

Appendix B

Cultural Resources



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

October 13, 2015

Mr. Greg Fleischer
Environmental Scientist
Carpenter Environmental Associates, Inc.
307 Museum Village Road
P.O. Box 656
Monroe, NY 10950

Re: CORPS PERMITS
Waterfront Commons, Proposed Retail Buildings, Arthur Kill Road
Arthur Kill Rd. (Block 7620, lots 1 & 50; Block 76
07PR04902

Dear Mr. Fleischer:

Thank you for requesting the comments of the New York State Historic Preservation Office (SHPO). We have reviewed the submitted materials in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include other environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

SHPO has reviewed the latest submission for this project – *Phase 1 Archaeological and Historical Survey, Waterfront Commons, Block 7620, Lot 1, Block 7632, Lots 1, 6, 50, 150 and 151, Richmond County, Staten Island, New York* (Greenhouse Consultants Incorporated, June 2015). We have the following comments, organized by the project sub-areas defined in the report.

Area 1

The investigation identified the precontact Catbriar Site, which has been assigned the Unique Site Number 08501.003358. Please complete the electronic site information in CRIS (instructions enclosed). This site should be avoided or subjected to a Phase II National Register eligibility evaluation.

The report also indicates that historic period artifacts were recovered that may be associated with the DuBois or Dissosway farmsteads. Further investigation should be undertaken to more precisely delineate and characterize this possible site.

Area 2

Additional testing is needed to determine whether potentially culture-bearing deposits are located within the Area of Potential Effects (APE).

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Area 3

Additional testing is needed to determine whether potentially culture-bearing deposits are located within the Area of Potential Effects (APE).

Area 4

Remains of an historic sawmill site have been identified. Please submit an electronic archaeological site form via CRIS. This site should be avoided or subjected to a Phase II National Register eligibility evaluation.

Area 5

Artifacts indicating the possible presence of both precontact and historic period sites were recovered. Additional testing is needed in order to confirm the presence of these sites.

Area 6

No further investigation of this area is needed.

Area 7

The presence of the Cole House Site has been identified. Please submit an electronic archaeological site form via CRIS. This site should be avoided or subjected to a Phase II National Register eligibility evaluation.

A second historic site, possibly associated with Mary C. Hilliard, has also been identified. Further investigation should be undertaken to more precisely delineate and characterize this site.

In addition to the above, please submit an engineering plan that clearly delineates the currently proposed project boundaries.

If you have any questions please don't hesitate to contact me.

Sincerely,



Philip A. Perazio, Historic Preservation Program Analyst - Archaeology Unit

Phone: 518-268-2175

e-mail: philip.perazio@parks.ny.gov

via e-mail only

Enclosure



Environmental and Planning Consultants

440 Park Avenue South
New York, NY 10016
tel: 212 696-0670
fax: 212 213-3191
www.akrf.com

November 12, 2015

Ms. Amanda Sutphin
New York City Landmarks Preservation Commission
1 Centre Street, 9th Floor
New York, NY 10007

Re: Archaeological Investigations of Waterfront Commons Site, Staten Island, NY

Dear Ms. Sutphin:

Arthur Kill Land Development, LLC is proposing to redevelop an approximately 33 -acre property (the "Project Site) along the Arthur Kill waterfront near the Outerbridge Crossing in the West Shore area with a mix of commercial uses with public waterfront open space, and street and infrastructure improvements including the opening of Richmond Valley Road west of Arthur Kill Road. The proposed Project Site encompasses Blocks 7620, Lot 1, and Block 7632, Lots 1, 6, 50, 150, and 151.

The proposed project requires various permits and authorizations from a number of other City, State and Federal discretionary actions including the New York City Planning Commission (CPC) and the New York State Department of Environmental Conservation (NYSDEC). The proposed project is therefore subject to City Environmental Quality Review (CEQR), Uniform Land Use Review Procedures (ULURP), and the State Environmental Quality Review Act (SEQRA). The New York City Department of City Planning's (DCP), Environmental Assessment and Review Division (EARD) acting on behalf of CPC, is the Lead Agency for this environmental review and we are providing this submission to you as agreed with EARD.

