-powered non-road construction equipment with a power rating of 50 hp or greater shall meet at least the Tier 3 emissions standard. All diesel-powered engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard;

(D) **Diesel Equipment Reduction.** Electrically powered equipment will be utilized to the extent practicable. Equipment that will use the grid power in lieu of diesel engines includes, but may not be limited to, hoists, the tower crane that would be employed during construction and small equipment such as welders;

(E) **Dust Control.** The construction of the Proposed Development is required to follow the DEP Construction Dust Rules regarding construction-related dust emissions. To minimize fugitive dust emissions from construction activities, a fugitive dust control plan including a robust watering program shall be required as part of contract specifications. The fugitive dust control plan shall provide, without limitation, that all trucks hauling loose material shall be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the project construction areas and, where necessary, water sprays shall be used for

all demolition, excavation and transfer of soils to ensure that materials will be dampened as necessary to avoid the suspension of dust into the air; and

(F) **Idle Time Restriction.** On-site vehicle idle time shall be restricted to three (3) minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading or processing device (e.g., concrete mixing trucks) or are otherwise required for the proper operation of the engine.

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

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

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement a plan for the reduction of construction noise from construction-related activities during the development of the Subject Property, which shall contain the following measures:

(A) Equipment that meets the sound level standards specified in Subchapter 5 of the City Noise Control Code shall be utilized from Construction Commencement;

(B) As early in the construction period as logistics allow, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment such as welders, water pumps, bench saws and table saws (i.e., early electrification) to the extent feasible and practicable;

(C) Construction sites shall be configured to minimize back-up alarm noise, to the extent feasible and practicable;

(D) Contractors and subcontractors shall be required to properly maintain their equipment and mufflers;

(E) Noisy equipment such as cranes, concrete pumps, concrete trucks and delivery trucks shall be located away from and shielded from sensitive receptor locations, to the extent feasible and practicable;

(F) The use of drilled caissons in lieu of driven piles for construction activities, except to the extent the use of driven piles is required by a Governmental Authority in conjunction with utility work or otherwise;

(G) Noise barriers constructed from plywood or other materials shall be utilized to provide shielding (e.g., the construction sites shall have a minimum eight- (8) foot barrier) and, where logistics allow, truck deliveries shall take place behind the noise barriers; and

(H) Path noise control measures (i.e., portable noise barriers, panels, enclosures and acoustical tents) shall be used for certain dominant noise equipment to the extent feasible and practicable.

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

(e) **Archeology.** Prior to Construction Commencement, Declarant shall prepare and submit an Unanticipated Discoveries Plan to LPC. Thereafter, Declarant shall comply with the Unanticipated Discoveries Plan in the event that intact landfill-retaining structures, wooden water pipes or other archaeological deposits are encountered during construction.

(f) [INTENTIONALLY OMITTED]

(g) **Appointment and Role of Independent Monitor.**

(i) Declarant shall, with the consent of DCP, appoint an independent third-party (the "**Monitor**") reasonably acceptable to DCP to oversee, on behalf of the City, the implementation and performance by Declarant of the PCREs set forth in Sections 3.01(a), 3.01(c), and 3.01(d) hereof (the "**Construction PCREs**"). The Monitor shall be an engineering firm or person holding a professional engineering degree, with significant experience in environmental management and construction management, including familiarity with the means and methods for implementation of the Construction PCREs. DCP shall advise Declarant of its reasonable acceptance or rejection of the Monitor, as proposed, within fifteen (15) days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.

(ii) The scope of services described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "**Monitor Agreement**") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed and such agreement may include provision for the retention by the Monitor (or, if reasonably acceptable to DCP, by Declarant) of consultants with expertise appropriate to assisting the Monitor in its performance of its obligations. If DCP shall fail to act upon a proposed Monitor Agreement within fifteen (15) days after submission of a draft form of Monitor Agreement to the offices of its General Counsel, the form of Monitor Agreement so submitted shall be deemed acceptable. The Monitor Agreement shall provide for the commencement of service by the Monitor at the commencement of demolition or excavation on the Subject Property, whichever first occurs, and for the termination of the Monitor's services upon issuance of the first TCO for any portion of the Proposed Development, unless Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement or substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.01(6).

(iii) The Monitor shall provide reports of Declarant's compliance with the Construction PCREs on a schedule reasonably acceptable to DCP, but not more frequently than

once every three (3) months. The Monitor may at any time also provide Declarant and the City with notice of determination that a Construction PCRE has not been implemented, accompanied by supporting documentation establishing the basis for such determination. The Monitor shall, on reasonable notice and during normal business hours (A) have full access to the Subject Property, subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts and imposed as part of a site safety protocol in effect for the Subject Property, provided that such access shall be coordinated with Declarant's construction activities and use of the Subject Property by occupants and visitors thereof and conducted in a manner that will minimize any interference with the Proposed Development or use of the Subject Property by occupants and visitors thereof, (B) be provided with access to all books and records on the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports and (C) be entitled to conduct any tests on the Subject Property that it reasonably deems necessary to verify Declarant's implementation and performance of the Construction PCREs. The Monitor Agreement shall provide that Declarant shall have the right to require the Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities. Nothing in this Declaration, including without limitation the provisions of this Section 3.01(g), shall be construed to make the Monitor a third-party beneficiary of this Declaration.

(iv) Declarant shall be responsible for payment of fees and expenses due the Monitor and any consultants retained by Declarant or the Monitor pursuant to the Monitor Agreement. All amounts payable by Declarant pursuant to this Section 3.01(g)(iv) shall be payable pursuant to the terms of the Monitor Agreement.

(h) **Construction PCRE Violations.** If the Monitor determines, either in a periodic report or otherwise, that Declarant has failed to implement or to cause its contractors to implement any or all of the Construction PCREs (a "**Construction PCRE Violation**"), the Monitor shall notify the General Counsel of DCP of such alleged Construction PCRE Violation and provide documentation establishing the basis for such determination. If the Chair concurs with the conclusion that such a Construction PCRE Violation has occurred, the Chair may thereupon give Declarant written notice of such alleged Construction PCRE Violation (each, a "**Construction PCRE Default Notice**"), transmitted to the address for notices for Declarant set forth in Section 8.1(a). Notwithstanding any provisions to the contrary contained in Article V of this Declaration, Declarant shall have ten (10) days after receipt of a Construction PCRE Default Notice to (i) effect a cure of the alleged Construction PCRE Violation; (ii) demonstrate to DCP why the alleged Construction PCRE Violation did not occur and does not then exist or (iii) demonstrate that a cure period longer than ten (10) days would not be harmful to the environment (such longer cure period, a "**Proposed Cure Period**"). DCP shall act with respect to a Proposed Cure Period within twenty-four (24) hours after receipt of a writing suggesting a Proposed Cure Period from Declarant. If DCP accepts the Proposed Cure Period in writing, then this shall become the applicable cure period for the alleged Construction PCRE Violation (the "**New Cure Period**"), provided that if DCP does not act with respect to a Proposed Cure Period within twenty-four (24) hours after receipt in writing from Declarant with respect thereto, the running of the ten (10) day cure period for the alleged Construction PCRE Violation shall be tolled until such time as DCP so acts. If Declarant fails to either (A) effect a cure of the alleged Construction PCRE Violation; (B) cure the alleged Construction PCRE Violation within a New Cure Period, if one has been established, or (C) demonstrate to DCP's satisfaction that a Construction CPRE Violation has not

occurred, then representatives of Declarant shall, at DCP's request, and upon a time and date acceptable to DCP, convene a meeting at the Subject Property with the Monitor and authorized representatives of DCP. If Declarant is unable reasonably to satisfy the authorized representatives of DCP that no Construction PCRE Violation exists or is continuing and Declarant, the Monitor and DCP are unable to agree upon a method for curing the Construction PCRE 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 pursuant to this Section 3.01(h), including seeking an injunction to stop work on the Subject Project against which the Construction PCRE Default Notice has been written, as necessary, to ensure that the Construction PCRE Violation does not continue, until Declarant demonstrates to the reasonable satisfaction of DCP that it has cured the Construction PCRE Violation.

(i) **Community Construction Task Force.** In order to provide, on a regular basis, a forum for communication with members of the community relating to the construction schedule and activities, and to respond to concerns of members of the community relating to the construction of the Proposed Development, Declarant shall participate in the community construction task force (the "**CCTF**") established pursuant to this Section 3.01(i).

(i) Within ten (10) days of Construction Commencement, Declarant shall provide notice of Construction Commencement to the Chair and shall reference its obligation to participate in a CCTF, if established by DCP. The CCTF shall consist of three (3) to five (5) community members appointed by DCP in consultation with Manhattan Community Board 3. In addition, the CCTF shall include an individual designated by Declarant to serve as a liaison to the CCTF (the "**Liaison**") and may include representatives designated by the developers of the other Proposed Two Bridges Developments.

(ii) Beginning within one (1) month of establishment of DCP's appointment of community members to the CCTF and continuing through the course of construction of the Proposed Development, the Liaison shall participate in periodic meetings of the CCTF, held no more frequently than once every three (3) months to (A) provide a forum to review construction schedules and provide information to the CCTF and (B) discuss construction-related issues with the CCTF. The Liaison shall work with the CCTF and developers of the other Proposed Two Bridges Developments to promptly respond to questions and concerns, as appropriate and reasonable. Declarant's obligations pursuant to this Section 3.01(i) shall expire upon the issuance of the first TCO or PCO for the entirety of the Proposed Development.

3.02 Project Components Related to Design and Operation.

(a) Pedestrian Wind.

(i) Two (2) marcescent streets trees of at least four- (4) inch caliper shall be located along Rutgers Slip near the northeast corner of the Proposed Development.

(ii) No subsequent analysis of wind conditions shall be required if the measures set forth in Section 3.02(a)(i) are implemented. However, if during design development any of the measures required pursuant to this Section 3.02(a) are eliminated or replaced (the "**Proposed Modifications**"), then Declarant shall cause a qualified consultant expert and

experienced in the field of wind conditions analysis (“**Wind Conditions Consultant**”) to conduct a preliminary sensitivity analysis, using a method and protocol acceptable to DCP, to assess the effect of such changes on pedestrian-level wind conditions (“**Preliminary Sensitivity Analysis**”) in order to determine whether the Proposed Modifications have the potential to result in a material increase in the number of exceedances of the wind safety performance criterion (“**Additional Exceedances**”) beyond the levels predicted in the FEIS. Notwithstanding the foregoing, additional measures, such as planting additional evergreen, semi-evergreen or marcescent tree plantings or replacement of existing/proposed deciduous tree plantings with such plantings, may be incorporated into the final design of the Proposed Development to further improve pedestrian-level wind conditions and no further wind tunnel analysis shall be required.

(iii) In the event Declarant demonstrates to the satisfaction of the Chair, based on the Preliminary Sensitivity Analysis, that the Proposed Modifications do not have the potential to result in Additional Exceedances, then no further wind testing shall be required. In the event that the Preliminary Sensitivity Analysis indicates that the Proposed Modification have the potential to result in Additional Exceedances, then:

(A) Declarant shall have the Wind Conditions Consultant undertake wind tunnel testing to assess the effect of the Proposed Modifications on pedestrian-level wind conditions, in accordance with a methodology and protocol acceptable to DCP, in order to measure whether and to what extent any Additional Exceedances may exist under such plan (the “**Wind Conditions Report**”). In the event that computer modeling software or other technology becomes available, which is demonstrated to the satisfaction of DCP to accurate and reliable, then such modeling or technology may be utilized in lieu of wind tunnel testing.

(B) In the event the Wind Conditions Report indicates that implementation of the Proposed Modifications has the potential to result in Additional Exceedances, Declarant shall, acting in consultation with DCP, incorporate additional measures to reduce the exceedances (e.g., additional tree and shrub planting features) which: (1) are determined through such wind tunnel testing to be effective in reducing or eliminating such Additional Exceedances and (2) are compatible with the urban design considerations.

(b) **Transportation.**

(i) DOB shall not issue, and Declarant shall not accept, Building Permits for the Proposed Development if it is the first of the Proposed Two Bridges Developments to seek Building Permits, until it has requested that the operator of Citibike or a successor public bike share system conduct a survey of potential bike share station locations within or in close proximity to the Large Scale Residential Development, with a particular focus on potential locations along South Street, Cherry Street and Rutgers Slip. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to contacting the operator of Citibike or a successor public bike share system pursuant to this Section 3.02(b)(i).

(ii) DOB shall not issue, and Declarant shall not accept, Building Permits for the Proposed Development unless it has contacted DOT to request the installation of

DOT bicycle racks in the public sidewalks adjacent to the retail spaces at the Proposed Development upon completion of the Proposed Development. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to contacting DOT pursuant to this Section 3.02(b)(ii).

(iii) DOB shall not issue, and Declarant shall not accept, Building Permits for the Proposed Development if it is the first of the Proposed Two Bridges Developments to seek Building Permits unless it has contacted DOT to request the installation of DOT wayfinding signage in public rights-of-way within and in close proximity to the LSRD, directing (x) cyclists to the nearest bike lanes and (y) pedestrians to the Corlears Hook ferry terminal. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to contacting DOT pursuant to this Section 3.02(b)(iii).

(iv) Declarant shall construct on-site bicycle parking in accordance with the bicycle parking provisions of the Zoning Resolution (i.e., Sections 25-80 and 36-70 of the Zoning Resolution).

(c) [INTENTIONALLY OMITTED]

3.03 Environmental Mitigations Relating to Open Space.

(a) The FEIS disclosed that a significant adverse impact to open space would occur upon occupancy of 1,723 new residential units, and identified mitigation measures for such impacts including:

(i) **On-Site Public Space.** Declarant covenants to design, construct and operate the public open space at the Subject Property (the "**On-Site Public Space**") identified on those plans designated as Z-010 and Z-011, dated August 7, 2017 and attached hereto as **Exhibit F** (the "**On-Site Public Space Plans**") in accordance with the provisions set forth in **Exhibit E** attached hereto).

(ii) **Coleman Playground Work.** Construction of the improvements at Coleman Playground (the "**Coleman Playground Work**") described in the scope of work attached hereto as **Exhibit G** (the "**Coleman Playground Scope**").

(iii) **Little Flower Playground-Captain Jacob Joseph Playground Work.** Construction of the improvements at Little Flower Playground and Captain Jacob Joseph Playground (the "**Little Flower Playground-Captain Jacob Joseph Playground Work**") and, together with the Coleman Playground Work and the Alternative Open Space Mitigation Work, each, "**Open Space Work**") described in the scopes of work attached hereto as **Exhibit H** (the "**Little Flower Playground-Captain Jacob Joseph Playground Scopes**") and, together with the Coleman Playground Scope and the Alternative Open Space Mitigation Scope, each an "**Open Space Scope of Work**"). Further enhancements to the Little Flower Playground-Captain Jacob Joseph Playground Scopes and the Coleman Playground Scope shall be permitted, provided that:

A DPR provides written notice of the proposed enhancements to the scope of work for such parks prior to Declarant's beginning preparation of initial schematic or other drawings pursuant to the Open Space Design Development Agreement. Such notice shall include a detailed scope of work and cost estimates prepared by DPR confirming that the cost of such enhancements would not, in the aggregate (i.e., inclusive of any prior enhancements adopted pursuant to this Section), increase the cost of the Open Space Scope of Work by more than five million dollars (\$5,000,000.00).

B If Declarant provides written notice to DCP and DPR that it has determined such additional enhancements, in the aggregate, would increase the cost of the Open Space Scope of Work by more than five million dollars (\$5,000,000.00), then Declarant, DCP and DPR shall work in good faith to resolve the discrepancy regarding compliance with Section 3.03(a)(iii)(A) pursuant to the process set forth for Alternative Open Space Mitigation Scope in Section 3.03(a)(iv)(B).

(iv) **Alternative Open Space Mitigation Work.**

A If, at any time before Declarant begins preparation of initial schematic or other drawings pursuant to the Open Space Design Development Agreement, DPR provides notice that the improvements to Coleman Playground, Little Flower Playground or Captain Jacob Joseph Playground should not be implemented because such Open Space Work would conflict with other design or construction plans then actively in progress for the park, then within ten (10) Business Days DCP and DPR shall in writing (I) propose alternative open space mitigation measures to be constructed at another park or public open space within the open space study area shown on Figure 5-1 of the FEIS; (II) provide a detailed scope of work for such alternative open space mitigation measures (the "**Alternative Open Space Mitigation Scope**"); and (III) provide cost estimates prepared by DPR confirming that the estimated cost of the Alternative Open Space Mitigation Scope is consistent with, and does not exceed, in aggregate, the "Total Cost Estimate" of the Coleman Playground Work and the Little Flower Playground-Capitan Jacob Joseph Playground Work, as set forth in Exhibit G and Exhibit H hereto, respectively, as may be modified pursuant to Exhibit G and Exhibit H.

B If Declarant determines and provides written notice to DCP and DPR that it has determined that the cost of the Alternative Open Space Mitigation Scope would exceed the cost of the original Open Space Work, then Declarant, DCP and DPR shall meet within ten (10) Business Days of receiving such notice to discuss their respective cost estimates and shall work in good faith to revise the Alternative Open Space Mitigation Scope so that it complies with Section 3.03(a)(iv)(A). If Declarant, DCP and DPR cannot agree on revisions to the Alternative Open Space Mitigation Scope within ten (10) Business Days following the initial meeting, then within ten (10) Business Days of the conclusion of such period, Declarant, DCP and DPR shall meet with the Office of the Deputy Mayor for Housing and Economic Development to develop an Alternative Open Space Mitigation Scope that complies with Section 3.03(a)(iv)(A). If Declarant, DCP and DPR do not agree, in writing, on an Alternative Open Space Mitigation Scope that complies with Section 3.03(a)(iv)(A) within five (5) Business Days of the meeting, then the Office of the Deputy Mayor for Housing and Economic Development shall issue a confirmation within ten (10) Business Days of the meeting that the Alternative Open Space Mitigation Scope, revised as appropriate by such Office, complies with Section 3.03(a)(iv)(A). Once Declarant has accepted

an Alternative Open Space Mitigation Scope or the Office of the Deputy Mayor for Housing and Economic Development has issued the confirmation, then such Alternative Open Space Mitigation Scope shall be designed and constructed (the “**Alternative Open Space Mitigation Work**”) in lieu of the original Open Space Scope of Work. If a Governmental Authority fails to provide information, attend meetings or provide the confirmation required pursuant to Section 3.03(a)(iv)(A), then Declarant may accept Building Permits, TCOs and PCOs without designing or constructing the Alternative Open Space Mitigation work or the original Open Space Work that was deemed to be in conflict with other plans, and shall have no further obligations with respect thereto.

(b) **Open Space Design Development Agreement.** Within one (1) year of approval, Declarant shall enter into an agreement with DPR with respect to the Open Space Work (the “**Open Space Design Development Agreement**”), provided that if either or both of the other Two Bridges Applicants have already executed an Open Space Design Development Agreement then Declarant may satisfy this obligation by executing such agreement as an additional party. The Open Space Design Development Agreement shall include the process, requirements and schedule for confirming the scope of work and preparing construction drawings for the Open Space Work, and the process by which Declarant shall have the right to make non-material modifications to the Open Space Plans due to unanticipated construction-related circumstances. The construction drawings shall be subject to approval by the DPR prior to commencement of a given scope of work and shall be prepared in accordance with DPR design standards and guidelines in effect at the time Declarant gives to DPR a notice that Declarant is commencing design of the Open Space Work. Such construction drawings (once approved, the “**Open Space Plans**”) shall be substantially in accordance with and limited to the Open Space Scope of Work. If design and construction drawings are submitted in phases, then DPR may only disapprove design and construction drawings if they do not substantially conform to the previously approved design drawings or do not conform with the applicable DPR design standards and guidelines. Any design or construction drawings which DPR does not approve or provide comments on within twenty (20) days shall be deemed approved.

(c) **Building Permits, TCOs and PCOs.**

(i) **Building Permits for Less than 1,723 New Residential Units.** If, together with the development of any of the Two Bridges Development Sites that have already received Building Permits, development of the Proposed Development would result in the occupancy of less than 1,723 new residential units at the Two Bridges Development Sites, then Declarant may accept Building Permits for the Proposed Development and no Open Space Plans or Open Space Work shall be required.

(ii) **TCOs and PCOs for Less than 1,723 New Residential Units.** If the Proposed Development would result in the occupancy of less than 1,723 new residential units at the Two Bridges Development Sites, then Declarant may accept TCOs or PCOs with respect to the Proposed Development and no Open Space Plans or Open Space Work shall be required.

(iii) **Building Permits for 1,723 or More New Residential Units.** If, together with the development of any of the Two Bridges Development Sites that have already received Building Permits, development of the Proposed Development would result in the

occupancy of 1,723 or more new residential units at the Two Bridges Development Sites, then DOB shall not issue, and Declarant shall not accept, Building Permits for the Proposed Development until Open Space Plans for the Coleman Playground Work have been approved by DPR in accordance with the Open Space Design Development Agreement; provided, however, that if either of the other Two Bridges Applicants have already received DPR approval for the Open Space Plans for the Coleman Playground Work, then Declarant may accept Building Permits without additional DPR approval. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to DPR approval of the Open Space Plans for the Coleman Playground Work.

