

NOTICE OF CERTIFICATION

([Open Air Café] [Kiosk])

This Notice, made as of the ___ day of _____, 202_, by _____ [a corporation, a partnership, an individual] having an address at _____ (the “Owner”).

WHEREAS, Owner is the fee owner of certain real property located in the Borough of _____, County of _____, City and State of New York, which property is designated as Tax Block ____, Lot(s) _____ and commonly known by the street address of _____ and which is more particularly described in Exhibit A attached hereto (the “Property”); and

WHEREAS, publicly accessible open space exists on the Property for which valuable benefits were or will be received in the form of additional floor area (the “Plaza”); and

[The following 2 recitals apply only if the plaza was previously certified and there is an existing recorded instrument(s) – use as applicable:]

WHEREAS, on _____, in connection with Application No. _____ ZC_ (the “Plaza Application”), the Chairperson of the City Planning Commission (the “Chairperson”) certified that such publicly accessible open space met the applicable requirements of the Zoning Resolution of the City of New York (“ZR”); and

WHEREAS, in connection with the Plaza Application, a Notice of Certification was executed on _____ and recorded on _____ (CRFN _____); and]

[The following 3 recitals only apply if a café/kiosk was previously certified and there is an existing recorded instrument(s) – use as applicable:]

WHEREAS, on _____, in connection with Application No. _____ ZC_ (the “Prior Cafe Application”), the Chairperson of the City Planning Commission (the “Chairperson”) *[if pursuant to former Section 37-05, remove reference to the Chairperson and refer to Commission only]* certified pursuant to [former] ZR Section [37-73(c)][37-04(g)] [37-05] that [an open air café] [a kiosk] may be constructed and placed in the Plaza as a permitted obstruction (the “Prior Café Certification”); and

WHEREAS, in connection with the Prior Café Application, a Notice of Certification was executed on _____ and recorded on _____ (CRFN _____) (the “Prior Cafe Notice”); and

WHEREAS, the Prior Café Certification has lapsed and the Prior Café Notice is of no further force and effect; and]

WHEREAS, Owner has submitted an application designated number _____ dated _____ (the “Application”) to the *[define in full only if first time using term:]* Chairperson of the City Planning Commission (the “Chairperson”)] requesting certification pursuant to Section 37-73(c) of the *[define in full only if first time using term:]* Zoning Resolution of the City of New York (“ZR”) to construct and place [a kiosk] [an open air café] in the Plaza as a permitted obstruction (the “Café Certification”); and

[if there is a concurrent application for design changes to an existing plaza:]

WHEREAS, Owner has also submitted an application designated number N _____ ZCM dated _____ to the Chairperson requesting certification pursuant

to ZR Section 37-625 to construct design changes to the Plaza, which changes are integral to the Cafe Certification [*if the design changes are required improvements, add the following:* pursuant to ZR Section 37-73(c)(6)] (the “Design Change Certification”), which certification has a separate Notice of Certification; and]

[alternatively, if there is a concurrent application for a new plaza certification:

WHEREAS, Owner has also submitted an application designated number _____ dated _____ to the Chairperson requesting certification pursuant to ZR Section 37-78 that a site plan for a public plaza that complies with ZR Section 37-70 has been submitted to the Chairperson, which plaza certification has a separate Notice of Certification; and]

WHEREAS, pursuant to ZR Section 37-73(d), the Café Certification and this Notice thereof shall be effective for a period of three years from the date of Certification (the “Effective Period”); and

WHEREAS, in connection with and as a requirement of certification, Owner is required to file a Notice of Certification with the New York City Register; and

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

THEREFORE, the Owner gives this Notice of Certification to the City of New York and future owners and to every party having any right, title or interest in the Property and their respective heirs, successors, or assigns:

1. If at any time during the Effective Period of the Café Certification, [a kiosk] [an open air café] is placed and operated in the Plaza pursuant to the Café Certification, such [kiosk] [open air café] shall be developed and maintained substantially in accordance with the following drawings, prepared by _____ and attached hereto as Exhibit B (the “Café Drawings”):

Drawing No./Title

Date

Last Revised Date

2. *[if there is a concurrent design change certification and the design changes are improvements required pursuant to ZR Section 37-73(c)(6), add the following at the beginning:*
Unless the Café Certification has lapsed prior to the end of the Effective Period pursuant to paragraph 3 hereof,]At the end of the Effective Period, the Café Certification, including the Café Drawings, shall automatically lapse, and this Notice of Certification shall automatically become null and void and be of no further force and effect.

[if there is a concurrent design change certification and the design changes are improvements required pursuant to ZR Section 37-73(c)(6):

3. If the design changes required pursuant to the Design Change Certification have not been substantially completed within one year of the date of the Café Certification, as determined by the Chairperson in writing at least one year after the date of such Certification (the “Chairperson Determination Letter”), then the Café Certification, including the Café Drawings, shall lapse in accordance with the Chairperson Determination Letter, at which time this Notice of Certification shall automatically become null and void and be of no further force and effect.]

4. Upon certification of the Application by the Chairperson, Owner shall file and duly record this Notice of Certification in the Borough Office of the City Register of the City of

New York, indexing it against the Property. Owner shall, promptly following recordation, deliver to the Chairperson a true copy of this Notice of Certification as recorded and certified by the City Register. Such recording is a precondition of the filing for or the issuance of any building permit for the placement of the [kiosk] [open air café] in the Plaza or any construction/site preparation/filing with the New York City Department of Buildings in connection with such [kiosk] [open air café].

5. A duly recorded copy of this Notice of Certification shall be attached to and submitted with any application relating to the Property filed with the New York City Department of Buildings or Department of Transportation. These agencies and any other agency of the City of New York may enforce the restrictions contained herein by any method authorized by law or in equity.

[if applicable, Prior Café Notice should be declared void if it did not contain language regarding its automatically becoming null and void upon lapse of Café Certification:

6. This Notice of Certification supersedes and replaces in all respects the Prior Café Notice, which shall hereby become null and void and of no further force and effect.]

IN WITNESS WHEREOF, the Owner has executed this Notice of Certification on the date written above.

By: _____
Name:
Title:

State of New York
County of _____

On the ____ day of _____, 202__ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by

his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public