A Draft Environmental Impact Statement (DEIS) is currently being prepared for the proposed project and as part of the DEIS, a Phase 1 Archaeological Investigation of the project site was prepared by Greenhouse Consultants, Inc. in June 2015. A draft of that report—"Phase 1 Archaeological and Historical Survey: Waterfront Commons, Block 7620, Lots 1 and 50; Block 7632, Lots 150 and 151; Richmond County, Staten Island, New York."—is provided with this letter. Also provided is a review of the Phase 1a as prepared by the New York State Historic Preservation Officer (SHPO) and a scope of work prepared by Greenhouse Consultants for additional Phase 1B and Phase 2 archaeological investigations of the site as requested by SHPO.

We are providing these materials at this time to coordinate the LPC review and any comments or questions you may have on these materials is appreciated.

Thank you for your assistance and should you have any questions, please do not hesitate to contact me at emeade@akrf.com or by telephone at (646) 388-9811.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth D. Meade', written in a cursive style.

Elizabeth D. Meade, RPA
Technical Director/Archaeologist

cc:

Gina Santucci, LPC

Robert Dobruskin and Evren Ulker-Kacar, NYCDCP

Robert White and Greg Holisko, AKRF

Jennifer Coughlan, Michael Bogin, Steven Barshov, Sive Paget Reisel

Barry Greenhouse, Greenhouse Consultants

Robert Konig, Arthur Kill Land Development, LLC

ARCHAEOLOGY

Project number: DEPARTMENT OF CITY PLANNING / LA-CEQR-R
Project: WATERFRONT COMMONS
Date received: 11/16/2015

Comments: as indicated below. Properties that are individually LPC designated or in LPC historic districts require permits from the LPC Preservation department. Properties that are S/NR listed or S/NR eligible require consultation with SHPO if there are State or Federal permits or funding required as part of the action.

This document only contains Archaeological review findings. If your request also requires Architecture review, the findings from that review will come in a separate document.

- 1) ADDRESS: ARTHUR KILL ROAD, BBL: 5076200001
- 2) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320001
- 3) ADDRESS: 4927 ARTHUR KILL ROAD, BBL: 5076320006
- 4) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320050
- 5) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320150
- 6) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320151

The LPC is in receipt of the, "Phase 1 Archaeological and Historical Survey for the Waterfront Commons Block 7620, Lot 1, Block 7632, Lots 1, 6, 50, 150, and 151, Richmond County, Staten Island, New York," prepared by Greenhouse Consultants, Inc and dated June 2015 and a scope of work for testing as well as comments from the NYSHPO. We concur with the NYSHPO's comments. To further evaluate the proposed scope for Phase 1B/2 Survey, we will need a site map showing the proposed areas for additional testing superimposed on a plan showing where the previous work occurred. In addition, we would like a pdf of the Phase 1 report for our archives.

cc: NYSHPO



11/25/2015

SIGNATURE
Amanda Sutphin, Director of Archaeology

DATE

File Name: 31028_FSO_ALS_11252015.doc

ENVIRONMENTAL REVIEW

Project number: DEPARTMENT OF CITY PLANNING / 09DCP018R
Project: WATERFRONT COMMONS
Date received: 11/22/2016

Comments: as indicated below. Properties that are individually LPC designated or in LPC historic districts require permits from the LPC Preservation department. Properties that are S/NR listed or S/NR eligible require consultation with SHPO if there are State or Federal permits or funding required as part of the action.