(iv) **TCOs for 1,723 or More New Residential Units.** If the Proposed Development would result in the occupancy of 1,723 or more new residential units at the Two Bridges Development Sites, then DOB shall not issue, and Declarant shall not accept, such TCO with respect to the Proposed Development until the Chair has issued a Notice of Substantial Completion for the Coleman Playground Work to DOB pursuant Section 3.03(f)(i).

(v) **PCOs for 1,723 or More New Residential Units.** If the Proposed Development would result in the occupancy of 1,723 or more new residential units at the Two Bridges Development Sites, then DOB shall not issue, and Declarant shall not accept, such PCO with respect to the Proposed Development until the Chair has issued a Notice of Final Completion for the Coleman Playground Work to DOB pursuant Section 3.03(f)(ii).

(vi) **Building Permits for the Final New Building.** DOB shall not issue, and Declarant shall not accept, Building Permits for the Proposed Development if it is the last building to be developed on the Subject Property, Site 5 and Site 6A, until Open Space Plans for the Little Flower Playground-Captain Jacob Joseph Playground Work have been approved by DPR in accordance with the Open Space Design Development Agreement; provided, however, that if either of the other Two Bridges Applicants have already received DPR approval for the Open Space Plans for the Little Flower Playground-Captain Jacob Joseph Playground Work, then Declarant may accept Building Permits without additional DPR approval. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to DPR approval of the Open Space Plans for the Little Flower Playground-Captain Jacob Joseph Playground Work.

(vii) **TCOs for the Final New Building.** If the Proposed Development is the last building to be developed on the Subject Property, Site 5 and Site 6A of the Two Bridges Development Sites, then DOB shall not issue, and Declarant shall not accept, a TCO a with respect to the Proposed Development until the Chair has issued a Notice of Substantial Completion for the Little Flower Playground-Captain Jacob Joseph Playground Work to DOB pursuant Section 3.03(f)(i).

(viii) **PCOs for the Final New Building.** If the Proposed Development is the last to be developed on the Subject Property, Site 5 and Site 6A of the Two Bridges Development Sites, then DOB shall not issue, and Declarant shall not accept, a PCO a with respect

to the Proposed Development until the Chair has issued a Notice of Final Completion for the Little Flower Playground-Captain Jacob Joseph Playground Work to DOB pursuant Section 3.03(f)(ii).

(d) **Performance of Open Space Work.** Declarant shall construct, or cause to be constructed, any Open Space Work required pursuant to Section 3.03(c) substantially in accordance with the Open Space Plans and agrees that the Open Space Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration.

(e) **Manner of Performance of the Open Space Work.** Declarant shall undertake and complete, or cause to be undertaken and completed, the performance of any Open Space Work required pursuant to Section 3.03(c) in a good and worker-like manner and in accordance with Legal Requirements and the requirements of DPR.

(f) **Completion of Construction.**

(i) **Notice of Substantial Completion.** Declarant shall notify the Chair and DPR at such time as it believes that any required Open Space Work (i.e., the work required at any individual park is complete) is Substantially Complete and shall request that the Chair issue a certificate, in the form of Exhibit I annexed hereto (a “**Notice of Substantial Completion**”), to Declarant certifying Substantial Completion of such Open Space Work. No later than twenty (20) calendar days after receipt of such request, the Chair, acting in consultation with DPR, shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the Open Space Work is not Substantially Complete and the items which need to be completed. If the Chair notifies Declarant that such Open Space Work has not been Substantially Completed, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a Punch List, which 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 the Chair of such completion. No later than ten (10) calendar days after receipt of such notice, the Chair, acting in consultation with DPR, shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List. This process shall continue until the Chair has issued a Notice of Substantial Completion. If the Chair fails to provide a notice to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Substantial Completion.

(ii) **Notice of Final Completion.** Declarant shall notify the Chair and DPR at such time as it believes that any required Open Space Work is Finally Complete and shall request that the Chair issue a certificate, in the form of Exhibit J (a “**Notice of Final Completion**”), to Declarant certifying Final Completion. No later than twenty (20) days after receipt of such request, the Chair, acting in consultation with DPR, shall either issue the Notice of Final Completion or deliver to Declarant a notice specifying in detail the reasons why the Open Space Work is not Finally Complete. If the Chair notifies Declarant that such Open Space Work has not been Finally Completed, 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 the Chair of such completion. No later than twenty (20) days after receipt of such notice, the Chair, acting in consultation with DPR, 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). This process shall continue until the Chair has issued a Certificate of Final Completion. If the Chair fails to provide either of such notices to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion shall be conclusive evidence with respect to Declarant that the required Open Space Work has been constructed in accordance with the design and construction specifications approved by the Chair.

(g) **Maintenance, Repair and Replacement.** Declarant shall not be responsible for the maintenance, repair or capital replacement of any Open Space Work.

3.04 Environmental Mitigation Relating to Shadows.

(a) The FEIS identified that the Proposed Development, only in conjunction with development of Site 6A, would result in a significant adverse shadow impact to Cherry Clinton Playground (the "**Impacted Playground**"). Accordingly, the first of the Shadow Mitigation Payments (defined below) relating to Cherry Clinton Playground shall be due prior to the occurrence of the later of the following: (i) acceptance of a Building Permit authorizing construction of the superstructure of the Proposed Development; and (ii) sixty (60) days following issuance of a Building Permit authorizing construction of the superstructure of the development at Site 6A. Subsequent annual payments shall be made on or prior to the calendar date of the initial payment. In any event, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to payment of the first Shadow Mitigation Payment.

(b) Once required pursuant to Section 3.04(a), Declarant shall provide DPR an amount equal to \$25,000 per year multiplied by its proportionate share of the impact as set forth in Exhibit K. Such payments (the "**Shadow Mitigation Payments**") shall be made on an annual basis for ten (10) years, subject to adjustment annually due to changes in the CPI. No further payments shall be required by any of the Two Bridges Applicants after the tenth (10th) year after Shadows Mitigation Payments are first required pursuant to Section 3.04(a). The Shadow Mitigation Payments shall be made by wire transfer or check payable into a dedicated fund designated by DPR to be used by DPR solely for the maintenance and enhanced care of plantings located at the Impacted Playgrounds. Declarant shall have no liability to the City or 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, incurred in connection with or arising from the use of the Shadow Mitigation Payment.

(c) Declarant shall not apply for or accept a TCO or PCO for the Proposed Development unless the commissioner of DPR has certified to the commissioner of DOB that all Shadow Mitigation Payments for which Declarant was responsible for pursuant to this Section 3.04 as of such date have been made. If the commissioner of DPR does not respond to Declarant's request for such certification within thirty (30) days, Declarant may self-certify to DOB, provided however that such self-certification shall include documentation demonstrating that such Shadow Mitigation Payments have been made in accordance with Section 3.04(b) hereof.

3.05 Environmental Mitigation Relating to Community Facilities – Child Care.

(a) **Project Completion After or Concurrent with Site 5 and Site 6A.** If (i) the developments proposed for Site 5 and Site 6A have already received TCOs and/or PCOs for all Low-Income Units, or the Two Bridges Applicants are concurrently seeking TCOs and/or PCOs for all Low-Income Units at the Two Bridges Development Sites, and (ii) upon issuance of such TCOs and/or PCOs, the Two Bridges Development Sites would include less than 186 units of Senior Housing, then: not less than 60 days prior to applying for a TCO or a PCO at the Subject Property that would result in occupancy of 509 or more Low-Income Units (exclusive of Senior Housing units) at the Two Bridges Development Sites, Declarant, if applying for such TCO or PCO, shall notify the Chair and ACS (at its Division of Family Well-Being) and request a day care needs assessment (the “**Day Care Assessment Request**”) to determine, based on a review of publicly funded day care slots, utilization and demand, if the full anticipated development of the Subject Property would create a need for additional day care capacity within the study area boundary identified in the FEIS, and shown on **Exhibit L** attached hereto (the “**Child Care Study Area**”). If a Day Care Assessment Request was previously made prior to issuance of TCOs or PCOs for Site 5 and/ or Site 6A, then no additional Day Care Assessment Request shall be required prior to issuance of TCOs or PCOs for the Proposed Development.

(i) In the event that DCP, in consultation with ACS, determines or has determined within sixty (60) days of a Day Care Assessment Request that the full anticipated development at the Subject Property would not result in the need for additional day care capacity in the Child Care Study Area, or that funding for the required number of child care slots at a rate set forth in **Exhibit M** hereto (the “**Child Care Funding Obligations**”) should not apply or could be reduced, the provisions of this **Section 3.05(a)** may be modified to be consistent with such determination, provided that Declarant records a notice of such change against the Subject Property in the Register’s Office. No amendment to this Declaration shall be required in connection with such modification to this **Section 3.05(a)**. The form of notice is subject to approval of DCP, and a copy of such notice upon its recording shall be provided to DCP.

(ii) In the event that DCP, in consultation with ACS, determines or has determined within sixty (60) days of the Day Care Assessment Request that the full anticipated development at the Subject Property would create a need for additional day care capacity in the Child Care Study Area, then Declarant shall be required to provide funding for the Child Care Funding Obligations, in an amount equal to (x) its Child Care Proportionate Share (as defined below), multiplied by (y) the Cumulative Four Year Mitigation Funding to ACS as set forth in **Exhibit M** hereto, multiplied by (z) the total Number of Slots in Excess of Impact Threshold to be Funded, as set forth in **Exhibit N** hereto associated with the total number of Low Income Units to be developed in the Two Bridges Development Sites. Declarant’s “**Child Care Proportionate Share**” shall be equal to the number of Low-Income Units (exclusive of Senior Housing units) to be developed in the Proposed Development divided by the number of Low-Income Units (exclusive of Senior Housing units) to be developed at the Two Bridges Development Sites.

(iii) If the Two Bridges Development Sites include (or are anticipated to include) less than 186 units of Senior Housing, DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the Proposed Development which would result in 509 or more new Low-Income Units (exclusive of Senior Housing units) at the Two Bridges Development Sites until either (A)

Declarant has notified DOB that it has provided its share of the Child Care Funding Obligations, as required by this Declaration, or (B) ACS has either determined that no additional day care capacity is needed within the Child Care Study Area, or has failed to respond to a Day Care Assessment Request within sixty (60) days. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO for any residential units on the Subject Property.

(b) **Project Completion Prior to Site 5 and Site 6A.** If the developments proposed for Site 5 and Site 6A have not already received all TCOs and/or PCOs for Low-Income Units within their respective buildings, then completion of the Proposed Development will not result in development of 509 or more new Low-Income Units (exclusive of Senior Housing units) at the Two Bridges Development Sites, and Declarant shall not be required to fund child care slots prior to acceptance of a TCO or a PCO for Low-Income Units. At the time TCOs or PCOs are issued for 509 or more Low-Income Units (exclusive of Senior Housing units) at the Two Bridges Development Sites, if (i) the Two Bridges Development Sites include (or are anticipated to include) less than 186 units of Senior Housing, and (ii) DCP, in consultation with ACS, determines that the full anticipated development of the Two Bridges Development Sites would create a need for additional day care capacity in the Child Care Study Area, then: DCP shall provide notice to Declarant that TCOs and/or PCOs have been issued for Site 5 and Site 6A and that the need for additional day care capacity remains. Declarant shall, within sixty (60) days of receipt of such notice, provide funding in an amount equal to (x) its Child Care Proportionate Share, multiplied by (y) the Cumulative Four Year Mitigation Funding to ACS as set forth in **Exhibit M**, multiplied by (z) the total Number of Slots in Excess of Impact Threshold to be Funded, as set forth in **Exhibit N**, associated with the total number of Low Income Units to be developed at the Two Bridges Development Sites.

(c) Declarant's payment for the Child Care Funding Obligation shall be paid into a dedicated fund designated by ACS to be used solely for the purpose of providing additional child care capacity to satisfy the mitigation requirements for the child care impact analyzed and identified within Chapter 21 of the FEIS. Upon receipt of the payment, ACS shall explore whether it is feasible for vouchers to be distributed for use at qualifying day care facilities within Manhattan Community District 3 and/or to be provided to qualifying occupants of the Two Bridges Development Sites, and if feasible, shall disburse them accordingly. Declarant shall have no liability to the City or ACS, 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, incurred in connection with or arising from the use of the funds paid pursuant to the Child Care Funding Obligation.

(d) If any of the Two Bridges Applicants enters into an agreement with ACS (or one its service providers) to provide a space within the Large Scale Residential Development suitable to accommodate the number of child care slots, as set forth in **Exhibit N**, that would otherwise need to be funded, and such agreement provides the space at a rate affordable to ACS child care providers for not less than four (4) years, then Declarant may accept TCOs or PCOs without paying its share of the Child Care Funding Obligations and Declarant shall have no further obligation with respect thereto.

3.06 Environmental Mitigation Relating to Community Facilities – Schools.

(a) The FEIS has disclosed a significant adverse impact to public elementary schools that would occur (i) if the Two Bridges Development Sites include less than 130 units of Senior Housing, and (ii) upon occupancy of 2,646 new residential units (exclusive of Senior Housing units) within the Two Bridges Development Sites, and further sets forth that, in full satisfaction of its obligations to mitigate such impact, the Two Bridges Applicants shall increase the elementary school capacity within the FEIS study area, shown on Exhibit O attached hereto (the “Schools Study Area”), and Declarant shall be required to provide funding (the “School Seat Payment”) in an amount equal to (x) its School Seat Proportionate Share, multiplied by (y) the cost per school seat of one hundred eighty thousand dollars (\$180,000), multiplied by (z) sixteen (16) school seats. Declarant’s “School Seat Proportionate Share” shall be equal to the number of residential units (exclusive of Senior Housing units) to be developed in the Proposed Development divided by the number of residential units (exclusive of Senior Housing units) to be developed at the Two Bridges Development Sites.

(b) Project Completion After or Concurrent with Site 5 and Site 6A. If (i) Site 5 and Site 6A have already received TCOs and/or PCOs for all new residential units, or the Two Bridges Applicants are concurrently seeking TCOs and/or PCOs for all new residential units at all of the Two Bridges Development Sites, and (ii) the Two Bridges Development Sites would contain less than 130 units of Senior Housing, then:

(i) Six (6) months prior to seeking a Building Permit for any portion of the Proposed Development, which would result in the occupancy of 2,646 or more new residential units (exclusive of Senior Housing units) within the Two Bridges Development Sites, Declarant shall give notice (the “School Mitigation Notice”) of such anticipated development to DCP, the SCA and DOE (collectively, the “School Mitigation Interested Parties”). In conjunction with the School Mitigation Notice, Declarant may submit an additional analysis, prepared in accordance with CEQR Technical Manual guidelines, to determine whether, based on the data available at the time of the additional analysis, the extent of the impacts and/ or timing of when the impacts on public elementary schools are projected to occur varies from that which had been identified the FEIS. Where the additional analysis conducted by Declarant demonstrates, to the reasonable satisfaction of DCP, in consultation with SCA and/or DOE, that the Proposed Two Bridges Developments would not result in the need for additional elementary school seat capacity or that the number of elementary school seats required to mitigate such impact could be reduced, then the School Seat Payment obligation may be modified consistent with such determination, provided that Declarant records a notice of such change against the Subject Property in the Register’s Office. No amendment to this Declaration shall be required in connection with such modification to this Section 3.06. The form of notice is subject to approval of DCP, and a copy of such notice upon its recording shall be provided to DCP.

(ii) In the event that no additional analysis is provided in connection with the School Mitigation Notice or an additional analysis is provided and a School Seat Payment is still required, then DOB shall not issue, and Declarant shall not accept, a Building Permit for any portion of the Proposed Development that would result in the occupancy of 2,646 or more new residential (exclusive of Senior Housing units) within the Two Bridges Development Sites, unless and until Declarant certifies to DOB that it has provided the School Seat Payment. Notwithstanding the foregoing, Declarant may file a Building Permit application with DOB solely

for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to providing the School Seat Payment.

(c) **Project Completion Prior to Site 5 and Site 6A.** If the developments proposed for Site 5 and Site 6A have not already received TCOs and/or PCOs for all new residential units, then completion of the Proposed Development will not result in occupancy of more than 2,646 new residential units (exclusive of Senior Housing units) within the Two Bridges Development Sites, and Declarant shall not be required to give the School Mitigation Notice or make the School Seat Payment prior to acceptance of a Building Permit for any portion of the Proposed Development. At the time that (i) a Building Permit is issued for the new development on Site 5 or Site 6A that would result in the occupancy of 2,646 or more new residential units (exclusive of Senior Housing units) within the Two Bridges Development Sites, and (ii) if the Two Bridges Development Sites would include less than 130 units of Senior Housing, then: DCP shall provide notice to Declarant that such Building Permit has been issued and that the need for additional elementary school capacity remains. Declarant shall, within sixty (60) days of receipt of such notice, provide funding in an amount equal to its School Seat Payment, which may be adjusted subject to an additional analysis conducted consistent with Section 3.06(b)(i) hereof.

(d) Notwithstanding anything to the contrary, upon the acceptance by the City of the School Seat Payment, Declarant shall have no further obligations whatsoever under this Declaration or the FEIS relating in any way to the School Seat Payment.

(e) The School Seat Payment shall be paid into a dedicated fund designated by SCA and used by the City, SCA and/or DOE to increase elementary school capacity within the School Study Area. Declarant shall have no liability to the City, SCA or DOE, 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, incurred in connection with or arising from the use of the School Seat Payment.

3.07 Environmental Mitigation Relating to Transportation – Transit.

(a) The FEIS disclosed that the Proposed Development would result in significant adverse impacts to the East Broadway subway station, and identified mitigation measures consisting of construction of a new subway entrance with a seven-and-one-half- (7½) foot wide street level stairway (S2) at the northeast corner of Rutgers Street and Madison Street, widening of the P3 platform-level stairway and adjoining ML7 mezzanine-level stairway to seven (7) feet (the "**Stair and Entrance Work**"), construction of an ADA-compliant elevator connecting street-level to mezzanine outside the fare-control area adjacent to the station's S5 stairway and construction of an ADA-compliant elevator from mezzanine to platform inside the control area (the "**Elevator Work**"; collectively with the Stair and Entrance Work, the "**Transit Mitigation Measures**").

(b) **Building Permits.** DOB shall not issue, and Declarant shall not accept, the issuance by DOB of a Building Permit for the Proposed Development until Declarant has entered into an agreement with the MTA with respect to the design process and construction requirements for the Transit Mitigation Measures (the "**Transit Mitigation Agreement**"), provided that if either

or both of the other Two Bridges Applicants have already executed a Transit Mitigation Agreement then Declarant may accept issuance of a Building Permit upon executing such Transit Mitigation Agreement as an additional party. Notwithstanding the foregoing, Declarant may file a Building Permit application for the Proposed Development with DOB solely for the purpose of seeking plan review and may file for and accept demolition, excavation and foundation permits for the Proposed Development prior to executing a Transit Mitigation Agreement.

(c) **Transit Mitigation Agreement Terms.** The Transit Mitigation Agreement shall include but not be limited to the following terms:

(i) **Construction Schedule.** A construction schedule developed in consultation with the MTA describing the phasing of work and permitted work hours.

(ii) **Design Development.** Process, requirements and schedule for the preparation of construction drawings (the "**Construction Drawings**") for the Transit Mitigation Measures. The Construction Drawings shall be subject to approval by the MTA prior to commencement of a given scope of work and shall be prepared in accordance with MTA design standards and guidelines in effect at the time Declarant gives to the MTA a Notice to Commence Design that Declarant is commencing design of the Transit Improvements.

(iii) **Security.** Prior to the commencement of construction of the Transit Mitigation Measures, Declarant shall provide letters of credit or other appropriate security reasonably satisfactory to the MTA for the performance of Declarant's demolition and construction obligations relating to the Transit Improvements, in an amount not to exceed 120% of the estimated construction cost of the Transit Mitigation Measures based on cost estimates prepared by Declarant and approved by the MTA. Upon substantial completion of a portion of the Transit Mitigation Measures, the value of the letter of credit or other security may be reduced accordingly.

(iv) **Maintenance, Repair and Replacement.** Declarant shall not be responsible for the maintenance, repair or capital replacement of any Transit Mitigation Measures.

(d) **Certificates of Occupancy.** DOB shall not issue, and Declarant shall not accept, the issuance of a TCO for the Proposed Development until the MTA shall have certified to DOB that the Transit Mitigation Measures are Substantially Complete, except that, if deemed acceptable to MTA with respect to its obligations under the Americans with Disabilities Act and pursuant to a timeframe specified in the Transit Mitigation Agreement, the Elevator Work may be Substantially Complete following issuance of a TCO. DOB shall not issue, and Declarant shall not accept, the issuance of a PCO until the MTA shall have certified to DOB that the Transit Mitigation Measures (including the Elevator Work) are Finally Complete.

(e) Declarant shall comply with requirements necessary to implement the Transit Mitigation Measures described in this Section and in the Transit Mitigation Agreement. To the extent that MTA deems the Transit Mitigation Measures to be unnecessary or infeasible, Declarant shall have no further obligations under this Declaration or the FEIS relating in any way to the Transit Mitigation Measures contained in Section 3.07.