Properties with Archaeological significance:

- 1) ADDRESS: ARTHUR KILL ROAD, BBL: 5076200001
- 2) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320001
- 3) ADDRESS: 4927 ARTHUR KILL ROAD, BBL: 5076320006
- 4) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320050
- 5) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320150
- 6) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320151
- 7) ADDRESS: , BBL: , PROPERTY NAME: RICHMOND VALLEY ROAD MAPPED ST.
- 8) ADDRESS: NASSAU PLACE, BBL: 5079830100
- 9) ADDRESS: ARTHUR KILL ROAD, BBL: 5079830110

Properties with no Architectural significance:

- 1) ADDRESS: ARTHUR KILL ROAD, BBL: 5076200001
- 2) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320001
- 3) ADDRESS: 4927 ARTHUR KILL ROAD, BBL: 5076320006
- 4) ADDRESS: ARTHUR KILL ROAD, BBL: 5076320050
- 5) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320150
- 6) ADDRESS: RICHMOND VALLEY ROAD, BBL: 5076320151
- 7) ADDRESS: , BBL: , PROPERTY NAME: RICHMOND VALLEY ROAD MAPPED ST.
- 8) ADDRESS: NASSAU PLACE, BBL: 5079830100
- 9) ADDRESS: ARTHUR KILL ROAD, BBL: 5079830110

Comments: LPC is in receipt of the "Draft Environmental Impact Statement" Historic and Shadow chapters of 9/28/16. The Shadows chapter is acceptable. The LPC comments dated 11/25/2015 as follows still need to be addressed.

The LPC is in receipt of the, "Phase 1 Archaeological and Historical Survey for the Waterfront Commons Block 7620, Lot 1, Block 7632, Lots 1, 6, 50, 150, and 151, Richmond County, Staten Island, New York," prepared by Greenhouse Consultants, Inc and dated June 2015 and a scope of work for testing as well as comments from the NYSHPO. We concur with the NYSHPO's comments. To further evaluate the proposed scope for Phase 1B/2 Survey, we will need a site map showing the proposed areas for additional testing superimposed on a plan showing where the previous work occurred. cc: NYSHPO



SIGNATURE

Gina Santucci, Environmental Review Coordinator

File Name: 31028_FSO_DNP_11292016.doc

12/5/16
DATE

ENVIRONMENTAL REVIEW

Project number: DEPARTMENT OF CITY PLANNING / 09DCP018R
Project: WATERFRONT COMMONS
Date received: 1/18/2017

Comments: The LPC is in receipt of the Draft EIS Historic and Cultural Resources, Alternatives, and Mitigation chapters of the EAS dated January 13, 2017.

There are no architectural concerns.

It appears that archaeological field testing proceeded without consulting with LPC as the Commission expressed concerns about the proposed work scope for that work in our 11/25/2015 comments. Please submit the archaeological field testing report ASAP so we may evaluate the work that has been completed and better assess what the following steps should be. Thus, we cannot concur with the language pertaining to archaeological resources in the historic resources and mitigation chapters at this time. We note, however, that the Alternatives chapter should be revised as it states that archaeological mitigation would be required if as-of-right construction proceeds. This is not our understanding unless there would be factors other than zoning compliance that would require such a project to be subject to environmental review.

cc: NYSHPO



1/25/2017

SIGNATURE
Gina Santucci, Environmental Review Coordinator

DATE

File Name: 31028_FSO_ALS_01192017.doc



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

May 18, 2017

Mr. Stephan Ryba
Chief, Eastern Section, Regulatory Branch
NY District U.S. Army Corps of Engineers
26 Federal Plaza, Room 1937
New York, NY 10278

Re: USACE
Waterfront Commons, aka Riverside Galleria
Borough of Staten Island, Richmond County, NY
07PR04902

Dear Mr. Ryba:

Thank you for requesting the comments of the New York State Historic Preservation Office (SHPO). We have reviewed the submitted materials in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources.

SHPO has reviewed the revised Phase IB/II archaeological report submitted for this project – *Supplemental Phase 1B and Phase 2 Archaeological and Historical Investigations of Riverside Galleria (Formerly Waterfront Commons), Block 7620, Lot 1, Block 7632, Lots 1, 6, 50, 150, and 151, and Richmond Valley Road Extension, Lots 100 And 110, Richmond County, Staten Island, New York* (Greenhouse Consultants, May 2017).