(f) Construction of the Transit Mitigation Measures and execution of the Transit Mitigation Agreement may be undertaken by Declarant alone or in conjunction with all Two Bridges Applicants.

3.08 Environmental Mitigation Relating to Transportation – Traffic and Pedestrians.

(a) If the Proposed Development is the last of the Proposed Two Bridges Developments to be developed, Declarant shall not apply for or accept a TCO or PCO for the Proposed Development until six (6) months after Declarant has sent written notice to DOT, requesting that DOT investigate the need for the traffic mitigation measures set forth in Tables 21-3 to 21-5 of the FEIS and the pedestrian mitigations measures set forth in Table 21-10 of the FEIS. To the extent that such mitigation measures are not required at the time of TCO or PCO, as reflected in Chapter 21 of the FEIS, or DOT does not implement or deems unnecessary one or more of the traffic and pedestrian measures set forth in the FEIS, Declarant shall have no further obligation with respect to such measures.

(b) If, at Construction Completion of the Proposed Development, no Building Permits have been issued for one or both of the other Proposed Two Bridges Developments, Declarant shall provide DOT a memorandum that includes a quantitative assessment confirming the need for or adjustments to the pedestrian and traffic mitigation measures. This assessment must be completed and provided to DOT prior to acceptance of TCOs or PCOs for the Proposed Development, and shall be based on the current conditions at the time, including new counts, if deemed necessary by DCP in consultation with DOT, at those locations that have been identified in the FEIS to incur impacts upon the full build-out of all the Proposed Two Bridges Developments.

3.09 Incorporation of FEIS Requirements in Mitigation Measures. If this Declaration inadvertently fails to incorporate a FEIS Requirement, such FEIS Requirement shall be deemed incorporated herein by reference as a Mitigation Measure. If there is any inconsistency between the FEIS Requirements as set forth in the FEIS and as incorporated in this Declaration as Mitigation Measures, the FEIS Requirement as set forth in the FEIS shall be applicable.

3.10 Innovation; Alternatives; Modifications Based on Further Assessments.

(a) **Innovation and Alternatives.** In complying with any PCRE set forth in Article III of this Declaration or by incorporation by inclusion in the FEIS, Declarant may, at its election, implement innovations, technologies or alternatives that are or hereafter become available, which Declarant demonstrates to the reasonable satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE, than those set forth in this Declaration (“**Alternative PCREs**”) in each case subject to approval by DCP in accordance with the provisions of Section 7.03

(b) **Elimination or Reduction Based on Further Assessments.** Where Declarant believes, in good faith, based on changed conditions, that a PCRE required under this Declaration could be reduced or eliminated without diminishment of the environmental standards that would be achieved by implementation of the PCRE (“**Elimination or Reduction of PCRE Measure**”), Declarant may, at its election, seek to reduce or eliminate such PCRE, where Declarant

demonstrates to the reasonable satisfaction of DCP that the reduction or elimination of the PCRE would not result in the diminishment of the environmental standards that would be achieved by implementation of the PCRE, in each case subject to approval by DCP in accordance with the provisions of Section 7.03.

ARTICLE IV.

FORCE MAJEURE

4.01 Force Majeure. If Declarant is unable to perform a Mitigation Measure or PCRE required by the FEIS by reason of a Force Majeure Event, Declarant may, upon notice to the Chair (a "**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 and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chair, in consultation with relevant agencies, shall thereafter determine whether a Force Majeure Event exists, and in all events shall, upon notice to Declarant no later than ten (10) days after its receipt of the Delay Notice, certify that a Force Majeure Event either exists or does not exist. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies that a Force Majeure Event exists, the Chair shall grant Declarant appropriate relief, including notifying DOB that a Building Permit, TCO or a PCO (as applicable) may be issued for any buildings, or portions thereof, located within the Subject Property; provided, however, that any relief granted shall not result in any new or different significant environmental impacts that were not addressed in the FEIS. As a condition to certifying that a Force Majeure event exists, the Chair may require that Declarant post a bond, letter of credit or other reasonable security in a form acceptable to the City in order to ensure completion of the PCRE or Mitigation Measures. Any delay arising by reason of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence the PCRE or Mitigation Measure, as applicable.

ARTICLE V.

ENFORCEMENT; DEFAULTS AND REMEDIES

5.01 Default and Remedies. Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party-in-Interest's right to exercise any and all administrative, legal or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement under this Declaration shall be subject to the cure provisions and periods set forth in Article V hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any TCO or PCO, for any portion of the

Proposed Development on the Subject Property subject to the Application; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any TCO or PCO for any use or improvement that exists on the Subject Property as of the date of this Declaration. Declarant shall have no liability with respect to defaults by the other Two Bridges Applicants with respect to their obligations and shall not be required to perform any such obligations.

5.02 Notice and Cure.

(a) Prior to 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, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) days written notice of such alleged breach or other violation. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any Person benefited hereunder, including the Commission and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect a cure during such thirty- (30) day period (or if cure is not capable of being commenced within such thirty- (30) day period and Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible) and thereafter proceeds diligently towards the effectuation of such cure, the aforesaid thirty- (30) day period (as such may be extended or shortened in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure, as determined by the City.

(b) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party-in-Interest shall fail to cure the alleged breach or other violation under this Declaration within the applicable grace period provided herein, the City may exercise any and all of its rights, including without limitation those delineated in this Article V and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by Declarant, Mortgagee and/or Party-in-Interest shall be subject to extension for a Force Majeure Event pursuant to Section 4.01 hereof.

5.03 No Enforcement by Third Parties. Notwithstanding any provision of this Declaration to the contrary, only Declarant, Declarant's successors and assigns and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other Person to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Application. In any proceedings brought by the City against Declarant seeking to deny or revoke a Building Permit, TCO or PCO, with respect to the Proposed Development, or to impose a lien, fine or other penalty, or to pursue any other remedy available to the City, if the event or occurrence which is the basis of an allegation of a failure to comply by Declarant is associated with the Proposed Development, then the City shall only deny or seek the revocation of Building Permits, TCOs or PCOs for the Proposed Development and only seek to impose a fine, lien or other penalty on the Proposed Development; any such event or occurrence shall not provide the basis for denial or revocation of the Building

Permits, TCOs or PCOs, or the imposition of any fine, lien or other penalty, with respect to other development sites within the Large Scale Residential Development for which no such failure to comply has occurred. No Person other than Declarant or any Mortgagee 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 or any Mortgagee, 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 Application.

ARTICLE VI.

MISCELLANEOUS

Effective Date; Recordation; Binding Nature; Successors; Limitation of Liability; Governing Law; Severability; Applications; Offering Plan; Indemnification; Acknowledgement; Representations; Estoppel

6.01 Effective Date; Recordation.

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

(b) **Recordation.** Promptly, and within ten (10) business days after the Effective Date, Declarant shall endeavor to file and record this Declaration (together with all of the exhibits hereto) in the Register's Office, indexing this Declaration against the Subject Property, and deliver to the DCP Office of the General Counsel within ten (10) business days from any such submission for recording, either (i) a copy of such documents as submitted for recording, together with an affidavit of submission for recordation or (ii) a copy of all such documents, as recorded, certified by the Register, upon recordation of such documents by the register. 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 (as permitted in accordance with this paragraph), shall be borne by Declarant.

6.02 Binding Nature; Successors.

(a) The restrictions, covenants, rights and agreements set forth in this Declaration shall run with the land and shall inure to the benefit of, and be binding upon any 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 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 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 its interest in the Subject Property subject to the further provisions of this Section 6.02. At such time as Declarant or any successor to Declarant no longer holds an interest in the Subject Property, Declarant's or Declarant's successor's obligations and liabilities under this Declaration shall wholly cease and terminate and the party succeeding Declarant or Declarant's successor shall assume the obligations and liabilities of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to Declarant shall be deemed 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 and the Charter of the City.

6.03 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 with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. In the event that any building in the Proposed Development is converted to condominium form of ownership, each Unit Owner (other than the owner of a Low-Income Unit), as successor-in-interest to Declarant, shall be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of the percentage interest owned by such unit owner in the common elements of the condominium in which the condominium unit is located, applied to the assessment imposed by the Association on the condominium in which such condominium unit is located (the "**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. 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, the lien of the board of managers of any such condominium for unpaid common charges of the condominium and a lien of the Association. 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.

(b) 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, 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.

6.04 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State.

6.05 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.

6.06 Applications. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested City agency or department have jurisdiction over the Subject Property.

6.07 Offering Plan. In the event that cooperative or condominium units are offered for sale in any building in the Proposed Development, a summary of the terms of this Declaration shall be included in any offering plan issues 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.

6.08 Indemnification.

(a) 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 shall impose on the Association any indemnification obligations other than with respect to the obligations set forth in Section 9.08 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.

(b) Declarant shall indemnify and hold harmless the City, DCP and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Declarant's default under this Declaration (including, without limitation, 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), or the negligence of Declarant, its agents, servants or employees in undertaking its obligations under this Declaration unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought against the City, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section and (ii) the City has no obligation under the settlement, financial or otherwise.

6.09 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.

6.10 Right to Sue.

(a) Nothing contained herein shall prevent Declarant from asserting any claim or action against the City, or any of its agencies or any of its officials, arising out of the performance by the City, or agency thereof, or failure of the City or agency thereof, to perform any of the obligations of the City, or agency thereof, under this Declaration or the exercise, by the City, or any agency thereof, of any of its rights under this Declaration.

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

6.11 Approvals. Wherever in this Declaration the certification, consent or approval of Declarant, the Chair or the Commissioner of DPR 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 or delayed.

6.12 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 and all property owners within a one-half mile radius of the Subject Property.

6.13 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.

6.14 Estoppel Certificates. Whenever requested by any Party-in-Interest, DCP 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 Declaration is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the Declarant is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

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

6.16 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, obligation, 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.

ARTICLE VII.

AMENDMENT, MODIFICATION AND CANCELLATION

7.01 This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval and upon express written consent of the Commission or an agency succeeding to the Commission's jurisdiction, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation.

7.02 Notwithstanding anything to the contrary contained in Section 7.01 hereof, any change 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 or Person, including, without limitation, any present or future Party-in-Interest.

7.03 The PCREs set forth in Article III of this Declaration may only be modified pursuant to Section 3.10 of this Declaration and in accordance with this Section provided a determination has been made that the Alternative PCREs or the Elimination or Reduction of PCRE Measures will not result in any greater adverse environmental impacts than have been identified in the FEIS. In the event that Declarant seeks to implement Alternative PCREs or the Elimination or Reduction of PCRE Measures, it shall set forth the basis for its determination that the Alternative PCREs or the Elimination or Reduction of PCRE Measures will not result in any greater adverse environmental impacts than have been identified in the FEIS in a Technical Memorandum submitted to DCP. Upon the acceptance of a Technical Memorandum by DCP demonstrating that the Alternative PCREs or Elimination or Reduction of PCRE Measures will not result in any greater adverse environmental impacts than have been identified in the FEIS, the requirements of this Declaration with respect to the PCREs addressed in such Technical Memorandum shall be modified to reflect the Alternative PCREs or the Elimination or Reduction of PCRE Measures. If Declarant implements an approved Alternative PCREs or Elimination or Reduction of PCRE

Measures, 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. Declarant shall not apply for or accept Building Permits for Proposed Development without implementing the required PCREs set forth in Article III until a Technical Memorandum has been submitted to and issued by DCP demonstrating that the proposed Alternative PCREs or the Elimination or Reduction of PCRE Measures will not result in any greater adverse environmental impacts than have been identified in the FEIS, and a notice indicating of such change has been recorded against the Subject Property in the Register's Office.

7.04 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.

7.05 Notwithstanding anything to the contrary contained in this Declaration, if all approvals given in connection with the Proposed Two Bridges Developments are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, 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 and provides that the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Chair. If some of the approvals given in connection with the Proposed Two Bridges Developments are declared invalid, then Declarant may apply to the Chair for a modification (pursuant to Section 7.02), an amendment or the cancellation of this Declaration.

7.06 From and after the date that Declarant no longer 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 for that portion of the Proposed Development upon that portion of the Subject Property for which the Association was formed. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change this Declaration, or make any application therefor, 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.

ARTICLE VIII.

NOTICES

8.01 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: Cherry Street Owner LLC
104 Fifth Avenue
New York, New York 10011

Two Bridges Senior Apartments, L.P.
275 Cherry Street
New York, New York 10002

Two Bridgeset Housing Development Fund Company, Inc.
c/o Settlement Housing Fund, Inc.
247 West 37th Street, 4th Floor
New York, New York 10018

With a copy to: Fried, Frank, Harris, Shriver & Jacobson, LLP
One New York Plaza
New York, New York 10004
Attention: David Karnovsky, Esq.

If intended for the City or
DCP, to: New York City Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271
Attention: Director

With a copy to: New York City Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271
Attention: General Counsel

If intended for DPR, to: Commissioner,
New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue

New York, New York 10065

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 10065

(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 an 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 DCP of its address for notice.

(b) Declarant, 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 IX.

PROPERTY OWNERS' ASSOCIATION

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

9.02 Property Owners' Association. In order to perform Declarant's obligations under this Declaration, Declarant shall cause to be organized a property owners' association (the "**Association**") within one hundred eighty (180) days of the issuance of a TCO for any portion of the Proposed Development which is (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 homeowners' association or similar governing entity comprised of homeowners.

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

9.04 Obligations. The Association shall be established to, among other things, assume Declarant's obligations as set forth in this Declaration.

9.05 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.

9.06 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 Declaration;

(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 State Not-for-Profit Corporation Law.

9.07 Successors. Every deed conveying title to, or a partial interest in the Proposed Development (other than a deed to a Low-Income 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 a Low-Income Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration.

9.08 Assessments.

(a) The Association shall assess all real property within the Subject Property, other than the portion thereof consisting of the 80 Rutgers Slip, 82 Rutgers Slip and 235 Cherry Street and Low-Income Units (the "**Assessment Property**") in order to obtain funds for any 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 State 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 Low-Income Units 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 Authority), 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 a Low-Income 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 a Low-Income Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section. 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 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 obligations of this Declaration shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Assessment Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of the Subject Property or any 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 the Subject Property 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 until the mortgagee or lien holder succeeds to such Possessory Interest.

[Signature Page Follows]

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

DECLARANT

CHERRY STREET OWNER LLC,
a Delaware limited liability company

By: 

Name: _____

Title: _____

Michael Stern
Authorized Signatory

TWO BRIDGES SENIOR APARTMENTS, L.P.,
a New York limited partnership

By: _____

Name: _____

Title: _____

**TWO BRIDGES SET HOUSING DEVELOPMENT
FUND COMPANY, INC.,**
a New York not-for-profit corporation

By: _____

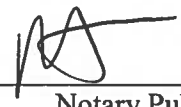
Name: _____

Title: _____

STATE OF New York)
) SS:
COUNTY OF New York)

On the 4 day of December, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Stern, 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.

NICOLE H AULETTA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AU6370947
Qualified in New York County
Commission Expires February 12, 2022



Notary Public

STATE OF)
) SS:
COUNTY OF)

On the ___ day of _____, in the year 2018, 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 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)
) SS:
COUNTY OF)

On the ___ day of _____, in the year 2018, 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 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


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

DECLARANT

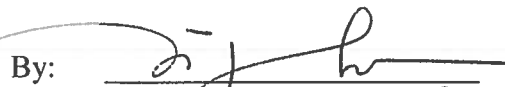
CHERRY STREET OWNER LLC,
a Delaware limited liability company

By: _____
Name:
Title:

TWO BRIDGES SENIOR APARTMENTS, L.P.,
a New York limited partnership

By: 
Name: VICTOR J. PAPA
Title: PRESIDENT

**TWO BRIDGESET HOUSING DEVELOPMENT
FUND COMPANY, INC.,**
a New York not-for-profit corporation

By: 
Name: VICTOR J. PAPA
Title: VICE PRESIDENT

STATE OF)
) SS:
COUNTY OF)

On the ____ day of _____, in the year 2018, 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 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 4 day of December, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Vicki Papa, 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 Montauk)

WILLIAM SAMUEL CHOURAQUI
Notary Public, State of New York
No. 01CH6327153
Qualified in New York County
Commission Expires June 9, 2019

On the 4 day of December, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Vicki Papa, 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

WILLIAM SAMUEL CHOURAQUI
Notary Public, State of New York
No. 01CH6327153
Qualified in New York County
Commission Expires June 9, 2019

EXHIBIT A-1

PROPERTY DESCRIPTION – THE DECLARANT PROPERTY

Block 248, Lot 70

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

BEGINNING at a point on the southerly line of Cherry Street distant 385.83 feet easterly from the corner formed by the intersection of the easterly line of Pike Slip with the southerly line of Cherry Street as these streets are laid out on Topographical Map ACC. No. 30011 dated February 10, 1972 Borough of Manhattan adopted by the Board of Estimate on the 20th of April 1972 Calendar No. 187;

RUNNING THENCE easterly, along the southerly line of Cherry Street for 112.00 feet to the corner formed by the intersection of the said line of Cherry Street with the westerly line of Rutgers Slip;

RUNNING THENCE southerly along the westerly line of Rutgers Slip forming an interior angle of 85 degrees 40 minutes 30 seconds with the southerly line of Cherry Street for 192.38 feet to a point;

RUNNING THENCE westerly, parallel with the southerly line of Cherry Street for 97.49 feet to a point;

RUNNING THENCE northerly at right angles to the southerly line of Cherry Street for 191.84 feet to the point or place of BEGINNING.

Block 248, Lot 76

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

BEGINNING at a point on the southerly side of Cherry Street, distant 112.00 feet Westerly from the corner formed by the intersection of the southerly side of Cherry Street and the westerly side of Rutgers Slip;

RUNNING THENCE South 03 degrees 53 minutes 25 seconds East, 176.50 feet;

THENCE in a Westerly direction, 72.28 feet;

THENCE in a Northerly direction, 48.73 feet;

THENCE in an Easterly direction, 1.74 feet;

THENCE in a Northerly direction, 121.58 feet to the southerly side of Cherry Street;

THENCE North 86 degrees 06 minutes 35 seconds East along the southerly side of Cherry Street, 58.96 feet to the point or place of BEGINNING.

EXHIBIT A-2

PROPERTY DESCRIPTION – LOT 15

Block 248, Lot 15

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

BEGINNING at a point on the southerly side of Cherry Street, distant 170.97 feet westerly from the corner formed by the intersection of the southerly side of Cherry Street and the westerly side of Rutgers Slip;

RUNNING THENCE South 01 degrees 28 minutes 22 seconds West, a distance of 121.58 feet;

THENCE South 84 degrees 27 minutes 06 seconds West a distance of 1.76 feet;

THENCE South 03 degrees 54 minutes 31 seconds East a distance of 48.71 feet;

THENCE South 88 degrees 31 minutes 11 seconds East a distance of 72.40 feet;

THENCE South 03 degrees 52 minutes 19 seconds East a distance of 15.26 feet;

THENCE North 86 degrees 06 minutes 28 seconds East a distance of 97.49 feet to the westerly side of Rutgers Slip;

THENCE South 00 degrees 25 minutes 58 seconds West along the westerly side of Rutgers Slip, a distance of 138.17 feet to the northerly side of South Street;

THENCE South 86 degrees 02 minutes 40 seconds West a distance of 208.68 feet;

THENCE North 00 degrees 00 minutes 00 seconds West a distance of 160.25 feet;

THENCE North 00 degrees 03 minutes 30 seconds East a distance of 50.01 feet;

THENCE North 00 degrees 00 minutes 05 seconds East a distance of 120.363 feet to the southerly side of Cherry Street;

THENCE North 86 degrees 06 minutes 35 seconds East along the southerly side of Cherry Street a distance of 40.15 feet to the point or place of BEGINNING.

EXHIBIT B

PARTIES-IN-INTEREST CERTIFICATION

[Certification Pending]

EXHIBIT C

**FORM OF WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made [_____] [____], [20__] by [_____] a [_____] ("Mortgage"), having its principal place of business at [_____].

WITNESSETH:

WHEREAS, Mortgagee is the lawful holder of that certain mortgage, dated [_____] (the "Mortgage") made by [_____] a [_____] ("Mortgagor"), in favor of Mortgagee, in the original principal amount of \$[_____] recorded in the Office of the City Register of the City of New York, Borough of Manhattan at [_____] on [_____] ; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block [_____] Lot [_____] on the Tax Map of the City of New York, Borough of Manhattan, 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 December 5, 2018, (the "Declaration"), made [Mortgagor], and

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

WHEREAS, Mortgagee represents that it has received and read the Declaration; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register 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, Mortgagee agrees, at the request of Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by 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 Mortgagee and its heirs, legal representatives, successors and assigns.