Based on the information provided, three archaeological sites have been identified.

1. The Catbriar Site (08501.003358), a precontact site, is recommended as eligible for listing on the National Register of Historic Places. It is within the project's currently defined APE. We recommend that the proposed project will have an adverse effect on this site.
2. The Area 1 West Site (08501.003696), which has both precontact and historic period components, has not been formally evaluating regarding its National Register eligibility. It appears that the archaeological site is outside of, but immediately borders the Area 5 portion of the APE. Based on this, SHPO recommends that a construction protection plan be developed to avoid inadvertent disturbance of the site.
3. The Dissosway Totten Starr Site (08501.003697) (aka the Area 5 site) contains both precontact and historic components. It is within the project's currently defined APE. We recommend that the proposed project will have an adverse effect on this site.

Therefore, SHPO recommends that the proposed project will have an **Adverse Effect** on historic properties listed or eligible for listing on the National Register of Historic Places, and that consultation should be undertaken to determine appropriate treatments.

Division for Historic Preservation

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If you have any questions please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip A. Perazio". The signature is fluid and cursive, with the first name "Philip" being more prominent.

Philip A. Perazio, Historic Preservation Program Analyst - Archaeology Unit

Phone: 518-268-2175

e-mail: philip.perazio@parks.ny.gov

via e-mail only

cc: Amanda Sutphin, Daniel Pagano, Gina Santucci, and Jessica MacLean, LPC
Greg Fleischer, Capital Environmental
Lisa Blake, NYC Planning
Paula Crowley, Greenhouse Consultants

ARCHAEOLOGY

Project number: DEPARTMENT OF CITY PLANNING / 09DCP018R
Project: Riverside Galleria
Date received: 6/12/2017

Comments: as indicated below. Properties that are individually LPC designated or in LPC historic districts require permits from the LPC Preservation department. Properties that are S/NR listed or S/NR eligible require consultation with SHPO if there are State or Federal permits or funding required as part of the action.

This document only contains Archaeological review findings. If your request also requires Architecture review, the findings from that review will come in a separate document.

Comments: The LPC is in receipt of the Draft Restrictive Declaration and has no objections. We are also in receipt of the revised historic resources chapter undated and concur with the language pertaining to archaeological resources.



6/20/2017

SIGNATURE
Amanda Sutphin, Director of Archaeology

DATE

File Name: 31028_FSO_ALS_06202017.doc

DECLARATION

This DECLARATION made as of the ____ day of _____, 2017, by WF Liberty, LLC, located at c/o Robert Konig, 15 Wycoff Place, Woodmere, NY 11598; Arthur Kill Hillside Development LLC, located at 1104 Avenue K, Brooklyn, NY 11230; LP Hillside Arthur Kill Development LLC, located at 1104 Avenue K, Brooklyn, NY 11230; Arthur Kill-Valley Realty LLC located at c/o Menicucci, Villa & Associates, PLLC, 2040 Victory Boulevard, Staten Island, New York, 10314; and New SI Water LLC, LLC, c/o Silberberg & Kirschner, LLP, 360 Lexington Avenue, 12th Floor, New York, New York, 10017

(hereinafter referred to collectively as “Declarant”);

WITNESSETH

WHEREAS, WF Liberty, LLC (the “Applicant”) has submitted an Application to the New York City Department of City Planning (“DCP”) for various approvals required to redevelop certain real property located in Kings County, City and State of New York, designated for real property tax purposes as Tax Block 7620, Lot 1 and Tax Block 7632, Lots 1, 6, 50, 150 and 151 on the Tax Map of the City of New York (the “Project Site”), which Application is described in further detail below;

WHEREAS, LP Hillside Arthur Kill Development LLC is the fee owner of certain real property located in Kings County, City and State of New York, designated for real property tax purposes as Lot 150 of Tax Block 7632 on the Tax Map of the City of New York and is more particularly described in Exhibit A, annexed hereto and made part hereof; and

WHEREAS, Arthur Kill Hillside Development LLC is the fee owner of certain real property located in Kings County, City and State of New York, designated for real property tax purposes as Lot 1 of Tax Block 7620 and Lots 50 and 151 of Tax Block 7632 on the Tax Map of the City of New York and is more particularly described in Exhibit B, annexed hereto and made part hereof; and

WHEREAS, Arthur Kill Valley Realty LLC is the fee owner of certain real property located in Kings County, City and State of New York, designated for real property tax purposes as Lot 1 of Tax Block 7632 on the Tax Map of the City of New York and is more particularly described in Exhibit C, annexed hereto and made part hereof; and

WHEREAS, New SI Water LLC is the fee owner of certain real property located in Kings County, City and State of New York, designated for real property tax purposes as Lot 6 of Tax Block 7632 on the Tax Map of the City of New York and is more particularly described in Exhibit D, annexed hereto and made part hereof; and

WHEREAS, Commonwealth Land Title Insurance Company (“Title Company”), has issued a Certification of Parties In Interest for each of the properties comprising the

Project Site, which are collectively annexed hereto as Exhibit E and made a part hereof, that as of ADD DATE, Declarant, ADD PARTIES are the only Parties-in-Interest (as defined in subdivision (c) of the definition of “zoning lot” set forth in Section 12-10 of the New York City Zoning Resolution) in the Project Site (the “Certification”); and

WHEREAS, all Parties-in-Interest to the Project Site have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as Exhibits XX-XX and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, as of the date hereof, the Title Company has determined that there has been no change in the facts set forth in the Certification, and the Declarant represents and warrants that the Parties-in-Interest listed in the Certification are the only known parties-in-interest in the Project Site as of the date hereof; and

WHEREAS, Applicant filed the following applications designated ADD APPLICATION NUMBER(s) (collectively, “the Application”) with DCP, for various approvals by the City Planning Commission (“CPC”), pursuant to Section 197-c of the New York City Charter (the Uniform Land Use Review Procedure or “ULURP”), which include, but are not limited to: (a) Special Permits allowing retail establishments with no limitation on floor area per establishment in an M1-1 zoning district as well as modifications to applicable waterfront zoning requirements to allow a commercial building greater than 30 feet in height and to alter yard requirements; (b) authorizations modifying the certain requirements applicable to lands within the Special South Richmond Development District (SRD), as well as certain requirements applicable to waterfront zoning lots; and

WHEREAS, the Application would facilitate the development of the Project Site; and

WHEREAS, a Draft Environmental Impact Statement (“DEIS”) concerning the Project Site prepared pursuant to the City Environmental Quality Review (the “CEQR”) is under review in connection with the Application (CEQR #09DCP018R);

WHEREAS, in connection with the DEIS, certain archaeological investigations have been conducted at the Project Site, the results of which are presented in a 2015 Phase 1A/1B Report and a 2017 draft Phase 1B/2 Report prepared by Greenhouse Consultants, Inc.;

WHEREAS, pursuant to CEQR, the Landmarks Preservation Commission (“LPC”), among others, has reviewed the preliminary DEIS and the Greenhouse Reports; and

WHEREAS, the results of such review, as documented in LPC’s March 2017 letter, attached hereto as Exhibit X, and made a part hereof, indicate the potential presence of significant archaeological resources the Project Site; and

WHEREAS, Applicant desires to identify the existence of any potential archaeological resources and mitigate any potential damage to any such archaeological resources found in connection with the development or redevelopment of the Project Site and has agreed to follow and adhere to all requirements for archaeological identification, investigation and mitigation set forth in the CEQR Technical Manual and LPC's Guidelines for Archaeological Work in NYC, including without limitation, the completion of an archaeological documentary study, archaeological field testing, excavation, mitigation and curation of archaeological resources as required by the LPC (collectively, the "Archaeological Work"); and

WHEREAS, Declarant agrees to restrict the manner in which the Project Site may be developed or redeveloped by having implementation of the Archaeological Work, performed to the satisfaction of the LPC, as evidenced by writings described and set forth herein, be a condition precedent to any soil disturbance for any such development or redevelopment (other than soil disturbance necessitated by WF Liberty LLC's performance of the Archaeological Work); and

WHEREAS, Declarant intends this Declaration to be binding upon all successors and assigns; and

WHEREAS, the Declarant intends this Declaration to benefit all the City of New York ("the City") and consents to the enforcement of this Declaration by the City.