[Signature Page Follows]

SCHEDULE A

PROPERTY DESCRIPTION – THE PREMISES

Block 248, Lot 15

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

BEGINNING at a point on the southerly side of Cherry Street, distant 170.97 feet westerly from the corner formed by the intersection of the southerly side of Cherry Street and the westerly side of Rutgers Slip;

RUNNING THENCE South 01 degrees 28 minutes 22 seconds West, a distance of 121.58 feet;

THENCE South 84 degrees 27 minutes 06 seconds West a distance of 1.76 feet;

THENCE South 03 degrees 54 minutes 31 seconds East a distance of 48.71 feet;

THENCE South 88 degrees 31 minutes 11 seconds East a distance of 72.40 feet;

THENCE South 03 degrees 52 minutes 19 seconds East a distance of 15.26 feet;

THENCE North 86 degrees 06 minutes 28 seconds East a distance of 97.49 feet to the westerly side of Rutgers Slip;

THENCE South 00 degrees 25 minutes 58 seconds West along the westerly side of Rutgers Slip, a distance of 138.17 feet to the northerly side of South Street;

THENCE South 86 degrees 02 minutes 40 seconds West a distance of 208.68 feet;

THENCE North 00 degrees 00 minutes 00 seconds West a distance of 160.25 feet;

THENCE North 00 degrees 03 minutes 30 seconds East a distance of 50.01 feet;

THENCE North 00 degrees 00 minutes 05 seconds East a distance of 120.363 feet to the southerly side of Cherry Street;

THENCE North 86 degrees 06 minutes 35 seconds East along the southerly side of Cherry Street a distance of 40.15 feet to the point or place of BEGINNING.

Block 248, Lot 70

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

BEGINNING at a point on the southerly line of Cherry Street distant 385.83 feet easterly from the corner formed by the intersection of the easterly line of Pike Slip with the southerly line of Cherry Street as these streets are laid out on Topographical Map ACC. No. 30011 dated February 10, 1972 Borough of Manhattan adopted by the Board of Estimate on the 20th of April 1972 Calendar No. 187;

RUNNING THENCE easterly, along the southerly line of Cherry Street for 112.00 feet to the corner formed by the intersection of the said line of Cherry Street with the westerly line of Rutgers Slip;

RUNNING THENCE southerly along the westerly line of Rutgers Slip forming an interior angle of 85 degrees 40 minutes 30 seconds with the southerly line of Cherry Street for 192.38 feet to a point;

RUNNING THENCE westerly, parallel with the southerly line of Cherry Street for 97.49 feet to a point;

RUNNING THENCE northerly at right angles to the southerly line of Cherry Street for 191.84 feet to the point or place of BEGINNING.

Block 248, Lot 76

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

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THENCE in a Northerly direction, 121.58 feet to the southerly side of Cherry Street;

THENCE North 86 degrees 06 minutes 35 seconds East along the southerly side of Cherry Street, 58.96 feet to the point or place of BEGINNING.

EXHIBIT D
NYCHA SCOPE

SITE WORK	SCOPE
<i>BUILDING ENVELOPE</i>	
Abatement required to perform building envelope work	
Repointing of existing brick facade and replacement of all adjacent caulking	This scope excludes LL11 certification
Replacement of AC sleeves and surrounding caulking	
Window replacement and surrounding caulking	
<i>BUILDING SYSTEMS</i>	
Replace rooftop exhaust fans	
Replace trash compactor and provide 1 year manufacturer warranty (not including chute riser)	
Replace interior elevator cab finishes	
Modernize elevators with 1-year manufacturer warranty (New motors, controllers and cables included)	
Install split AC systems in elevator machine rooms (EMR)	
Security System / Intercom / Controlled Access	Up to 8 card readers and fobs, 75 cameras with pipe (either stairwells or corridors + lobby/facade) wire and licenses, DoorKing style intercom system
<i>INTERIOR COMMON SPACE</i>	
Paint lobby walls and ceilings	
Paint interior stairs	
Paint corridor walls and ceilings	
Replace common area floors	public corridors on floors with units only
<i>ENVIRONMENTAL</i>	
Testing prior to work	
<i>ADDITIONAL ALTERNATE</i>	
Apartment entry hardware	Only available if full \$12.5m is not reached
Apartment radiators, convector and baseboard work	Only available if full \$12.5m is not reached

EXHIBIT E

ON-SITE PUBLIC SPACE PROVISIONS

I. Obligation to Construct On-Site Public Space.

a. **Design.** The On-Site Public Space shall be constructed in the location shown on those plans attached as **Exhibit F**; (ii) shall include in all substantial respects the amounts of seating, planting and trees as well as the water feature (the “**Required Elements**”) shown on plans attached as **Exhibit F**; and (iii) conform in all substantial respects with the design criteria set forth below (collectively, the “**Design Criteria**”):

i. **Prohibitions.** Devices or forms affixed or incorporated into planter ledges, steps, sills or other horizontal surfaces that would otherwise be suitable for seating that are intended to prevent, inhibit or discourage seating (such as spikes, metal bars, or pointed, excessively rough, or deliberately uncomfortable materials or forms) shall be prohibited. Deterrents to skateboards, rollerblades and other wheeled devices are permitted on seating surfaces if they do not inhibit seating, maintain a minimum distance of five (5) feet between deterrents, are integrated into the seating surface at the time of manufacture or construction, and are constructed of materials that are consistent with the materials and finish quality of the seating surface.

ii. **Lighting and Electrical Equipment.** The On-Site Public Space shall be illuminated to provide for safe use and enjoyment of all areas of the On-Site Public Space, provided that all lighting within the On-Site Public Space area shall be shielded to minimize any adverse effects on surrounding residences.

iii. **Bicycle Parking.** If directed by DCP, a location for bike racks or a docking station for Citibike or a successor public bike share system shall be provided within the On-Site Public Space.

iv. **Signage.** The On-Site Open Space shall include signage that is designed based on the provisions of Zoning Resolution Section 37-751 (Public Space Signage) in effect on the date of this Declaration, as modified herein. All references therein to “public plaza” shall be replaced with the words “Public Open Space.” Zoning Resolution Section 37-751(a)(3) shall be modified as follows: the hours of operation set forth in this **Exhibit E** shall replace the words “Open 24 hours” and the words “Open to the Public” shall precede those hours of operation. There may also be one operating rules sign within the On-Site Public Space. Such sign shall not exceed one (1) foot square dimension, may not be freestanding, and shall contain no lettering greater than three-quarters (³/₄) of an inch in height. In addition, at the direction of DCP, the On-Site Open Space shall include signage providing directions to the nearest ferry terminal and/or bike lanes.

b. CPC Chair Review and Certification of Design.

i. DOB shall not issue, and Declarant shall not accept, a Building Permit (other than a permit for demolition, site preparation, foundation or excavation work) for the Proposed Development unless and until the Chair certifies to DOB that the design of the On-Site Public Space contains the Required Elements and complies with the Design Criteria (the “**On-Site Public Space Certification**”).

ii. To initiate Chair review, Declarant shall submit drawings, including the plans approved pursuant to the Application, the plans attached as **Exhibit F** to this Declaration, and plans for the On-Site Public Space ("**On-Site Public Space Certification Plans**") with dimensions and sufficient details to enable the Chair to determine whether the Required Elements are present and whether the Design Criteria have been complied with.

iii. Within thirty (30) days of such submission, the Chair shall either (A) issue the On-Site Public Space Certification, or (B) notify Declarant in writing of any lacking Required Elements or of any failure to comply with the Design Criteria, in which case Declarant shall submit revised On-Site Public Space Certification Plans which shall address such defects, and the Chair shall issue the On-Site Public Space Certification within fifteen (15) days after receipt thereof.

II. Construction of the On-Site Public Space.

a. **Manner of Performance of the Construction Work; Permits.** Declarant shall, at its sole cost and expense, undertake and complete the performance of the On-Site Public Space Work so as to construct the On-Site Public Space as required pursuant to the provisions of this Declaration. Declarant shall perform the On-Site Public Space Work in a good and workerlike manner and in accordance with Legal Requirements, and the provisions of this Declaration, it being expressly acknowledged by the City that other than Building Permits and the On-Site Public Space Certification, no permits or approvals from any government entity are necessary as a condition precedent to the construction of the On-Site Public Space.

b. **Non-material Modifications to the On-Site Public Space Certification Plans.** Declarant shall have the right to make non-material modifications to the On-Site Public Space Certification Plan to respond to unanticipated field conditions or similar unanticipated construction-related circumstances. All material modifications to the On-Site Public Space Certification Plan may be made only upon the written approval of the Chair, which approval shall not be unreasonably withheld or delayed. To initiate Chair review of material modifications, Declarant shall submit a modified On-Site Public Space Certification Plans with sufficient details to enable the Chair to determine whether the modified Public Access Certification Plan continues to include the Required Elements and whether the Design Criteria continue to be complied with (the "**Modified On-Site Public Space Certification Plans**"). Within fifteen (15) days of such submission, the Chair shall either (A) accept the Modified On-Site Public Space Certification Plans, or (B) notify Declarant in writing of any lacking Required Elements or of any failure to comply with the Design Criteria, in which case Declarant shall submit revised Modified On-Site Public Space Certification Plans which shall address such defects, and the Chair shall issue the On-Site Public Space Certification within fifteen (15) days after receipt thereof.

III. Completion of Construction.

a. Declarant shall notify DCP at such time as it believes that the On-Site Public Space is Substantially Complete, and shall request that the Chair certify such open space as Substantially Complete. Not later than ten (10) business days after receipt of such request, the Chair shall either issue a Notice of Substantial Completion or DCP shall deliver a notice to Declarant setting forth in detail the reasons why the open space is not Substantially Complete. If DCP notifies Declarant that the On-Site Public Space has not been Substantially Completed in accordance with the On-

Site Public Space Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a Punch List, which 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 (10) business days after receipt of such notice, the Chair shall either issue the Notice of Substantial Completion or DCP shall notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If the Chair or DCP fail to provide a notice to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Substantial Completion with respect to the On-Site Public Space.

b. DOB shall not issue, and Declarant shall not accept, a TCO for 594 or more residential units within the Proposed Development until Declarant has Substantially Completed the On-Site Public Space and the Chair has certified the Substantial Completion of such space to DOB. Following certification of Substantial Completion, the On-Site Public Space shall be open to the public, maintained and repaired in accordance with the requirements set forth in this **Exhibit E**.

c. Declarant shall notify DCP at such time as it believes that the On-Site Public Space is Finally Complete and shall request that the Chair certify such open space as Finally Complete. Not later than ten (10) business days after receipt of such request, the Chair shall either issue a Notice of Final Completion or DCP shall deliver a notice to Declarant setting forth in detail the reasons why the open space is not Finally Complete. If DCP notifies Declarant that the On-Site Public Space has not been Finally Completed in accordance with the On-Site Public Space Plans, such notice shall contain a Punch List. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify the DCP of such completion. No later than ten (10) business days after receipt of such notice, the Chair shall either issue the Notice of Final Completion or DCP shall notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If the Chair or DCP fail to provide a notice to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Final Completion with respect to the On-Site Public Space.

d. DOB shall not issue, and Declarant shall not accept, a PCO for the Proposed Development until the Chair has certified Final Completion of the On-Site Public Space to DOB.

IV. Public Access Easements.

a. Declarant covenants that, immediately upon the issuance of a Notice of Final Completion, it (as the burdened party) shall grant, convey and transfer to the City and the general public (as the benefitted party) a permanent, perpetual and non-exclusive public access easement over and encompassing the On-Site Public Space unobstructed from the surface thereof to the sky (easement area) for the purpose of recreational use by the general public. Such easement (i) shall be effectuated pursuant to this **Section V** without the necessity for recording a separate easement instrument and (ii) upon issuance of a Notice of Final Completion, shall be prior in interest to any property interest on the Subject Property or any portion thereof that is recorded after the date of this Declaration.

b. No member of the public shall have the right to use On-Site Public Space 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 the property or any person.

V. Operation and Maintenance.

a. **Hours of Access.** Declarant covenants that, upon Substantial Completion of the On-Site Public Space, such open space shall remain open and accessible to the public each day at least from dawn until dusk, unless otherwise approved in writing by the Chair. Notwithstanding the foregoing, Declarant may close the On-Site Public Space to the public for one day or such other period as shall be required by law to prevent a public dedication of the On-Site Public Space, other than Saturday, Sunday or public holiday, on the same date in January each year or as near to such date as is possible, to preserve Declarant's ownership interest in the On-Site Public Space and to prevent a public dedication.

b. **Maintenance and Repair.** Declarant shall be responsible for the maintenance and repair of the On-Site Public Space in accordance with the standards set forth in this **Section VI of Exhibit E.** All such maintenance shall be performed in a good and worker-like manner.

c. **Cleaning.**

i. Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the On-Site Public Space in clean, neat and good condition.

ii. All walkways, lighting and all other improvements and facilities installed in the On-Site Public Space shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

iii. Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

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

v. Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed.

vi. Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than twenty-four (24) hours after each snowfall or accumulation of ice.

d. **Landscape Maintenance.** A maintenance program for the planted portions of the On-Site Public Space shall be established, consisting of a "Spring Start-up Period" program, a "Season Closing Period" program and a continuing maintenance program through the "Growing Season."

e. **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. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

- i. Remove any winter protectives from trees, shrubs and other planting materials;
- ii. Remove all landscaping debris including leaves and dead branches;
- iii. Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- iv. Remove or destroy any weeds growing between paving blocks, pavement and concrete areas;
- v. Apply commercially available nitrogen-rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
- vi. Remove any sand deposited as a result of winter sandings;
- vii. Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size; and
- viii. Re-seed grassed areas as needed.

f. **Season Closing Period:** The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

- i. Rake and collect leaves from the Open Space;
- ii. Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;
- iii. Apply commercially available nitrogen rich fertilizer to all lawn areas; and
- iv. Reseed grassed areas as needed.

g. **Growing Season:** The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out 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 City or State regulations governing water usage;

iii. Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed; and

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

h. **Repairs and Replacements.** Repairs and replacements of facilities within the On-Site Public Space shall occur as needed to maintain such facilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the On-Site Public Space Certification Plans (as may be modified pursuant to this Declaration) and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the On-Site Public Space:

i. **Benches or Other Seating:** Maintenance, including replacement of any broken or missing slats and painting, as necessary;

j. **Fences or Other Barriers:** Any broken or materially cracked fences, or barriers shall be repaired or removed and replaced;

k. **Paving:** All paved surfaces shall be maintained so as to be safe and attractive;

l. **Signage:** All signs and graphics shall be maintained in a first-class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

m. **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;

n. **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; and

o. **Construction Defects and Hazardous Conditions:** Declarant shall periodically inspect the On-Site Public Space for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

p. **Closure.** Notwithstanding the foregoing, Declarant may close the On-Site Public Space or the most limited portions thereof as may be necessary in order (i) to accomplish the maintenance, repairs or replacements or (ii) to make emergency repairs to mitigate hazardous conditions or emergency conditions. Emergency conditions for which the On-Site Public Space 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, provided that no such emergency closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with the New York City Police Department and obtained its concurrence that closure is warranted for a longer period. Declarant shall promptly

notify the Chair in writing of any closure which extends more than twelve (12) hours. Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or mitigation to be undertaken, and will exercise due diligence in the performance of such repairs etc. or mitigation so that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly.

q. **Rules and Regulations.** Declarant shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the On-Site Public Space, which rules and regulations shall not conflict with DPR Rules and Regulations (56 RCNY §1-01 et seq.). In addition, Declarant may from time to time modify such rules and regulations, with the consent of the Chair. Declarant shall operate the On-Site Public Space in conformity with the DPR Rules and Regulations unless and until it promulgates rules and regulations of its own for use of the On-Site Public Space.

EXHIBIT F

ON-SITE PUBLIC SPACE PLANS

[See Attached]

EXHIBIT G

THE COLEMAN PLAYGROUND SCOPE

Convert Grass to Synthetic Turf & Field Lighting: 38,000 sf

Excavation, Drainage, Fill Material, Synthetic Turf, Concrete & Rebar, Conduit, Wiring, Controls, Boxes & Service Connect
Cost Estimate: \$5.75M

Reconstruct Playground: 32,000 sf

Removals, Excavation, Drainage, Concrete, Paving, Play Equipment, Spray Showers, Lighting, Seating & Safety Surfacing
Cost Estimate: \$4.5M

Construct Dog Run: 10,000 sf

Excavation, Fill Materials, Drainage, Paving Materials, Seating
Cost Estimate: \$1.1M

Passive Seating Plaza: 4,700 sf

Excavation, Drainage, Fill materials, Fencing, Seating
Cost Estimate: \$480K

Interior Pathways: 6,000 sf

Excavation, Drainage, Fill materials, Fencing, Seating
Cost Estimate: \$570K

Replace Sidewalks: 19,600 sf

Excavation, Fill Materials, Paving
Cost Estimate: \$1.55M

TOTAL COST ESTIMATE: \$13,950,000

Note:

1. Skate Park is not in mitigation scope of work.
2. Assumed 32,000 sf of Playground area and 10,000 sf of Dog Run.

EXHIBIT H

THE LITTLE FLOWER PLAYGROUND- CAPTAIN JACOB JOSEPH PLAYGROUND SCOPES

CAPTAIN JACOB JOSEPH PLAYGROUND SCOPE

Replace perimeter fencing with lower steel/iron picket
Add drinking fountain and water service
Add lighting, including service connection
Repair perimeter brick wall and piers (piers are leaning and cheek walls have cracked), and add handrails
Remove pavement between the trees and add planting, low fence and a few benches
Repaint playground equipment and replace safety surface tiles
Replace swingset (the existing swingset is large, but has only four swings)
Introduce plantings into the playground – along the southern and northern edges, cutting away pavement and adding low, sturdy shrubs
Relocate benches and add benches to positions in front of the plantings
Install low plant protection fencing
Eliminate outer fence at subway vent and repair or replace inner fence

TOTAL COST ESTIMATE: \$450,000

LITTLE FLOWER PLAYGROUND SCOPE

Refurbish comfort station – cleanup and paint, replace fixtures and tiling
Repaint all benches (approximately 80)
Repaint play equipment and fencing
Replace all safety surface tiles
Install new plantings at eastern street edge
Install additional shrubs and ground cover in existing perimeter planting areas
In the southeast corner, install BBQ units (4), new picnic tables (8), a drinking fountain and trash receptacles (4)

TOTAL COST ESTIMATE: \$400,000

EXHIBIT I

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

[Letterhead of the Chair]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: [] Playground Work

Dear []:

This letter constitutes the Notice of Substantial Completion of the [] Playground Work, as defined in the Restrictive Declaration by [] dated _____, recorded in the City Register's Office, New York County at CRFN [] on [] (the "Declaration"), pursuant to Sections 3.03(a)[] and 3.03(f)(i) of the Declaration.

By this notice, the undersigned, as Chairperson of the City Planning Commission, confirms [] Playground Work 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 Notice of Substantial Completion Issued]

EXHIBIT J

FORM OF NOTICE OF FINAL COMPLETION

[Letterhead of the Chair]

[Date]

NOTICE OF FINAL COMPLETION

Re: [_____] Playground Work

Dear [_____]:

This letter constitutes the Notice of Final Completion of the [_____] Playground Work, as defined in the Restrictive Declaration by [_____] dated _____, recorded in the City Register's Office, New York County at CRFN [_____] on [_____] (the "Declaration"), pursuant to Sections 3.03(a)[] and 3.03(f)(ii) of the Declaration.

By this notice, the undersigned, as Chairperson of the City Planning Commission, confirms [_____] Playground Work 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 Notice of Final Completion Issued]

EXHIBIT K

**SHADOW MITIGATION PAYMENTS
DECLARANT'S PROPORTIONATE SHARE**

Site 4 (4A/4B):

Cherry Clinton Playground: 10%

Site 5:

Cherry Clinton Playground: 10%

Lillian D. Wald Playground: 50%

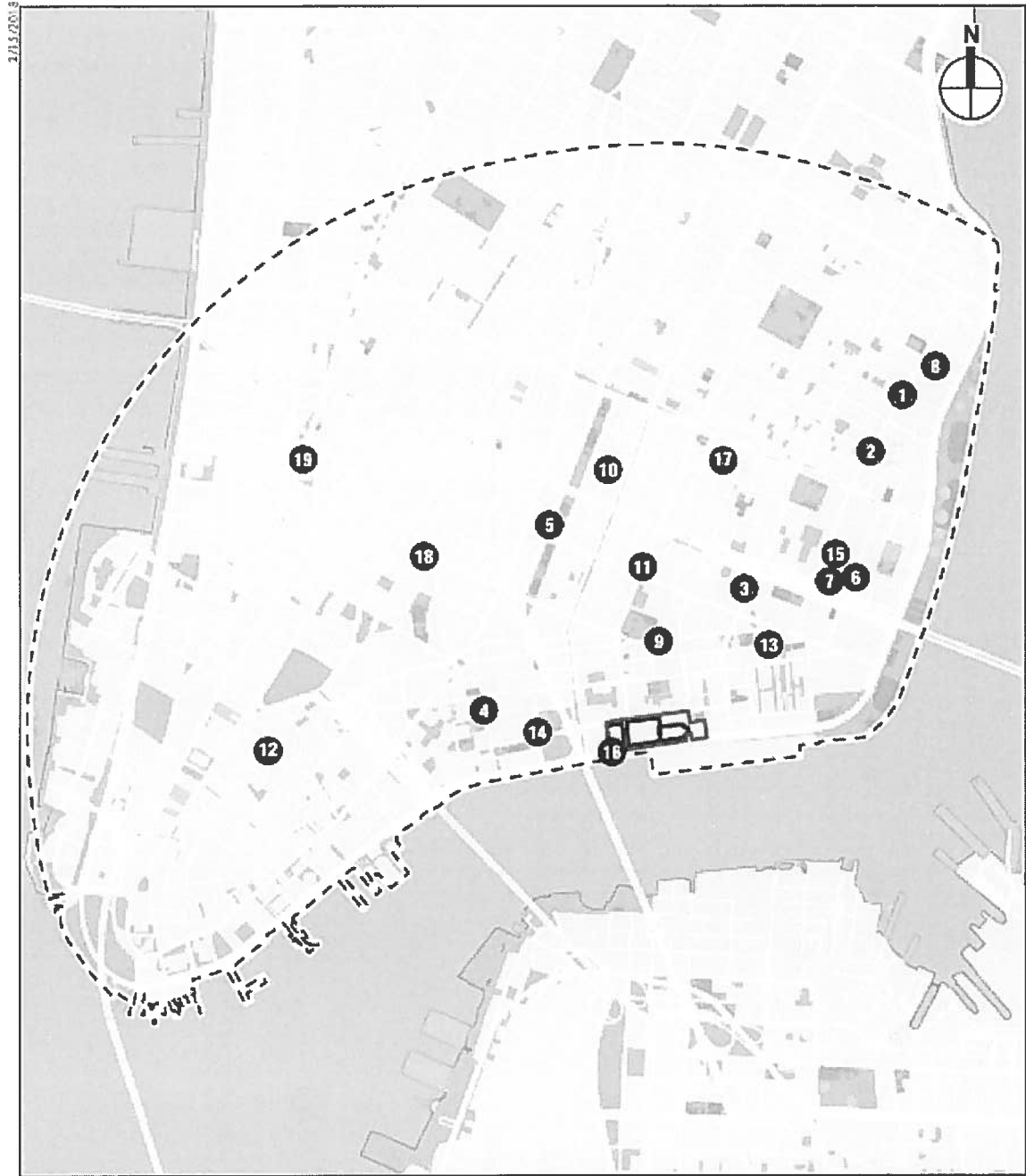
Site 6A:




Cherry Clinton Playground: 90% following issuance of Building Permits for Site 5 or 6A superstructure; 80% following issuance of Building Permits for Site 5 and 6A superstructure

Lillian D. Wald Playground: 50%

EXHIBIT L

CHILD CARE STUDY AREA



-  Project Sites
-  Boundary of Two Bridges LSRD
-  Study Area (1.5-mile boundary)

1 Child Care and Head Start Centers

0 2,000 FEET

[Exhibit L to Restrictive Declaration]

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EXHIBIT M

CUMULATIVE FOUR YEAR MITIGATION FUNDING TO ACS

**NYC Administration for Children's Services
NYC Department of City Planning Child Care Mitigation Grid**

Variables:	
Mitigation Slots	1
Infant SMR	\$19,366
Toddler SMR	\$13,990
Pre-school SMR	\$12,632
Inflation Factor	0.81%

	Completion Year											
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12
Fiscal year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2027	2027
Infant Cost	\$3,680	\$3,709	\$3,740	\$3,770	\$3,801	\$3,832	\$3,863	\$3,894	\$3,926	\$3,958	\$3,990	\$4,022
Toddler Cost	\$3,777	\$3,808	\$3,839	\$3,870	\$3,901	\$3,933	\$3,965	\$3,997	\$4,030	\$4,062	\$4,096	\$4,129
Pre-School Cost	\$6,821	\$6,876	\$6,932	\$6,989	\$7,046	\$7,103	\$7,161	\$7,219	\$7,277	\$7,337	\$7,396	\$7,456
Annual total mitigation funding to ACS cost/slot	\$14,278	\$14,394	\$14,511	\$14,629	\$14,748	\$14,867	\$14,988	\$15,110	\$15,233	\$15,357	\$15,482	\$15,607
Cumulative four year mitigation funding to ACS	\$14,278	\$14,394	\$14,511	\$14,629	\$14,748	\$14,867	\$14,988	\$15,110	\$15,233	\$15,357	\$15,482	\$15,607
				\$59,232	\$59,713	\$60,199	\$60,688	\$61,181	\$61,679			

Notes/Assumptions:

Inflation factor is CPI 5-year average for New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, Series ID: CUUURA101SA0, CUUSA101SA0
Mitigation slots to be supplied by DCP.

Slots are average total voucher slots by age for most recent City Fiscal Year at time of calculation.
State Market Rate (SMR) is the 2016 GDC weekly FT rate for NYC from the NYS OCFS website multiplied by 52.2 weeks.
CPI is applied to current SMR to FY2023 (Year 6)

EXHIBIT N

NUMBER OF SLOTS IN EXCESS OF IMPACT THRESHOLD TO BE FUNDED

Number of Low-Income Family Units in Project Area	Number of Child Care Slots in Excess of Threshold to Be Funded	Child Care Demand (Slots)
0 - 508	0	58
509 - 517	1	59
518 - 526	2	60
527 - 534	3	61
535 - 543	4	62
544 - 552	5	63
553 - 560	6	64
561 - 569	7	65
570 - 578	8	66
579 - 586	9	67
587 - 595	10	68
596 - 604	11	69
605 - 613	12	70
614 - 621	13	71
622 - 630	14	72
631 - 639	15	73
640 - 647	16	74
648 - 656	17	75
657 - 665	18	76
666 - 673	19	77
674 - 682	20	78
683 - 691	21	79
692 - 699	22	80

EXHIBIT O

SCHOOLS STUDY AREA



-  Project Sites
-  Community School District (CSD 1) Boundary
-  Boundary of Two Bridges LSRD
-  Public School



CSD Elementary Public Schools

[Exhibit O to Restrictive Declaration]

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THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 3
59 East 4th Street - New York, NY 10003
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Alysha Lewis-Coleman, Board Chair

Susan Stetzer, District Manager

September 28, 2018

Marisa Lago, Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Director Lago and City Planning Commissioners,

At its September 2018 monthly meeting, Community Board 3 passed the following resolution:

VOTE: Deny Approval of the Proposed Minor Modifications to the Two Bridges Large Scale Residential Development (ULURP Nos: M 180507 C ZSM; M 180505 A ZSM; M 180506 B ZSM; N180498 ZCM)

WHEREAS, on June 25, 2018, three separate land use applications seeking minor modifications to the Two Bridges Large Scale Residential Development (LSRD) were referred to Community Board 3 Manhattan for review; and

WHEREAS, the land use applications for proposed actions at 247 Cherry Street, 259 Cherry Street, and 260 South Street were filed separately by applicants Cherry Street Owner LLC, LE1SUB LLC, and Two Bridges Associates, LP, respectively, but are being considered together for the purposes of both environmental review and community board review, as all three project sites are located within the Two Bridges LSRD and would be developed during the same construction period, and thus are considered to have cumulative impacts; and

WHEREAS, the proposed actions would facilitate the construction of four towers across three separate buildings with heights of 1,008 feet (80-stories), 798 feet (69-stories), 748 feet (62-stories), and 730 feet (62-stories); and

WHEREAS, the proposed projects would contain 2,527,727 gross square feet (gsf) of residential space spread across 2,775 new residential dwelling units (DUs); 10,858 gsf of retail space; 17,028 gsf of community facility space; and would introduce, conservatively, more than 5,800 new residents to the project area; and

WHEREAS, the proposed projects are extremely out of scale with the surrounding neighborhood and conflict with the objectives of the Two Bridges LSRD to insure better site planning and urban design that

does not unduly increase bulk and density, alter open space access, adversely affect access to light and air, or create traffic congestion to the detriment of residents; and

WHEREAS, the proposal for a mere 25 percent affordable units does not sufficiently advance the projects' stated goal and purpose, and the introduction of an additional 2,081 market rate units and the substantial environmental impacts associated with these proposed actions would place such a burden on the community as to produce more severe and acute district needs, particularly in regard to residential affordability and heightened residential displacement pressure; and

WHEREAS, despite the scale and nearly unprecedented nature of these proposals, the applications have been designated as minor modifications to the underlying LSRD controls pursuant to a determination by then City Planning Commission (CPC) Chair Carl Weisbrod, in a letter dated August 11, 2016; and

WHEREAS, Community Board 3 previously and explicitly requested that the CPC better explain and justify its decision on how the minor modification determination was made, both in a letter to the Department of City Planning dated May 25, 2017 and at the public scoping meeting for the Two Bridges LSRD Environmental Impact Statement (EIS), held on May 25, 2017, and has yet to receive an adequate explanation; and

WHEREAS, without further explanation, and given the massive scale of development and potential for significant adverse impacts that the proposed modifications to the Two Bridges LSRD site plan would facilitate, it would appear that the proposed actions should in fact warrant a Special Permit, which would ensure that the project would be subject to Uniform Land Use Review Procedure (ULURP) and provide the public with additional opportunity to review the proposed actions, as well as allow local elected officials to review them further and appropriately represent the interests of their constituents in the land use review process; and

WHEREAS, in a letter to Director of City Planning Marisa Lago dated June 21, 2018, Community Board 3 expressed concern with the project application process and public review timelines, as more than one year had passed between the close of the public scoping period for the Two Bridges LSRD EIS and the unexpected referral of project applications to the Community Board on June 25, 2018; and

WHEREAS, these unexpected referrals triggered a 60-day review period that coincided with the well-known community board recess that occurs annually in August, making sufficient community board and public review extremely challenging; and

WHEREAS, the CPC and Department of City Planning (DCP) ultimately acknowledged this issue and extended the review period through October 2018, this revised timeline nonetheless presented challenges for Community Board 3 and the public, as the review must take into consideration three separate land use applications and an unprecedented joint EIS of considerable size and technical detail; and

WHEREAS, as non-ULURP actions, these applications are not subject to robust public review and are required to have only one public hearing, despite representing the largest scale development the Two Bridges LSRD and surrounding area has seen in nearly half a century; and

WHEREAS, due to the limited opportunities for public review, Community Board 3 voluntarily hosted a public hearing on August 14, 2018 to allow members of the community to voice their opinions on the proposed actions; and

WHEREAS, at this public hearing, more than 100 members of the public attended and more than 60 members of the public provided testimony opposing the land use applications, with only a single member of the public providing testimony in support of the project applications; and

WHEREAS, the Two Bridges LSRD Draft Environmental Impact Statement (DEIS) was issued on June 22, 2018 and includes analysis, findings, and proposed mitigations that Community Board 3 considers inadequate; and

WHEREAS, a number of Community Board 3 requests made during the Two Bridges LSRD EIS Public Scoping period were left wholly unaddressed or insufficiently resolved upon issuance of the DEIS; and

WHEREAS, due to the inadequacy of the *City Environmental Quality Review (CEQR) Technical Manual* guidelines, a number of significant environmental impacts are under-measured in the DEIS; and

WHEREAS, even in instances where significant adverse impacts are identified in the DEIS, a number of these impacts are inexplicably left unmitigated; and

WHEREAS, several proposed mitigations that have been identified thus far nonetheless appear insufficient in being able to offset the significant adverse impacts the proposed actions would generate; and

WHEREAS, a number of potential additional mitigations that are being considered are having details withheld until the completion of the Final Environmental Impact Statement (FEIS), barring them from sufficient public review; and

WHEREAS, under the terms of the now-expired Two Bridges Urban Renewal Plan (TBURP) and the active Two Bridges LSRD, the area has been, since 1961, governed by regulations requiring the provision of low- and middle-income housing and site planning to facilitate the best possible housing environment, requiring the distribution of bulk and open space to create a better design for the LSRD and surrounding neighborhood than would otherwise be possible; and

WHEREAS, the project applications would likely facilitate the construction of up to 694 affordable residential dwelling units (DUs), it remains unknown at what affordability levels these DUs will be made available and how long the terms of their affordability will remain in place for; and

WHEREAS, the affordability program that would likely be applied to these projects, 421-a Tax Exemption - Option E, would set affordability levels at income thresholds that are higher than the existing median household income in the Two Bridges area, which is currently \$30,771 for a household of three, or roughly 30% of the Area Median Income (AMI) for the New York City region, making even the affordable units the proposed actions would generate inaccessible for the majority of current area residents; and

WHEREAS, despite the introduction of 694 "affordable" units to the Two Bridges LSRD, the proposed actions would likely be unable to meet the growing local need for deeply affordable, high-quality housing,

and would also introduce 2,081 DUs of market-rate housing to an area that has historically consisted of primarily rent regulated housing; and

WHEREAS, Community District 3 already has the second highest income disparity—the gap between our lowest income and highest income residents—of all Community Districts in New York City; and

WHEREAS, given that both the affordable and market-rate units the proposed actions would generate would be unaffordable for the majority of current area residents, it is likely that the proposed actions would heighten the risk for residential displacement; and

WHEREAS, for both fiscal years 2019 and 2020, Community Board 3 identified the need for affordable housing and the growing risk of residential displacement as issues of premier importance in Community District 3 when creating annual District Needs Statements; and

WHEREAS, local not-for-profit Henry Street Settlement, after conducting a number of focus groups and hosting an annual town hall meeting in October 2017 to identify Lower East Side residents' primary concerns, similarly found that residents "fear being displaced from the neighborhood due to rising rents, insufficient affordable housing, and a rising cost of living" and that "new developments are extremely expensive and cater to wealthy newcomers," with affordable units being "too few—and too costly"¹; and

WHEREAS, the changing demographics generated by the proposed actions are likely to affect retail and small businesses in the area that currently respond to local residents' needs, including culturally and linguistically appropriate businesses that cater to linguistically isolated populations nearby; and

WHEREAS, the neighborhood previously lost an important local food resource with the closure and demolition of Pathmark in 2012 to facilitate the construction of One Manhattan Square, and will temporarily lose access to an important remaining food resource in the Stop 1 Food Market during the proposed construction period; and

WHEREAS, any adverse impacts generated by the proposed projects would have a disproportionate impact on a number of minority groups in the area immediately surrounding the proposed project sites, as:

- 1) 82 percent of residents overall are people of color;
- 2) 22 percent of residents in the area are 65 and older—and half of that senior population is living with a disability; and
- 3) 18 percent of all residents in the area are living with a disability; and

WHEREAS, the neighborhood where the proposed actions would be implemented is an important ethnic enclave, as:

- 1) 47.5 percent of residents in the area are Chinese and 23 percent are Hispanic/Latino;
- 2) 46 percent of residents are foreign born; and
- 3) 41 percent of residents have limited English proficiency; and

¹ Henry Street Settlement. (April 2018). *Community Engagement, Public Policy, and Advocacy Findings from Focus Groups and the Community Town Hall*. <<https://www.henrystreet.org/wp-content/uploads/2018/04/Red-Book-2017.pdf>>

WHEREAS, nearly 30 percent of area residents live below the poverty line and the median household income for a family of three is just \$30,771; and

WHEREAS, all of these rates are considerably higher than the rest of Manhattan; and

WHEREAS, the proposed actions would involve the relocation of 19 senior residents of 80 Rutgers Slip during the construction period, pursuant to a regulatory agreement and relocation plan administered by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the regulatory agreement and relocation plan has not yet been disclosed to Community Board 3 or other local elected officials, and potentially includes the current warehousing of affordable senior units despite substantial need in the community and long wait lists; and

WHEREAS, the proposed projects are likely to have a significant adverse impact on public school utilization rates and no mitigations for this impact has been identified at this time; and

WHEREAS, the proposed projects would all be sited within the 2015 FEMA-identified floodplain, and despite some proposed resiliency elements attached to the projects, little analysis has been done to evaluate the potential impacts these measures would have on areas immediately surrounding the proposed projects in a flood scenario; and

WHEREAS, the proposed projects would decrease the already limited open space ratio in the surrounding area from 0.897 acres per 1,000 residents to just 0.831 acres per 1,000 residents, both below the City goal of 2.5 acres per 1,000 residents and the citywide median of 1.5 acres per 1,000 residents and does not facilitate the addition of any new open space in the area; and

WHEREAS, proposed mitigations to the accessibility and circulation at the F-line East Broadway station are not likely to be sufficient in offsetting the impacts that more than 5,800 new residents would have on subway line service, station accessibility, and pedestrian circulation; and

WHEREAS, Community Board 3 has previously resolved to support land use actions in the proposed project area that these applications would be incompatible with, and which represent a vision for the Two Bridges waterfront area that the proposed actions would be in direct conflict with; and

WHEREAS, Community Board 3 believes the proposed actions would represent a significant change to the underlying Two Bridges LSRD site plan and zoning controls and would have impacts that are inconsistent with the LSRD objectives, and therefore do not constitute minor modifications; and

WHEREAS, this change brings into question every Large Scale special permit issued since the establishment of the Two Bridges LSRD, as the Community Board 3 is not likely to have made the same decisions regarding prior special permits and modifications if they understood that they would not have an opportunity for review and negotiation through ULURP when future significant amendments were being proposed; and

THEREFORE BE IT RESOLVED that Community Board 3 recommends to deny the approval of the proposed modifications to the Two Bridges LSRD; and

THEREFORE BE IT FURTHER RESOLVED that Community Board 3 asks that CPC find the proposed amendments to the Two Bridges LSRD to be so significant as to require review pursuant to ULURP.

Please contact the community board office with any questions.

Sincerely,



Alysha Lewis-Coleman, Chair
Community Board 3



MyPhuong Chung, Chair
Land Use Zoning, Public & Private Housing Committee

cc: Bob Tuttle, Department of City Planning
Matthew Pietrus, Department of City Planning
Tara Duvivier, Manhattan Borough President's Office
Paul Leonard, Office of Council Member Margaret Chin
Marian Guerra, Office of Council Member Margaret Chin
Venus Galarza-Mullins, Office of New York State Senator Brian Kavanagh
Laurence Hong, Office of New York State Assembly Member Yuh-Line Niou
Ben Kleinbaum, Capalino+Company



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Alysha Lewis-Coleman, Board Chair

Susan Stetzer, District Manager

September 28, 2018

Robert Dobruskin, AICP
Director, Environmental Assessment and Review Division
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Director Dobruskin,

At its September 2018 monthly meeting, Community Board 3 passed the following resolution:

TITLE: CB 3 Response to the Two Bridges LSRD Draft Environmental Impact Statement

WHEREAS, the proposed actions considered in the Draft Environmental Impact Statement (DEIS) include modifications to the existing Two Bridges Large Scale Residential Development (LSRD) to facilitate the development of three new mixed-use buildings within the Two Bridges LSRD; and

WHEREAS, the proposed actions have separate developers, approvals, and financing, but are being considered together for the purposes of environmental review since all three project sites are located within the Two Bridges LSRD and would be developed during the same construction period, and thus are considered to have cumulative environmental impacts; and

WHEREAS, under the terms of the now-expired Two Bridges Urban Renewal Plan (TBURP) and the active Two Bridges LSRD, the area has been, since 1961, governed by regulations requiring the provision of low- and middle-income housing and site planning to facilitate the best possible housing environment, and requiring the distribution of bulk and open space to create a better design for the lots and surrounding neighborhood than would otherwise be possible; and

WHEREAS, the proposed actions would facilitate the construction of four towers across three separate buildings with heights of 1,008 feet (80-stories), 798 feet (69-stories), 748 feet (62-stories), and 730 feet (62-stories); and

WHEREAS, the proposed projects would contain 2,527,727 gross square feet (gsf) of residential space spread across 2,775 new residential dwelling units (DUs), 10,858 gsf of retail space, 17,028 gsf of community facility space, and would introduce, conservatively, more than 5,800 new residents to the project area; and

WHEREAS, the Two Bridges LSRD Draft Environmental Impact Statement (DEIS) was issued on June 22, 2018 and includes analysis, findings, and proposed mitigations that Community Board 3 considers inadequate;

THEREFORE, BE IT RESOLVED that Community Board 3 requests that the Lead Agency respond to, study further, and clarify the following:

WHEREAS, the identified purpose and need of the proposed actions hinges upon the advancement, through the creation of 694 affordable residential units, of a City-wide initiative to build and preserve 200,000 affordable residential units;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 does not find that the proposal for a mere 25 percent affordable units sufficiently advances this stated goal and purpose, and further finds that the introduction of an additional 2,081 market rate units and the substantial environmental impacts associated with these proposed actions place such a burden on the study area and Community District as to render the purpose null and in fact produce more severe and acute district needs; and

WHEREAS, the DEIS “Project Description” is insufficient in providing details of the specific minor modifications to the Two Bridges LSRD sites (Site 4A/4B, Site 5 and Site 6A) that constitute the proposed actions and exactly how they would enable the proposed developments to occur; and

WHEREAS, the DEIS only states that the minor modifications to the LSRD would “modify the approved site plans to enable the proposed developments to be constructed utilizing unused existing floor area,” and it remains unclear what the unused existing floor area is and how it is being calculated;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the Lead Agency expand the description of the specific minor modifications being proposed and sufficiently detail the proposed modifications to the underlying Two Bridges LSRD site plan and zoning controls when describing the proposed actions; and