NOW, THEREFORE, Declarant does hereby declare and agree that the Project Site shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the value and desirability of the Project Site and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Project Site or any part thereof:

1. Declarant covenants and agrees that no application for grading, excavation, foundation, alteration building or other permit respecting the Project Site which permits soil disturbance shall be submitted to or accepted from the Department of Buildings (the "DOB") by the Applicant until LPC has issued to DOB, as applicable, either a Notice of No Objection, as set forth in Paragraphs 2(a) and 2(c), a Notice to Proceed, as set forth in Paragraph 2(b), a Notice of Satisfaction, as set forth in Paragraph 2(d), or a Final Notice of Satisfaction, as set forth in Paragraph 2(e). Applicant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction, as the case may be, to the DOB at the time of filing of any application set forth in this Paragraph 1.

2. (a) Notice of No Objection – LPC shall issue a Notice of No Objection after the Applicant has completed the work set forth in the LPC-approved Archaeological

Documentary Study and LPC has determined that the results of such assessment demonstrate that the site does not contain potentially significant archaeological resources.

(b) Notice to Proceed with LPC-Approved Field Testing and/or Mitigation – LPC shall issue a Notice to Proceed after it approves a Field Testing Plan and, if necessary, a Mitigation Plan. Issuance of a Notice to Proceed shall enable the Declarant to obtain a building permit solely to perform excavation or other work necessary to implement the Field Testing and/or Mitigation Plan. The LPC shall review and approve the scope of work in all permits prior to field testing or mitigation work commencing on the Project Site.

(c) Notice of No Objection After Field Work – LPC shall issue a Notice of No Objection After Field Work if the Applicant has performed required LPC-approved field testing and, as a result of such testing, the LPC determines that the Project Site does not contain potentially significant archaeological resources. The notices described in subparagraphs (a) and (c) of this paragraph shall each hereafter be referred to as a “Notice of No Objection.” Issuance of a Notice of No Objection shall be sufficient to enable the Applicant to obtain a full building permit for the performance of excavation or construction on the Project Site.

(d) Notice of Satisfaction – LPC shall issue a Notice of Satisfaction after the Mitigation Plan has been prepared and accepted by LPC and LPC has determined in writing that all significant identified and archaeological resources have been documented and removed from the Project Site. Issuance of a Notice of Satisfaction shall enable the Applicant to obtain a building permit for excavation and construction on the Project Site.

(e) Final Notice of Satisfaction – LPC shall issue a Final Notice of Satisfaction after the mitigation has been completed and the LPC has set forth in writing that the Mitigation Plan, including but not limited to the Final Archaeological Report and a curation plan for any archaeological resources found on the Project Site, has been completed to the satisfaction of LPC.

3. No temporary certificate of occupancy (“TCO”) or permanent certificate of occupancy (“PCO”) shall be granted by the Buildings Department or accepted by the Applicant until the Chairperson of the LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection.

4. The Director of Archaeology of the LPC shall issue all notices required to be issued hereunder reasonably promptly after the Applicant has made written request to the LPC and has provided documentation to support each such request, and the Director of Archaeology of the LPC shall in all events endeavor to issue such written notice to the

DOB, or inform the Applicant in writing of the reason for not issuing said notice, within thirty (30) calendar days after the Applicant has requested such written notice.