WHEREAS, the proposed actions to facilitate the developments are a deviation from previously approved Two Bridges LSRD plans and modifications, yet are being considered as minor modifications to the underlying LSRD controls pursuant to a determination by then City Planning Commission (CPC) Chair Carl Weisbrod, in a letter dated August 11, 2016, stating that the proposed modifications would not require new waivers and would not increase the extent of previously granted waivers due to compliance with governing criteria codified in Section 2-(6)(g)(5)(ii) of the Rule of the City of New York (RCNY); and

WHEREAS, despite this determination, in the same letter, CPC states in writing that “the development contemplated here is significant”; and

WHEREAS, Community Board 3 previously and explicitly requested that the CPC better explain and justify its decision on how the minor modification determination was made, both in a letter to the Department of City Planning (DCP) dated May 25, 2017 and at the public scoping meeting for the Two Bridges LSRD Environmental Impact Statement (EIS), held on May 25, 2017; and

WHEREAS, it remains unclear to Community Board 3 why guidelines in the RCNY for City Council Modifications would govern LSRD site planning and modifications proposed by private applicants; and

WHEREAS, there is nothing explicit in the RCNY, New York City Charter or the New York City Zoning Resolution (ZR) that requires the CPC to find that these proposed changes are minor modifications; and

WHEREAS, a number of prior Two Bridges LSRD site plan alterations made in years past, which constituted smaller changes, were not found to be minor modifications and instead required the granting of special permits and authorizations; and

WHEREAS, in the absence of further explanation, these findings appear to be arbitrary and capricious as well as precedent setting for City policy regarding special large scale development zoning provisions;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 again requests that the City clarify and explain in detail the aforementioned determination that the proposed actions constitute minor modifications to the Two Bridges LSRD; and

WHEREAS, it is unclear how the proposed actions, even if understood to be minor modifications, would comply with the ZR, particularly ZR § 78-313, outlining requirements for the authorization of minor modifications and requiring a number of prerequisite conditions for modification approval, including:

- 1) § 78-313 (a), which states that modifications should aid in achieving the general purposes and intent of the LSRD, including the facilitation of better site planning and the enabling of open space to be arranged to best serve active and passive recreation needs;
- 2) § 78-313 (b), which states that the distribution of floor area and dwelling units facilitated by a modification must not unduly increase the bulk of buildings, density of population, or intensity of use to the detriment of residents;
- 3) § 78-313 (d), which states that modifications to the distribution and location of floor area must not adversely affect access to light and air outside the LSRD or create traffic congestion; and
- 4) § 78-313 (g), which states that modifications of height and setback must not impair the essential character of the surrounding area and must not have adverse effects upon access to light, air and privacy of adjacent properties;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that the City clarify and expressly define how the proposed actions comply with these prerequisite conditions; and

WHEREAS, a number of Community Board 3 requests during the Two Bridges LSRD EIS Public Scoping period were left wholly unaddressed or insufficiently resolved upon issuance of the DEIS, including:

- 1) The request for an irregular study area shape for all analyses that extends further inland than a quarter-mile radius around the project sites, extending to Grand Street and following Bowery to Oliver Street and the East River shoreline;
- 2) The request for detailed explanation of the purpose and need of the proposed actions to justify the unprecedented scale of change being proposed in this specific area;
- 3) The request to disclose relocation plans for senior residents of the ten units at 80 Rutgers Slip, including how relocation costs will be addressed for those residents, the duration of time they will be relocated, where they will be housed and under what conditions, and what costs will be incurred and by whom. The Two Bridges LSRD Final Scope of Work for Preparation of a Draft Environmental Impact Statement

stated that the EIS would include a description of relocation plans for residents of 80 Rutgers Slip, yet the DEIS only indicates the applicant's intentions and does not disclose the details of the applicant's regulatory agreement with the U.S. Department of Housing and Urban Development (HUD), the details of which are necessary to understand the senior relocation plans;

- 4) The request to evaluate student generation for community facilities impacts more accurately, without lumping the entire borough of Manhattan together, and to instead be broken down by Community District or other sub-borough level of analysis to better reflect real-life conditions;
- 5) The request to study not only the size of businesses, but the populations that they serve and the choices those populations have if these businesses were to be displaced when analyzing indirect business displacement. As this analysis focuses on businesses that are "essential to the local economy," it must consider services for the linguistically isolated populations in this area;
- 6) The request to consider the unique impact of ride-hailing operations such as Uber when considering traffic impacts and determining the mode split for new residents, as they will likely not follow typical Manhattan patterns due to the proposed projects' distance from the subway and the projected median income of new residents;
- 7) The request to examine the adverse impacts that gentrification driven over-policing would have on existing low-income communities of color, particularly youth in the study area;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 reiterates these concerns and, again, requests they be addressed; and

WHEREAS, regarding public policy, there has been limited explanation as to how the CPC determined that the proposed actions constitute a minor modification to the existing LSRD, and without disclosure of when and how this policy was promulgated, it is assumed that the proposed actions themselves represent a significant material change to existing regulations and policy governing any and all future modifications to LSRDs, indicating that all future modifications will be considered to be "minor" if they do not need additional waivers; and

WHEREAS, if it is now in fact the CPC's position that all modifications to Large Scale special permits (including Large Scale Residential Developments, Large Scale General Developments, and Large Scale Community Facility Developments) in New York City may now be considered as "minor," without requiring Uniform Land Use Review Procedure (ULURP) if changes to the plan do not require further waivers, than that constitutes a significant change to the City's land use policy that needs to be evaluated; and

WHEREAS, the DEIS includes a questionable determination that the proposed actions are consistent with the overall development objectives of the Two Bridges LSRD; and

WHEREAS, the DEIS does not detail how long the regulatory agreements for the existing affordable units in the Two Bridges LSRD are for, nor does it disclose the terms of affordability, unit-type mix, and a definitive total number of new affordable units that would result from the proposed actions in the analysis of impacts on *Housing New York: A Five-Borough, Ten-Year Plan*, despite determining that the proposed actions would affirmatively advance this plan; and

WHEREAS, the DEIS does not consider impacts on the *NextGeneration NYCHA* plan, which includes development proposals for New York City Housing Authority (NYCHA) complexes within the ½-mile radius study area, including

La Guardia Houses, where infill is being proposed, and Smith Houses, where development has previously been considered;

WHEREAS, the DEIS does not consider impacts on and compliance with the Lower Manhattan Coastal Resiliency Project (LMCR) as prioritized in *One New York: The Plan for a Strong and Just City* despite the proposed projects proximity to the East River waterfront and location within the LMCR resiliency projects and waterfront improvement areas;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the analysis of applicable public policies insufficient and requests an expanded analysis that includes consideration of policy governing land use actions in LSRDs, more detailed consideration of consistency with *Housing New York: A Five-Borough, Ten-Year Plan*, and the addition of analysis of *NextGeneration NYCHA* and the LMCR Project; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a commitment to regular coordinating meetings with all appropriate agencies and stakeholders as an additional and necessary mitigation if non-compliance and adverse impacts related to the LMCR Project are identified; and

WHEREAS, regarding public policy, the DEIS does not sufficiently address the proposed actions consistency with a number of policies outlined in the City's *Waterfront Revitalization Program*, including:

- 1) Policy 1.2, requiring use and design features that enliven the waterfront and attract the public, as the DEIS identifies a number of private (not public) open spaces as examples of actions that will attract the public, as well as walkway improvements connecting to the waterfront adjacent to Site 5 without identifying if they will be publically accessible;
- 2) Policy 1.3, requiring adequate public facilities and infrastructure in coastal redevelopment, as the DEIS identifies that the proposed actions will produce unmitigated significant adverse impacts on community facilities, transportation and open space, resulting in inadequate public facilities and infrastructure, yet determines with little support that "With appropriate mitigation measures in place, it is assumed that public facilities and infrastructure would be adequate in the future With Action condition";
- 3) Policy 1.5, requiring the integration of climate change and sea level rise considerations into the planning of the proposed actions, as the DEIS identifies only protections against future flooding on the project sites, but does not disclose the proposed resiliency measures potential effects on the surrounding area, nor does the narrative even address climate change or sea level rise explicitly. In addition, such measures are not necessarily consistent with Policy 6, which requires that projects "minimize loss of life, structures, infrastructure, and natural resources caused by flooding." Policy 6 refers to not only the proposed project, but also the neighboring area. The DEIS discloses that the proposal includes, "structural considerations for stand-alone flood barriers or façades designed to be structurally resistant to flooding." These measures may protect this project, but could move flood waters from this area to other areas that are both less protected and which have structures that are less resilient than those proposed;
- 4) Policy 3.2, requiring the support and encouragement of recreational education and commercial boating, as the DEIS determines that the proposed actions are consistent with this policy only because they do not interfere with these potential activities, without identifying a proactive measure that encourages and supports such activities. This narrative is self-serving and technically incorrect, as the project is not consistent with this policy—it is simply not applicable;

- 5) Policy 4.8, requiring the maintenance and protection of living aquatic resources, as the DEIS does not consider the impacts on the fish and benthic community in the waters that will be shaded by the proposed developments;
- 6) Policy 6.1, requiring development to minimize losses from flood and erosion, as the DEIS does not explain how the proposed actions will address and minimize the potential for losses from flooding and coastal hazards in the surrounding area;
- 7) Policy 6.2 (d), requiring the identification of adaptive strategies to minimize losses from flood and erosion and requiring a description of how the project would affect the flood protection of adjacent sites, the DEIS does not at all explain how the proposed actions will address losses from flooding and coastal hazards in the surrounding area nor does it include any analysis in this determination, and simply states that “the proposed projects would not affect the flood protection of adjacent sites and would not conflict with other resilience projects currently under consideration in the area”;
- 8) Policy 8.2, which requires the proactive incorporation of public access into new public and private development, as the DEIS does not identify how the proposed actions incorporate public access to the waterfront, only that they do not hinder it; and
- 9) Policy 9, requiring the protection of scenic resources that contribute to the visual quality of the New York City coastal area, as the DEIS determines that “the proposed projects would not obstruct views to the waterfront and the East River,” yet does not include sufficient explanation, nor renderings and 3D drawings from areas upland of the development sites, from existing buildings in the LSRD, or from Brooklyn which clearly identify that the proposed actions would not obstruct views to prominent features such as the Manhattan Bridge and other bridges, the East River, and the Brooklyn waterfront;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the analysis of consistency with the *Waterfront Revitalization Program* in the DEIS to be insufficient and inaccurate, and requests detailed clarification of the aforementioned concerns; and

WHEREAS, regarding public policy, the DEIS does not consider a number of recent public policy initiatives, including but not limited to relevant policy on:

1) Fair Housing

On March 9th 2018, New York City Housing Preservation and Development (HPD) announced *Where We Live NYC*, a comprehensive fair housing planning process to study, understand, and address patterns of residential segregation. The DEIS does not include a discussion of fair housing in general nor how the proposed actions are consistent with the policy objectives of *Where We Live NYC*, or how any inconsistencies would be mitigated;

2) Interbuilding Voids and Zoning

In January 2018, Mayor de Blasio announced at a Town Hall on the Upper East Side that the City is developing policies that will address what are now known as “interbuilding voids.” This was reiterated by the Mayor at a June 2018 Town Hall on the Upper West Side. An interbuilding void is a space in a building that may be nominally used for mechanicals or egress but which is largely empty space, devoid of residential, commercial or community facility floor area. One of the developments the proposed actions would facilitate (Site 4) has a large interbuilding void at the base that allows the building to rise

over an existing neighboring building. The DEIS does not discuss how this building will be consistent with DCP's changing policy on interbuilding voids or identify modifications or mitigations to ensure consistency with this policy. DCP's Manhattan Office has formed a working group that is developing policies that will prevent this building technique, and while these policies are not yet finalized, considering that DCP is the Lead Agency, the EIS should acknowledge the policy and how this building will be consistent with DCP's policy efforts; and

3) **Interbuilding Voids and Fire Safety and Operations**

On May 3, 2018, the Fire Department of the City of New York's (FDNY) Bureau of Operations cited both general and specific operational and safety concerns regarding a building planned with a 150-foot interbuilding void. One of the developments the proposed actions would facilitate has an interbuilding void that is larger than the one that caused the FDNY to express concern. It is therefore likely that they would have the same concerns with this proposed interbuilding void.¹ The DEIS does not analyze how this building will address the concerns the FDNY outlined as policy, despite §28-103.8 of the Building Code that allows the Commissioner of Buildings to deny a building permit based on such safety concerns;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the DEIS to be insufficient as the time between the close of the public scoping period and the issuance of the DEIS was excessive, lasting more than 12 months, and effectively limited the opportunity to incorporate any new policies promulgated in that period into the analysis scope; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the analysis of applicable public policies insufficient and requests an expanded analysis that includes consideration of City policy that was promulgated in the period between the public scoping comment period and the issuance of the DEIS; and

WHEREAS, regarding the analysis of socioeconomic conditions that looks at indirect business displacement, the DEIS concludes that the project would not result in significant indirect business displacement, yet it is reasonable that changing demographics in the study area could have a significant impact on local retail as new residents in the 2,081 private market DUs will have significantly higher incomes than current residents in the study area; and

WHEREAS, the DEIS identifies that in the past many predominantly Chinese businesses were in operation in the area (**Table 3-15**), with 20 out of 25 sites analyzed previously being the location of a predominately Chinese business, and with major turnover having occurred at eight sites, and medium turnover having occurred at six sites, the former and current retail in the area may uniquely serve a particular linguistically isolated population, and these retail businesses are particularly vulnerable to displacement despite the determination of no impact;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the analysis of indirect business displacement and the determination of no significant adverse impacts to be insufficient and inaccurate and

¹ The concerns the FDNY express are as follows:

- "Access for FDNY to blind elevator shafts... will there be access doors from the fire stairs.
- Ability of FDNY personnel and occupants to cross over from one egress stair to another within the shaft in the event that one of the stairs becomes untenable.
- Will the void space be protected by a sprinkler as a "concealed space."
- Will there be provisions for smoke control/smoke exhaust within the void space.
- Void space that contain mechanical equipment... how would FDNY access those areas for operations."

requests revised analysis, as well as the identification of adequate and detailed mitigation strategies if further significant adverse impacts are identified; and

WHEREAS, regarding the DEIS analysis of socioeconomic conditions that looks at indirect residential displacement, the definition of “vulnerable population” outlined in the *City Environmental Quality Review (CEQR) Technical Manual* limits the analysis to “privately held units unprotected by rent control, rent stabilization, or other government regulations restricting rent,” while excluding analysis of the market pressures on rent regulated units; and

WHEREAS, 88% of rental units in the study area are located in buildings that have received some form of government subsidy or have at least one unit protected by rent control, rent stabilization, or other government regulations; and

WHEREAS, this by no means indicates that 88% of all rental units in the study are protected—merely that they are located in a building where at least one unit is rent protected, yet the DEIS proceeds with this faulty assumption and excludes all residents of these buildings from consideration as a vulnerable population; and

WHEREAS, many actual rent regulated households in the study area have already experienced indirect displacement pressures and there has been a loss of 950 rent regulated units between 2007 and 2016 in the study area²; and

WHEREAS, recent research has documented a direct correlation between heightened housing market pressures and the loss of rent regulated units³, and the Legal Aid Society’s recent lawsuits against the City regarding the Bedford Union Armory and the East Harlem Neighborhood Rezoning have further documented this correlation; and

WHEREAS, despite the presence of rent regulated units, there were over 300 eviction cases filed in the study between January 2013 and June 2015, including 135 at 82 Rutgers Slip alone⁴; and

WHEREAS, the City has in fact acknowledged the reality that residents of rent regulated buildings can constitute a vulnerable population by launching the pilot program *Partners in Preservation*, with \$500,000 in funding, to specifically protect rent-stabilized tenants from pressures generated by changes in market conditions; and

WHEREAS, without an analysis that includes an expanded vulnerable population which includes rent regulated tenants, as well as an accounting of government-subsidized buildings that are nearing the end of their regulated term agreements, and a consideration of the effect of proposed federal budget cuts on this regulated housing stock, then the City is continuing a trend of inadequate analysis and planning that undercounts the socioeconomic impacts of the proposed actions and all future actions; and

WHEREAS, the DEIS determines that the study area has already experienced a readily observable trend toward increasing house prices and changing characteristics of new residential development, and states that the proposed actions would not alter this trend, yet is not compelled by *CEQR Technical Manual* guidelines to conduct further analysis or identify mitigations;

² As documented by data provided here: [taxbills.nyc](http://taxbills.nyc.gov)

³ As documented by the data provided here: <http://blog.johnkrauss.com/where-is-decontrol/>

⁴ As documented by data provided here: <https://projects.propublica.org/evictions/#15.99/40.7121/-73.9909>

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the analysis of socioeconomic impacts and the determination of no significant adverse impacts, as informed by *CEQR Technical Manual* guidelines, to be insufficient and inaccurate; and

THEREFORE, BE IT FURTHER RESOLVED that the Lead Agency and the City has a responsibility to the public to use the best reasonable methods for analyzing and mitigating impacts and disclosing those impacts and mitigation measures in an EIS; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests an expanded, detailed analysis of indirect residential displacement that considers market pressures on regulated units in the study area, including disclosure and analysis of eviction rates in the study area; disclosure and analysis of the amount of government-subsidized DUs in the area, including identification of those that are nearing the end of their regulatory agreements; and, if the revised data continues to show impacts, identify appropriate, adequate, and detailed mitigation measures; and

WHEREAS, regarding community facilities and services, a number of publicly-known projects are anticipated to be completed prior to and just after the proposed actions anticipated build year of 2021, including One Manhattan Square, which will add 1,020 new residential DUs to the study area; *NextGeneration NYCHA* residential infill at the La Guardia Houses campus, potentially including as many as 300 new residential units; Essex Crossing, which is will add 1,000 new DUs, 750 of which will be completed by 2021; and the proposed Grand Street Guild development which will add 400 new DUs at 151 Broome Street; and

WHEREAS, these developments are included in the analysis of public libraries but not in all analysis frameworks or proposed future scenarios considering impacts on community facilities and services;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds that without the inclusion of these publicly-known developments, the analysis framework for community facilities and services is insufficient and needs to be revised; and

WHEREAS, the DEIS examines the enrollment, capacity, available seats and utilization rates of public schools in both Community School District 1 (CSD1) and Sub-District 1 of CSD1, it is still uncertain the impact that the aforementioned additional DUs from other publically-known developments will have on public schools in the neighborhood; and

WHEREAS, the multipliers for student generation used to analyze impacts on public schools, as defined in the *CEQR Technical Manual*, are out-of-date and incorrect, drawing from the 2000 Census Public Use Microdata Sample (PUMS) file, data that is 18 years old; and

WHEREAS, this method is shockingly coarse, lumping together both neighborhoods within boroughs and unit types—suggesting for example, that a market-rate project with 300 studio apartments in Midtown would generate the exact same number of school children as a 100% affordable project with 300 3-bedroom units on Avenue D; and

WHEREAS, the conservative analysis scenario which does not include projected housing exclusively for use by seniors does represent the limitations of the proposed project accurately, as none of this senior housing is at this time guaranteed, and therefore does not reflect the full extent of child care and student impacts as the proposed actions are currently defined, and even with senior units excluded, the increase in utilization rises by more than 20% and the Sub-district would be at over 100% overutilization; and

WHEREAS, despite the inaccuracy of the analysis framework and student projection methodology, the DEIS still finds that the proposed actions would result in a significant adverse impact on public schools and publically funded child care facilities, for which no mitigations have yet been identified;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests an assessment of community facilities impacts using the most current and accurate data available, including multipliers generated from the most current American Community Survey data; the most recent school enrollment data (e.g. 2016-2017 data should be replaced with 2017-2018 data for the sub-borough area); assess overutilization within the Sub-District rather than on a District-wide level; eliminate the conservative analysis scenario which excludes housing exclusively for use by seniors, as it does not accurately describe the proposed projects' current unit mix; and, if the revised analysis continues to show impacts, provide appropriate, adequate, and detailed mitigation measures for overutilization in the Sub-District; and

WHEREAS, regarding shadows, the DEIS finds that out of 34 resources that will be affected by shadows, two—Cherry Clinton Playground and Lillian D. Walk Playground—would experience significant adverse shadow impacts; and

WHEREAS, the DEIS finds that the Cherry Clinton Playground will incur incremental shadows for more than two hours every day and for more than three hours in the summer months, and the health of the trees and playground property would be significantly affected by the shadows; Lillian D. Wald Playground will incur incremental shadow in the mid-afternoon for roughly two hours; Little Flower Playground will incur approximately five hours of incremental shadow; and Coleman Playground will incur more than two hours of incremental shadows in the morning in the summer months and nearly an hour in the spring and fall; and

WHEREAS, despite these significant adverse shadow impacts on crucial open space resources, the DEIS states only that mitigation measures for shadow impacts are being explored by the applicants and will be refined prior to the issuance of the FEIS; and

WHEREAS, the only mitigation measure identified thus far includes dedicated funding for enhanced maintenance at two playground sites;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that “dedicated funding for enhanced maintenance” be explicitly defined, including a detailed explanation of the amount of funding and length of time the dedicated funding will be provided, the regulatory agreement or restrictive declaration these funds will be secured through, and an explanation of how said funds will be used to mitigate the impact of irreversible shadow generation—including how “enhanced maintenance” will mitigate the irreversible loss of sunlight for vegetation, including cherry trees, and playground users; and

WHEREAS, the Greenstreet analysis is deficient in that it identifies “shade-tolerant and hardy plantings” without identifying what those plantings are;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests an inventory and identification of specific species, including a discussion and analysis of how much sunlight they need compared to how much sunlight they will receive under the proposed With Action conditions, with an evaluation of impacts based on this accurate and detailed inventory, as well as the identification of adequate and detailed mitigation strategies if further significant adverse impacts are then found; and

WHEREAS, there are significant omissions of many “sunlight sensitive resources” in the analysis. The following (**Figure 1**) is a reproduction of the map of the Tier 1 and 2 Assessment. The legend shows that the green areas are “Publicly Accessible Open Space” (as identified in DEIS Figure 6.1)



Figure 1 - Reproduction of DEIS Figure 6.1

In fact, when the areas shown in green are compared with New York City’s Geographic Information System (GIS), they align perfectly with the layer labeled “Parks.” Unfortunately, this layer does not contain all “publicly accessible open spaces” that will be impacted by the project. This layer omits many non-park publicly accessible open spaces, all of which are sunlight sensitive resources according to the definition in the *CEQR Technical Manual*; and

WHEREAS, the Two Bridges area was remade during urban renewal and not only contains many New York City parks, but also many additional publicly accessible open spaces that have the potential to be adversely impacted by shadows; and

WHEREAS, the following image (**Figure 2**) shows the magnitude of this difference by showing all the publicly accessible open space identified in New York City GIS’s Open Space layer, on top of the DEIS’s Tier 1 and 2 Assessment map. The areas identified by the GIS as non-park open space are shown in dark green below:



Figure 2 - Reproduction of DEIS Figure 6.1 altered to show NYC identified publicly accessible open spaces in dark green

The elements in dark green that are not studied in the DEIS include ballfields, school yards and school playgrounds, including PS 2 Yard/Playground, Murry Bertraum Softball Field, Shuang Wen School Yard with Playground, Orchard Collegiate School Yard, a ball court at NYCHA La Guardia Houses, and tennis courts adjacent to the Cherry Clinton Playground; and

WHEREAS, this may not be all of the shadow sensitive resources as defined by the CEQR *Technical Manual*, as seen in the following (**Figure 3**), which reproduces altered DEIS Figure 6.1 and adds Community Gardens. The Community Garden data set is coarser, as it includes portions of lots that are not shadow sensitive, but this provides more evidence that even more receptors identified by the *CEQR Technical Manual* have been omitted from the analysis:

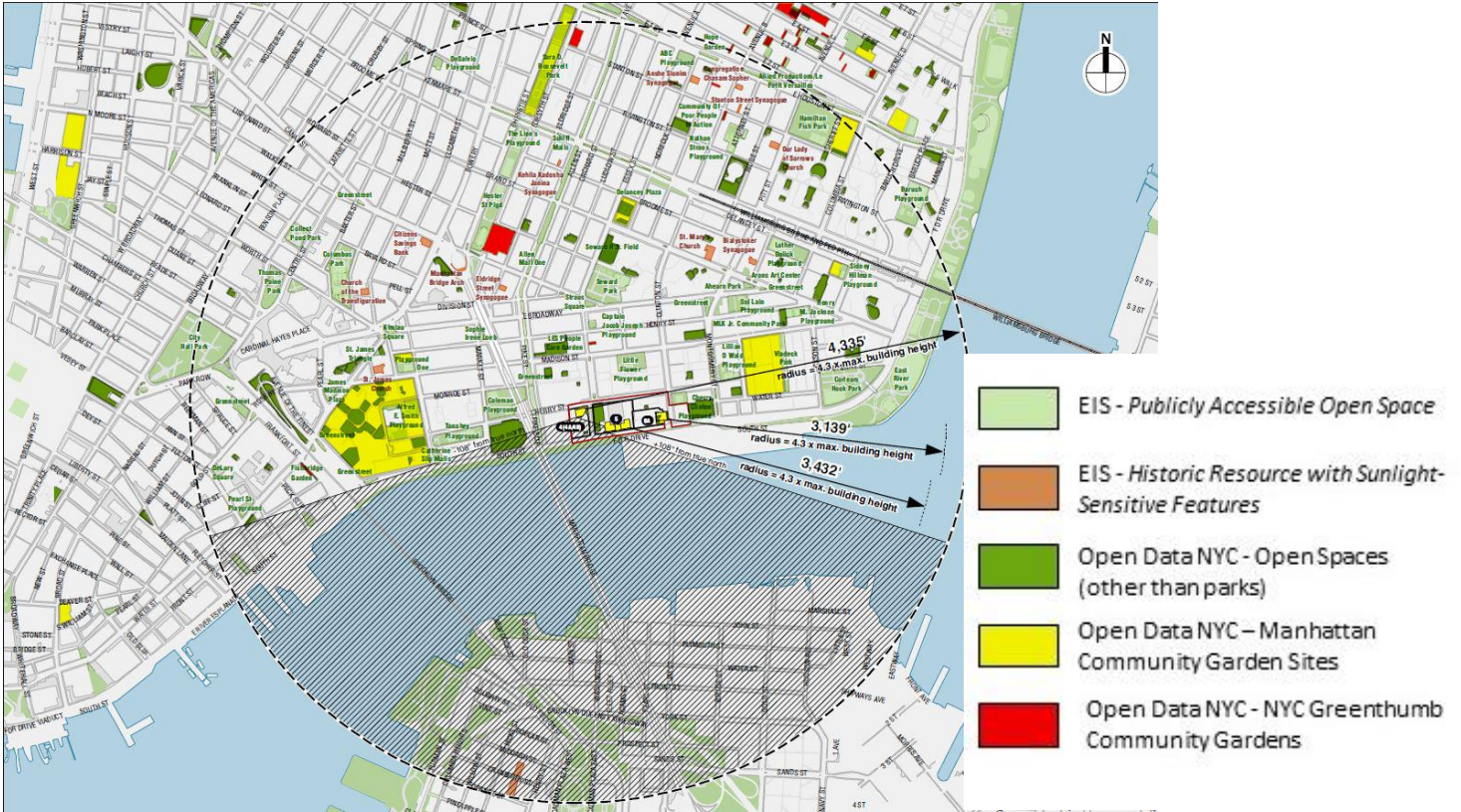


Figure 3 - Reproduction of DEIS Figure 6.1 altered to show publicly accessible open spaces and community gardens not studied in the DEIS

WHEREAS, taken together this data suggests that the DEIS could be missing as many as 41 sunlight sensitive resources in the study area: eight community gardens, and 33 publicly accessible open spaces. It is likely that not all of these sites are sunlight sensitive, but a quick review suggests that most of them are, and should have been included in the analysis; and

WHEREAS, it is likely that the above *still* underestimates the amount of publicly accessible open space that will have shadow impacts, as for example, most of the qualifying residential open space at the NYCHA La Guardia Houses *functions* as publicly accessible open space and has been functioning as publicly accessible open space for decades; and

WHEREAS, the *CEQR Technical Manual* instructs that sunlight sensitive resources include, “[a]ll public open space as identified in *Chapter 7, ‘Open Space,’*” and *Chapter 7* instructs that ‘Open Space’ includes: “housing complex grounds, if publicly accessible;” and

WHEREAS, the grounds at La Guardia Houses are open from the sidewalk and freedom of movement between the neighborhood and the open space is not impeded, and they are owned by a public authority, the areas used for recreation and green spaces should have been identified as a sunlight sensitive resource, as they are very large and are located directly to the north of the proposed project, thus experiencing some of the largest shadow impacts; and

WHEREAS, the DEIS does not evaluate shadow impacts on any NYCHA open spaces, and preliminary shadow analyses conducted by both the Municipal Art Society of New York (MAS) and George M. Janes & Associates have identified this significant shortcoming; and

WHEREAS, a demonstration of the magnitude of this omission prepared by George M. Janes and Associates is included as *Appendix A* to this document; and

WHEREAS, MAS has further identified that the proposed actions would generate shadow impacts on open spaces at:

- 1) The Rutgers Houses for approximately three hours daily during the May 6 and September 21 evaluation periods; and
- 2) The La Guardia Houses for approximately 7 hours daily during the May 6 and September 21 evaluation periods; and

WHEREAS, privately owned open spaces are exempt from shadow impact analysis under CEQR guidelines, yet the proposed actions inclusion of private open space to mitigate adverse impacts suggests that an evaluation of the shadow impacts on Rutgers Park would be appropriate, as again according to MAS analysis, it would also be impacted by shadows generated by the proposed actions for a significant portion of the day during both the May 6 and September 21 evaluation periods;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests expanded and corrected shadow analysis that includes all publically accessible open spaces, NYCHA open spaces, and private open spaces impacted in the study area, and the identification of adequate and detailed mitigation strategies if further significant adverse impacts are then found; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that mitigation measures be identified for all impacted sites; and

WHEREAS, regarding urban design and visual resources, the overall analysis framework for urban design is insufficient and requires a more robust level of analysis; and

WHEREAS, a number of view corridors and visual resources will be irreparably changed under the proposed With Action conditions, yet the DEIS does not identify changes to these resources that would trigger a determination of significant adverse impact; and

WHEREAS, a number of the With Action/No Action visual comparisons are not presented from the same vantage point and do not present buildings with enough contrast to disclose actual impacts, including DEIS images 50a and 50b, images 51a and 51b, 53a and 53b, and 56a and 56b; and

WHEREAS, a number of comparative photosimulations between existing conditions and proposed conditions show a different aspect ratio, shading, and colors of building and sky; and

WHEREAS, the proposed conditions will not change the color of the sky, remove shadows from the street, or lighten the color of the facades of existing buildings, making these images misleading and contrary to best practices in the production of photosimulations for environmental review; and

WHEREAS, conclusions in the urban design and visual resources analysis minimize visual impacts and justify determinations based primarily on comparisons and consistency with a single building, One Manhattan Square, without comprehensively assessing the totality of cumulative impacts the proposed actions will have on the study areas; and

WHEREAS, the DEIS claims that the project will “not eliminate any significant publicly accessible view corridors or completely block public views to any visual resources,”

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests revised With Action/No Action visual comparisons that accurately presents visualizations from the same perspective; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a revised analysis with a threshold for findings of significance that uses *impairment* of the quality of a viewpoint, rather than the *complete blockage* threshold to identify significant adverse impacts on visual resources; and requests the identification of adequate and detailed mitigation strategies if further significant adverse impacts are then found; and

WHEREAS, the DEIS makes assertions about wind conditions without presenting any data to support those assertions, stating that a study was performed that found the conditions the proposed projects would create would be “similar to those at comparable locations in the City,”

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full disclosure of this study, including the identification of comparable locations in the City, the safety of wind conditions for pedestrians, the comfort of wind conditions for pedestrians, and if significant adverse impacts are found, the identification of adequate mitigation measures, including the potential placement and number of marcescent trees that would be needed, and how effective such mitigation measures would be; and

WHEREAS, regarding natural resources, the DEIS describes how nighttime migratory bird collisions are more likely to occur on buildings above 656 feet; and

WHEREAS, despite the fact that the proposed developments are between 730 feet and 1,008 feet tall, and despite the fact that the DEIS clearly identifies that the buildings would intersect the strata of airspace in which migrating birds most commonly fly—increasing the risk of bird collision—the DEIS ultimately downplays the impacts of the proposed development on bird collisions; and

WHEREAS, the DEIS describes methods (patterned or fritted glass) by which the proposed developments could reduce bird collisions which are being considered by the applicants, it does not indicate that any of these methods will be implemented;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full disclosure of the design features being considered as well as their intended impacts and confirmation of the applicants’ commitment to implementation; and

WHEREAS, regarding water and sewer infrastructure, the DEIS concludes there will not be an impact on either the City’s water supply or sewage treatment systems, yet the DEIS does identify impacts on the drainage system during heavy rain events; and

WHEREAS, the DEIS identifies that the volume of sanitary sewage sent to combined sewer systems will more than double in the With Action scenario, with up to an additional 588,000 gallons flowing into the combined

sewer system in the heaviest rainfall scenarios, and indicates that storm water Best Management Practices (BMPs) would be required as part of the New York City Department of Environmental Protection (DEP) site connection approval process, the DEIS does not identify any concrete mitigation measures; and

WHEREAS, the project sites are within a combined sewer drainage area, where regulators permit up to a certain amount of “allowable flow” that the system can handle to go to large interceptor sewers that direct the combined wastewater to a wastewater treatment plant, and where, to avoid overloading a Waste Water Treatment Plant (WWTP) when the system contains more than the allowable flow, coastal outfalls can discharge the excess amount into local waterways rather than directing them to the WWTP; and

WHEREAS, given the realities of climate change and the estimation by DEP that New York City could potentially experience as much as 3.0 inches/hour of rainfall by 2065, and the fact that DEP already identified the spillage of more than 18 million gallons of raw sewage across 26 CSO events in 2016 at the outfall serving the combined sewer system in question; and

WHEREAS, during a high tide or storm surge event, river water can quickly enter the wrong end of an outfall with great force and fill nearby sewers to capacity, causing flooding that is difficult to mitigate and which could render the local drainage system useless, potentially causing the precipitation and sanitary sewage in the local drainage system to backup and surcharge into streets and properties; and

WHEREAS, the project sites and the local combined sewage drainage area are naturally vulnerable to many types of flooding as they are low lying and next to the coast, and during a storm event the drainage areas low lying points may need to simultaneously manage the compounded impacts of tidal flooding, extreme rainfall, sanitary sewage generation, and storm surge, resulting in a heightened and disastrous flood risk; and

WHEREAS, the proposed actions would result in total on-site sewage generation of 820,429 gallons per day (gpd), 3.30 times the volume of current sanitary sewage generation, resulting in that much less space for the local drainage area to simultaneously manage storm water during flash or tidal flooding, or a coastal storm event;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that to most clearly show the impacts of the anticipated increase in sanitary sewage on the local combined sewer drainage area, the principal conclusions in this analysis should include and represent these incremental increases as percentage values to illustrate the relative change in volume as measured in **Table 11-5**; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the analysis of scenarios that would be considered flash flooding or greater by the National Weather Service (NWS) (identified as rainfall of at least *1.0 to 1.5 in over 1 hour*) in order to accurately assess and disclose the capacity of drainage systems during heavy rain and coastal flooding events which the area is naturally predisposed to; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further revised analysis of infrastructural capacity and the identification of adequate and detailed mitigation strategies if further significant adverse impacts are identified; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests identification and disclosure of the BMPs that would be included in the proposed actions; and

WHEREAS, regarding transportation, 15 intersections are identified in the DEIS as having potential for significant adverse impacts under the proposed actions and a number of these have no proposed mitigation measures, including the intersections of South Street and Montgomery Street, and Chatham Square and Worth Street/Oliver Street; and

WHEREAS, the signal timing changes and lane restriping that is being proposed to mitigate impacts at the remaining 13 intersections are subject to New York City Department of Transportation (DOT) approval and the potential for unmitigated traffic impacts at these locations remains;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full mitigation of all identified traffic impacts, as well as disclosure of proposed signal timing changes and lane restriping plans with approval from DOT; and

WHEREAS, the DEIS estimates that only 1,069 vehicle trips to and from the area will be generated as a result of development despite the anticipated addition of over 2,000 market-rate residential DUs; and

WHEREAS, the DEIS does not disclose any substantial explanation of the methodology for calculating the impacts of the growing ride-hailing industry or the impacts of online-based vendor deliveries to the area, both of which may have an elevated impact in the study area under the proposed With Action conditions due to the higher anticipated income of new residents; and

WHEREAS, for travel demand assumptions, data was drawn from the Seward Park Mixed Use Development Project, which included a unique housing model with 50% of DUs set-aside as permanently affordable; and

WHEREAS, the study area has fewer mass transit options than are available in the Seward Park Mixed Use Development Project area; and

WHEREAS, due to these differences, assumptions from the Seward Park Mixed Use Development Project should not be applied to the proposed actions, as it can safely be assumed that higher income residents will have higher rates of car ownership and limited access to public transit will generate more automobile trips;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a revised estimation of vehicle trips generated with these potentially elevated impacts and ride-hailing impacts included; and

WHEREAS, the DEIS finds that the addition of more than 5,800 new residents to the area, with limited subway access, would not generate incremental bus trips at a level requiring detailed bus line-haul analysis and determines that the proposed actions would not significantly impact bus line-haul;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that a detailed bus line-haul analysis be conducted to address the unique conditions in the study area, including limited access to subway lines, that would differ from the standard Travel Demand Assumptions outlined in the *CEQR Technical Manual* regarding modal splits; and

WHEREAS, the DEIS finds that the addition of more than 5,800 new residents to the area as a result of the proposed actions would not significantly impact subway line service; and

WHEREAS, the DEIS analysis assigned only 5% of trips to the B-line and D-line Grand Street subway station and 95% of trips to the F-line East Broadway subway station, with limited explanation of the methodological decision; and

WHEREAS, anticipated MTA New York City Transit repairs to the Rutgers Tube slated for 2022 are expected to limit F-line service at the East Broadway subway station just after the proposed actions projected build year; and

WHEREAS, the only significant adverse impacts identified are for the F-line East Broadway subway station S1 stairway during weekday AM and PM peak hours, and the P3 stairway for the weekday AM peak hour, and therefore the only mitigations proposed are station accessibility and circulation-based; and

WHEREAS, the conceptual engineering studies for these mitigations have at this time been performed and are described as feasible in the DEIS, yet the details of these studies have not been disclosed and the potential for these adverse impacts to be unmitigated remains;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that subway line haul methodology and trip generation methodology be refined to more accurately reflect use patterns the proposed actions will influence, as well as reflect publically-known service interruptions that are expected to impact transit in the study area; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests any conceptual engineering and feasibility studies for mitigation measures be disclosed; and

WHEREAS, the following intersections were highlighted in the DEIS as having been the site of ten or more injuries during the study period between November 1, 2013 and October 31, 2016, including:

- Allen Street and Canal Street - 16
- Allen Street and Delancey Street - 37
- Allen Street and Division Street - 10 (1 fatality)
- The Bowery and Canal Street/Manhattan Bridge - 81
- Chatham Square/Park Row and Worth Street/Mott Street - 10
- Pike Street and East Broadway - 13
- Pike Street and Madison Street - 12
- Rutgers Slip and South Street - 11 (1 fatality); and

WHEREAS, the DEIS indicates that none of these intersections were found to have design deficiencies, yet a number of the intersections, such as Chatham Square/Park Row and Worth Street/Mott Street are very difficult to navigate and involve several turning movements and pedestrian crossings, which belies the relatively low number of accidents (10); and

WHEREAS, the DEIS determined that traffic impacts at Chatham Square/Park Row and Worth Street/Mott Street, as well as at the intersection of South Street and Montgomery Street, could not be mitigated;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further study of these intersections and requests a proposal for redesign as a necessary mitigation of the anticipated adverse impact; and

WHEREAS, the DEIS has identified significant parking shortfalls that will result from the proposed actions, yet the *CEQR Technical Manual* does not designate parking shortfalls in the borough of Manhattan as constituting a significant adverse impact due to the magnitude of available alternative modes of transportation; and

WHEREAS, the study area in fact lacks a significant magnitude of alternative modes of transportation as exemplified by the transit analysis trip generation methodology that identifies 95 percent of residents in the study area are likely to use a single subway station and line, the F-line at the East Broadway subway station;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further study of these parking shortfalls and a reconsideration of the mitigation standards typically applied to Manhattan actions due to the unique circumstances of limited public transit access in the study area; and

WHEREAS, regarding the analysis of neighborhood character, half the study area is in the East River, which does not make a reasonable study area for neighborhood character; and

WHEREAS, the analysis of neighborhood character is self-serving and could be much more easily argued from the opposite position, as the reduction in open space ratio, the major increase to private open space usage, shadows, visual resources, land use/zoning policy, and changes in the socioeconomic conditions the proposed actions would facilitate, would create significant changes in neighborhood character; and

WHEREAS, the DEIS states that “the proposed actions would not result in significant adverse impacts associated with neighborhood character,” the proposed actions will certainly *change* neighborhood character;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full disclosure of changes in neighborhood character, and a detailed and specific explanation of how these changes in neighborhood character do not constitute significant adverse impacts; and

WHEREAS, regarding construction impacts, a large number of significant adverse construction-period traffic impacts, parking shortfalls during peak construction, and construction-period noise impacts will remain unmitigated; and

WHEREAS, study area residents have already endured unmitigated construction impacts during the construction period of the adjacent One Manhattan Square project; and

WHEREAS, the DEIS does not provide sufficient details about the mitigation measures to be employed during the projects’ stated 30- to 36-month construction period;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a full disclosure of all mitigation plans and a detailed explanation of:

- 1) The process by which communication with the community would occur, including procedure for delivering construction updates and disclosure of dedicated hotline information;
- 2) Maintenance and Protection of Traffic (MPT) plans for temporary sidewalks, street closures, etc. during the entire construction period;
- 3) Pest management strategies that would be employed at the project sites during the construction period;

- 4) Emissions reduction strategies and best practices that would be employed during the construction period;
- 5) Specific noise control measures being proposed; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a commitment to regular coordinating meetings with all appropriate agencies and stakeholders as an additional and necessary mitigation; and