5. Declarant represents and warrants with respect to the Project Site that no restrictions of record, nor any present or presently existing estate or interest in the Project Site nor any lien, encumbrance, obligation, covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.

6. Declarant acknowledges that the City is an interest party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.

7. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant and/or Applicant shall be deemed to include such successors and assigns as well as successors to their interest in the Project Site. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.

8. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, except that the City and any other party relying on this Declaration will look solely to the fee estate interest of the Declarant in the Project Site for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant shall have no personal liability under this Declaration.

9. The obligations, restrictions and agreements herein shall be binding on the Declarant or other parties in interest only for the period during which the Declarant and any such Party-in-Interest holds and interest in the Project Site; provided; however, that the obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

10. Declarant shall indemnify the City, its respective officers, employees and agents from all claims, actions or judgments for loss, damage or injury, including death or property damage of whatsoever kind or nature, arising from Declarant's performance of its obligations under this Declaration, including without limitation, the negligence or carelessness of the Declarant, its agents, servants or employees in undertaking such performance; provided, however, that should such a claim be made or action brought,

Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City and no such claim or action against the City shall be settled without the written consent of the City.

11. 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 a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant, including but not limited to the cost of undertaking the Mitigation Plan, if any.

12. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Project Site to waive its right to execute this Declaration and subordinate its interest in the Project Site to this Declaration. Any mortgage or other lien encumbering the Project Site in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.

13. This Declaration and the provisions hereof shall become effective as of the date of this Declaration. Declarant shall record or shall cause this Declaration to be recorded in the Office of the County or City Register, indexing it against the Project Site within five (5) business days of the date hereof and shall promptly deliver to the LPC and the CPC proof of recording in the form of an affidavit of recording attaching a copy of the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to LPC and CPC as soon as a certified copy is available.

14. This Declaration may be amended or modified by Declarant only with the approval of LPC or the agency succeeding to its jurisdiction and no other approval or consent shall be required from any other public body, private person or legal entity of any kind. A statement signed by the Chair of the LPC, or such person as authorized by the Chair, certifying approval of an amendment or modification of this Declaration shall be annexed to any instrument embodying such amendment or modification.

15. Any submittals necessary under this Declaration from Declarant to LPC shall be addressed to the Director of Archaeology of LPC, or such other person as may

from time to time be authorized by the Chair of the LPC to receive such submittals. As of the date of this Declaration, LPC's address is:

Landmarks Preservation Commission, 1 Centre Street, 9N
New York, New York 10007

Any notices sent to Declarant shall be sent to the addresses hereinabove first set forth and shall be sent by personal delivery, delivery by reputable overnight carrier or by certified mail.

16. Declarant expressly acknowledges that this Declaration is an essential element of the environmental review conducted in connection with the Application and, as such, the filing and recordation of this Declaration may be a precondition to the determination of significance pursuant to CEQR, which implements the State Environmental Quality Review Act ("SEQRA") and the SEQRA Regulations, Title 6 New York Code of Rules and Regulations ("NYCRR") Part 617.7 within the City of New York.

17. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Locals laws.

18. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

19. Wherever in this Declaration, the certification, consent, approval, notice or other action of Declarants, LPC or the City is required or permitted, such certification, consent, approval, notice or other action shall not be unreasonably withheld or delayed.

20. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

21. This Declaration and its obligations and agreements are in contemplation of the Applicant receiving approvals or modified approvals of the Application. In the event that the Applicant withdraws the Application before a final determination or the Application is not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and Declarant may request that LPC issue a Notice of Cancellation upon the occurrence of the following events: (i) the Applicant has withdrawn the Application in writing before a final determination on the Application; or (ii) the Application was not approved by the CPC, and/or the City Council, as the case may be in accordance with Charter Section 197-c (ULURP); or (iii) LPC has issued a

By: _____

Title:

[illegible]

Notary Public

Notary Public

By: _____

Title:

[illegible]

Notary Public

NEW SI WATER LLC

By: _____

Name:

Title:

CERTIFICATE OF ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 2017 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public