WHEREAS, during the construction period, 10 DUs in 80 Rutgers Slip would be removed and replaced in the new Site 4 (4A/4B) building, and an additional nine DUs in 80 Rutgers Slip would be renovated, resulting in the relocation of approximately 19 senior residents of 80 Rutgers Slip during the construction period; and

WHEREAS, approval for this relocation plan must be granted by HUD, and has thus far not included any consultation with the Community Board or local elected officials, nor has the regulatory agreement or relocation plan been disclosed in the DEIS;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full disclosure of any regulatory agreements and relocation plans for the approximately 19 senior residents at 80 Rutgers Slip; and

WHEREAS, the only alternatives to the proposed actions that are considered in the DEIS are the required No Action Alternative and a No Unmitigated Significant Adverse Impacts Alternative; and

WHEREAS, a Lesser Density Alternative was considered but ultimately excluded, citing that the reduction in density would significantly reduce the amount of permanently affordable housing delivered by the proposed actions and thus compromise the project description and objectives; and

WHEREAS, despite these findings, the total number of affordable units is not inherently contingent on project density or mitigation of environmental impacts;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests a full consideration of at minimum, a Lesser Density Alternative, as well as any other reasonable alternatives that could reduce adverse environmental impacts; and

WHEREAS, the *CEQR Technical Manual*, and specifically the guidelines for the analysis of indirect residential displacement, are so insufficient and flawed that to evaluate and propose specific mitigations based on these findings would be inadequate and represent a dangerous level of irresponsible planning; and

WHEREAS, despite the flawed analysis of indirect residential displacement impacts, it is clear that in reality the proposed actions represent a type of large-scale, majority market rate waterfront development that has been documented to result in widespread residential and commercial displacement in other neighborhoods such as Greenpoint-Williamsburg; and

WHEREAS, the proposed actions introduction of a limited amount of regulated units at rental levels that far exceed real affordability for the majority of area residents, and over 2,000 market rate units will likely generate similar widespread indirect residential displacement in the absence of substantial changes to the proposed actions or comprehensive mitigations; and

WHEREAS, the provision of a limited number of rent regulated apartments at rental levels that far exceed real affordability for the majority of area residents does not in itself begin to appropriately mitigate this anticipated indirect residential displacement;

THEREFORE, BE IT RESOLVED that Community Board 3 requests a meaningful and accurate analysis of indirect residential displacement and the full and appropriate mitigation of all accurately identified impacts; and

WHEREAS, in addition, the proposed actions would likely result in significant adverse impacts to publically funded child care facilities, open space, shadows, traffic, transit, pedestrians, and noise during the construction period; and

WHEREAS, a number of these impacts, including shadows at Cherry Clinton Playground and Lillian D. Wald Playground; traffic impacts at the intersection of South Street and Montgomery Street and the intersection of Chatham Square and Worth Street/Oliver Street; and construction-period noise, would go unmitigated; and

WHEREAS, a number of mitigations are either wholly unidentified or lacking in substantive detail, and are anticipated to be defined between the current time and the completion of the FEIS, including mitigation measures for significant adverse impacts on public elementary school utilization rates and publicly funded child care facilities;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that all significant adverse impacts be fully mitigated and that no impacts be left unmitigated in the FEIS; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the proposal to define mitigations during the period between the issuance of the DEIS and the completion of the FEIS to be insufficient, as it denies the Community Board and the public an opportunity to fully review, vet, and comment on significant and necessary mitigation proposals prior to the CPC vote on the project applications; and

WHEREAS, the currently proposed square footage for community facilities outlined in the DEIS project description would not be adequate to accommodate the necessary mitigations for public school or child care facility impacts and no off-site locations have yet been identified; and

WHEREAS, the DEIS states that Restrictive Declarations for the proposed projects will be adopted requiring consultation with the New York City Administration for Children's Services (ACS) to mitigate publically funded child care facilities impacts, but no such Restrictive Declaration has been disclosed;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the identification of sites for the proposed public school and child care facility mitigations prior to the issuance of the FEIS; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the disclosure of written commitments and/or Restrictive Declarations for any mitigations of publically funded child care facilities; and

WHEREAS, a number of identified mitigations are expected to be further refined between the current time and the completion of the FEIS, including proposals for the dedication of publically accessible open space at Rutgers Slip, and the renovation of existing open spaces at Coleman Playground, Captain Jacob Joseph Playground, and Little Flower Playground; funding enhanced maintenance at Cherry Clinton Playground and Lillian D. Wald Playground; signal timing changes and lane restriping at 13 intersections; the installation of a new subway

entrance, platform widening, and the installation of ADA-compliant elevators at the F-line East Broadway subway station; and timing changes and crosswalk widening at several intersections;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 finds the proposal for refinement of any identified mitigations during the period between the issuance of the DEIS and the completion of the FEIS to be insufficient, as it denies the Community Board and the public an opportunity to fully review, vet, and comment on significant and necessary mitigation proposals prior to the CPC vote on the project applications; and

WHEREAS, in each case where mitigations were identified, they may include significant public actions and costs, and are contingent on consultations with a number of City agencies as well as the findings of conceptual engineering and feasibility studies that have either not yet been conducted or are not included in the DEIS, and therefore there is a real potential for no mitigation of any identified adverse impacts; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the disclosure of written commitments and/or Restrictive Declarations for any major capital improvements to transportation infrastructure that are being proposed as mitigations; and

WHEREAS, the ratio of open space acres per 1,000 residents in the already underserved study area would decrease from 0.897 under the No Action condition to 0.831 under the With Action condition; and

WHEREAS, the proposed mitigations for the loss of open space include the dedication of publically accessible but private open space at Rutgers Slip; the renovation of existing open spaces at Coleman Playground, Captain Jacob Joseph Playground, and Little Flower Playground; and funding enhanced maintenance at Cherry Clinton Playground and Lillian D. Wald Playground; and

WHEREAS, the proposed public space at Rutgers Slip is actually private space which serves as the entrance way to the residential building at 82 Rutgers Slip and the residents have expressed serious safety concerns with converting this into a public plaza;; and

WHEREAS, funding for existing open space renovations is not a sufficient mitigation for the loss of open space or the impact of shadows on vegetation and playground use; and

WHEREAS, despite the significant shadow impacts on crucial open space resources, the DEIS states only that mitigation measures for shadow impacts are being explored by the applicants and will be refined prior to the issuance of the FEIS; and

WHEREAS, there has been no disclosure of how these specific playgrounds have been selected for mitigation;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests assurances that proposed open space mitigations would be completed, including written commitments and/or Restrictive Declarations for any major capital improvements; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further explanation of the justification, decision-making, public outreach, and agency consultations that went into the selection of proposed open space and shadow mitigation locations; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests full disclosure of the details, including amount and length of commitment, for the funding of enhanced maintenance that is proposed as a shadow impact mitigation; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further explanation of the rationale behind enhanced funding being able to functionally mitigate the permanent imposition of shadows on vegetation and playground use; and

WHEREAS, there is no timetable or cost estimate provided for the F-line East Broadway subway station mitigation proposals, nor is there any evaluation of the impacts on subway line-service, traffic, and pedestrian circulation during the construction period; and

WHEREAS, there is no timetable or cost estimate for proposed parks renovations, nor disclosure of proposed temporary park closures and the temporary impact on open space ratio during that would occur during any renovation construction period;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further analysis of the construction impacts that an East Broadway subway station renovation would have on subway-line service, traffic, and pedestrian circulation during the construction period; and

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests the disclosure of project timelines and cost-estimates for all proposed mitigations identified in the DEIS and FEIS; and

WHEREAS, regarding growth-inducing aspects of the proposed actions, the DEIS finds that the proposed projects are not expected to induce any significant additional growth beyond that identified in the project description and analyzed throughout the EIS; and

WHEREAS, the proposed actions are anticipated to introduce more than 5,800 new residents and 2,081 market-rate DUs to the primarily low- and middle-income, and predominantly rent-regulated Two Bridges LSRD; and

WHEREAS, development in general, and the introduction of unregulated DUs, has never previously occurred on this scale in the Two Bridges LSRD; and

WHEREAS, a number of soft-sites would remain in the Two Bridges LSRD after the completion of the proposed actions, including significant unused floor area ratio (FAR) at Site 6B and Site 7, including parking lots and open spaces, as well as in the immediate adjacent area, including the Con Edison site at 220 South Street and open spaces on NYCHA properties at the La Guardia Houses, Rutgers Houses, and Smith Houses;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 questions the determination that the proposed projects are not expected to induce any additional growth and requests further and refined analysis of the growth-inducing aspects of the proposed actions;

WHEREAS, regarding irreversible and irretrievable commitments of resources, the DEIS does not evaluate and disclose the irreversible and irretrievable loss of visual resources from the proposed action sites as well as visual resources from upland and from Brooklyn; and

WHEREAS, the DEIS identifies additional resiliency measures the proposed actions would contribute to the area, it does not consider the irreversible and irretrievable loss of permeable surfaces, as well as the loss of trees and other vegetation from shadow impacts, that can function to absorb rain and flood waters;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests further detailed analysis and disclosure of these additional irreversible and irretrievable commitments of resources; and

WHEREAS, overall, the DEIS displayed a lack of responsiveness to Community Board 3's comments on the Draft Scope of Work; and

WHEREAS, given the potential change in CPC policy regarding the approval process for modifications to Large Scale special permits that the proposed actions represents, in which ULURP is not triggered as long as proposals do not require further waivers; and

WHEREAS, recommendations by community boards for Large Scale developments and special permits granted by the CPC and City Council during ULURP are typically made with the understanding that even though a project may receive zoning waivers, other "trade-offs" can make those waivers more acceptable, which is fundamental to the land use decision-making process in New York City, especially at the community board level; and

WHEREAS, the CPC's determination that the proposed significant development should be classified as a minor modification to the Two Bridges LSRD plan, suggests that applicants can always come back after special permits and waivers have been granted and build out projects with no community board review, as long as no additional waivers are sought; and

WHEREAS, this change brings into question every Large Scale special permit issued since 1961, as participants in the ULURP process, including community boards, are not likely to have made the same decisions regarding all Large Scale special permits if they understood that they would not have an opportunity to review the plans again even when significant amendments were being made; and

WHEREAS, there is no evidence that buildings even close to the scale proposed were discussed during any hearings or deliberations made by Community Board 3 prior to making recommendation on the granting of previous special permits for Large Scale Residential Development in Two Bridges;

THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that the minor modification determination be reconsidered and the proposed actions be subject to ULURP, as anything less undermines established community planning precedent and the role of community boards in the land use planning process in New York City; and

WHEREAS, the methodology guiding the DEIS analysis as outlined in the *CEQR Technical Manual* is inherently flawed and appears to have a strong bias against any finding of significant impact, regularly producing analysis across numerous study areas that is both inadequate and does not begin to capture the actual impact on the environment as required under State law; and

WHEREAS, the DEIS, as currently constituted, includes a large number of serious omissions, misrepresentations and errors, and ultimately does not fully disclose all the proposed actions' significant impacts; and

WHEREAS, given the methodological shortcomings and the large number of serious omissions, misrepresentations, and errors, the Lead Agency should not have accepted this DEIS as complete;

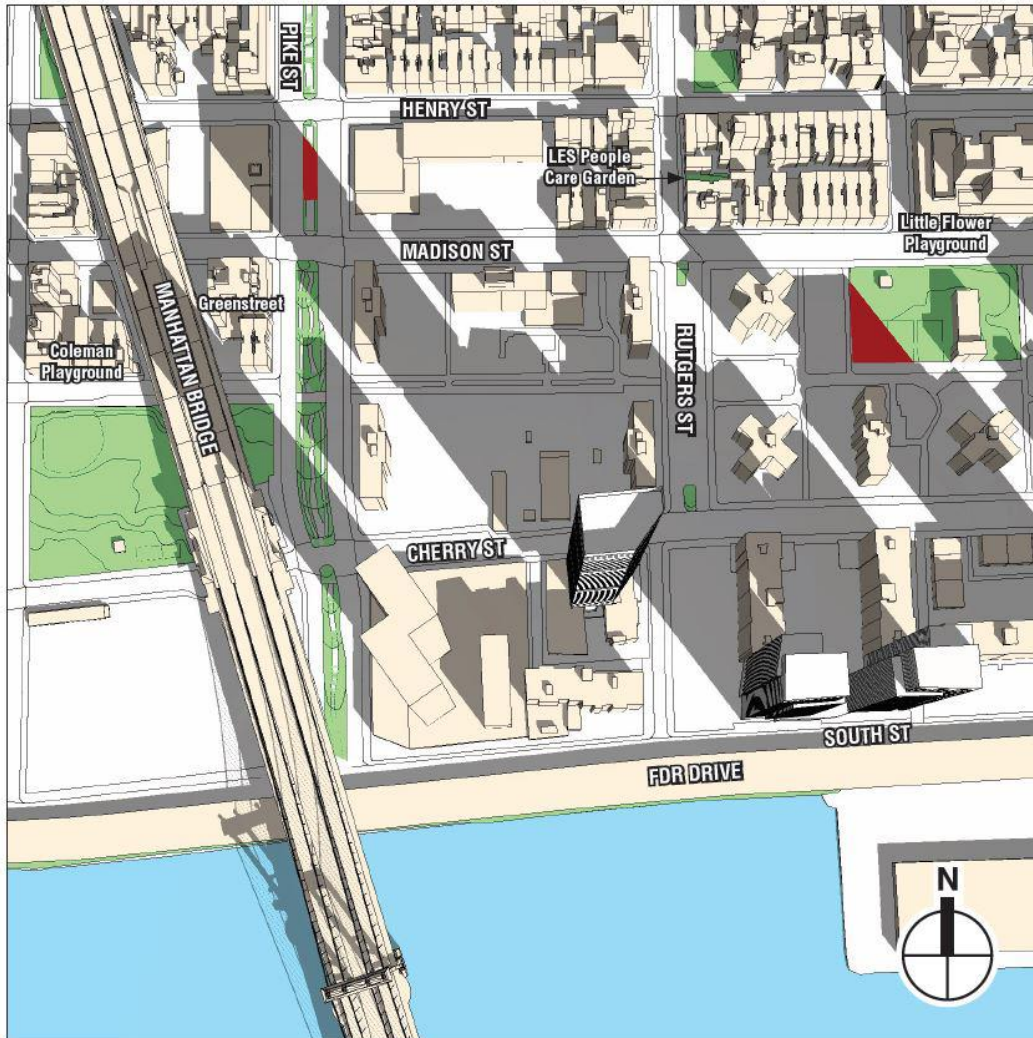
THEREFORE, BE IT FURTHER RESOLVED that Community Board 3 requests that the omissions, misrepresentations and errors outlined here be corrected in a Supplemental DEIS which includes appropriate, adequate, and detailed mitigation measures for all identified impacts; and

THEREFORE, BE IT FURTHER RESOLVED that if a Supplemental DEIS is not issued, than Community Board 3 requests that all the aforementioned requests for the correction of omissions, misrepresentations and errors be included in the FEIS.

APPENDIX A

Prepared for Manhattan Community Board 3 by George M. Janes & Associates

To demonstrate the magnitude of the omissions in the sunlight sensitive resources, we have prepared a series of images starting with the March 21, 10am shadow rendering that appears in the DEIS (**Figure 4**). The two areas marked in red are incremental shadows on shadow sensitive resources as identified in the DEIS:



10:00 AM

Figure 4 - Reproduction of March 21, 10am shadow rendering

The above omits several sunlight sensitive resources. The following is a plan for this area showing both the resources identified in the DEIS and publicly accessible open spaces added from New York City's GIS (**Figure 5**). The resources in the DEIS are in light green and the resources added are in dark green:

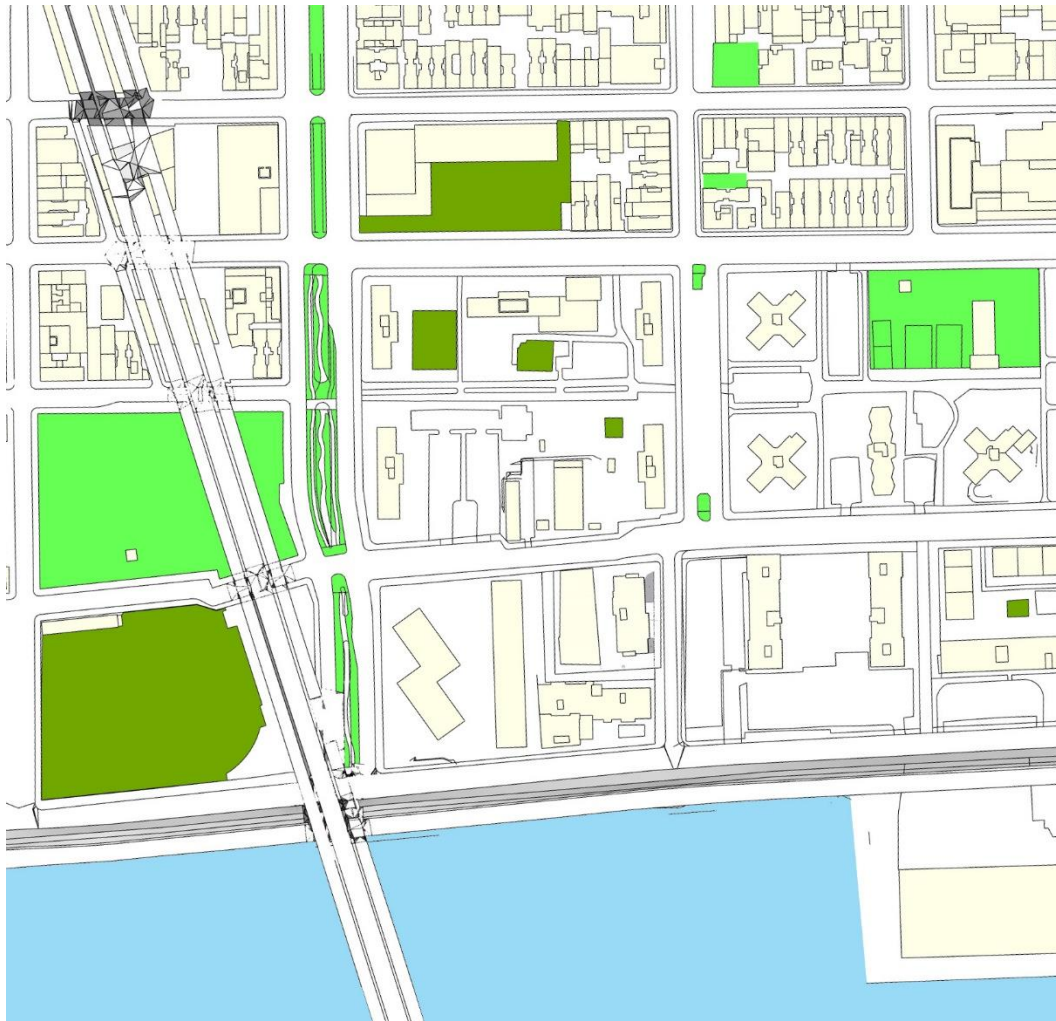


Figure 5 - Plan showing both identified sunlight sensitive resources (light green) and publicly accessible open spaces omitted (dark green)

To reexamine incremental shadow impact, we have taken models for the proposed building and rendered our own shadows for the day and time (**Figure 6**). There are trivial differences in the shadows that appear in the DEIS and the following renderings due to the differences in the 3D models used to render the shadows. The incremental shadow impacts identified in the DEIS are marked in red, while the incremental shadow impacts missing from the DEIS are shown in orange.



Figure 6 - March 21, 10am shadow rendering showing incremental shadow impact on parks identified in the DEIS (in red), and incremental shadow impact on publicly accessible open spaces not identified in the DEIS (in orange)

To be clear, this only marks the publicly accessible open spaces and community gardens identified in the New York City Open Space GIS layer, and does not include qualified residential open space on La Guardia Houses which is functional used as publicly accessible open space, but not identified as such. If that space is included, the incremental shadow impact is much larger (**Figure 7**).



Figure 7 - March 21, 10am shadow rendering showing incremental shadow impact on parks identified in the DEIS (in red), incremental shadow impact on publicly accessible open spaces not identified in the DEIS (in orange), and incremental shadow impact on residential open space that functions as publicly accessible open space (in yellow)

With or without the open space impacts on La Guardia Houses, the DEIS understates sunlight sensitive resources that have a potential to be impacted. The omission is so large that the entire chapter needs to be redone in a supplemental DEIS.

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Please contact the community board office with any questions.

Sincerely,



Alysha Lewis-Coleman, Chair
Community Board 3



MyPhuong Chung, Chair
Land Use Zoning, Public & Private Housing Committee

cc: Matthew Pietrus, Department of City Planning
Bob Tuttle, Department of City Planning
Tara Duvivier, Manhattan Borough President's Office
Paul Leonard, Office of Council Member Margaret Chin
Marian Guerra, Office of Council Member Margaret Chin
Venus Galarza-Mullins, Office of New York State Senator Brian Kavanagh
Laurence Hong, Office of New York State Assembly Member Yuh-Line Niou
Ben Kleinbaum, Capalino+Company