



IN THE MATTER OF an application submitted by 1-10 Bush Terminal Owner L.P. and 19-20 Bush Terminal Owner L.P. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 129-21 of the Zoning Resolution to modify:

1. the use regulations of Section 42-10 (Uses Permitted As-Of-Right); and
2. the bulk regulations of Section 43-12 (Maximum Floor Area Ratio), Section 43-20 (Yard Regulations), and Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks);

in connection with a proposed commercial use development involving one or more zoning lots, planned as a unit and comprise an area of at least 1.5 acres, on properties generally bounded by 2nd Avenue, the northwesterly centerline prolongation of 32nd Street, 3rd Avenue, and 37th Street (Block 679, Lot 1; Block 683, Lot 1; Block 687, Lot 1; Block 691, Lots 1 & 44; Block 695, Lots 1, 20, 37, 38, 39, 40, 41, 42 & 43), and 39th Street, 2nd Avenue, 41st Street and its northwesterly centerline prolongation, a line 245 feet northwesterly of 1st Avenue, the northwesterly centerline of former 40th Street, and a line 560 feet northwesterly of 1st Avenue (Block 706, Lots 1, 20, 24 & 101; Block 710, Lot 1), in M1-2 and M2-4 Districts, within the Special Industry City District, Borough of Brooklyn, Community District 7.

This application for a special permit was filed by the applicant, 1-10 Bush Terminal Owner L.P. and 19-20 Bush Terminal Owner L.P., on February 19, 2019. Approval of this action, along with its related actions, would facilitate a mixed-use development containing approximately 6.6 million square feet of industrial, commercial, and community facility uses in the Sunset Park neighborhood of Brooklyn, Community District 7.

RELATED ACTIONS

In addition to the special permit (C 190297 ZSK) that is the subject of this report, implementation of the land use actions associated with the proposed development also require action by the City Planning Commission (CPC) on the following applications, which are being considered concurrently with this application:

- C 190296 ZMK** A zoning map amendment to change an M3-1 district to an M2-4 district and to establish the Special Industry City District (IC)
- N 190298 ZRK** A zoning text amendment to establish the Special Industry City District (IC) and create a new special permit to modify use, bulk, and other requirements within the newly-created special district
- C 160146 MMK** A City Map change for the elimination, discontinuance, and closing of 40th Street between First and Second avenues

BACKGROUND

A full background discussion and description of this project appears in the report for the related zoning map amendment (C 190296 ZMK).

ENVIRONMENTAL REVIEW

This application (C 190297 ZSK), in conjunction with the related applications (C 190296 ZMK, N 190298 ZRK and C 160146 MMK), 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 designated CEQR number is 18DCP034K. The lead is the City Planning Commission.

A summary of the environmental review, including the Final Environmental Impact Statement (FEIS) dated August 7, 2020, appears in the report on the related application for a zoning map amendment (C 190296 ZMK).

UNIFORM LAND USE REVIEW

In response to the COVID-19 pandemic, the Mayor issued Emergency Executive Order No. 100 on March 16, 2020 that suspended certain time requirements relating to the Uniform Land Use Review Procedure (ULURP) and other land use processes as of March 12, 2020. The suspension included portions of sections 195, 197-c and 197-d of the New York City Charter, as well as sections of the Administrative Code and the Rules of the City of New York, pertaining to time limitations. The CPC ceased meeting immediately after issuance of the Executive Order until August 3, 2020, when the regular schedule of meetings was resumed. The ULURP time requirements suspended by Emergency Executive Order No. 100 are expected to begin running by September 14, 2020.

This application (C 190297 ZSK), in conjunction with the applications for the related actions (C 190296 ZMK and C 160146 MMK), was certified as complete by the Department of City Planning on October 28, 2019 and duly referred to Community Board 7 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b); along with the related text amendment (N 190298 ZRK), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Brooklyn Community Board 7 held a public hearing on this application (C 190297 ZSK), in conjunction with the related applications for a zoning map amendment (C 190296 ZMK), zoning text amendment (N 190298 ZRK), and City Map change (C 160146 MMK) on December 9, 2019. On January 15, 2020, the Community Board adopted a resolution recommending disapproval of the application with modifications and conditions by a vote of 32 in favor, 12 opposed, and two abstaining.

A summary of the Community Board's recommendation and modifications/conditions appears in the report for the related zoning map amendment (C 190296 ZMK).

Borough President Recommendation

The Brooklyn Borough President held a public hearing on this application (C 190297 ZSK), in conjunction with the related applications for a zoning map amendment (C 190296 ZMK), zoning text amendment (N 190298 ZRK), and City Map change (C 160146 MMK) on January 8, 2020 and issued a recommendation to disapprove the application with modification/conditions.

A summary of the Borough President's recommendation and modifications/conditions appears in the report for the related zoning map amendment (C 190296 ZMK).

City Planning Commission Public Hearing

On February 5, 2020 (Calendar No. 3), the CPC scheduled February 19, 2020 for a public hearing on this application (C 190297 ZSK) and the related applications for a zoning map amendment (C 190296 ZMK), zoning text amendment (N 190298 ZRK), and City Map change (C 160146 MMK). The hearing was duly held on February 19, 2020 (Calendar No. 25), in conjunction with the public hearings on the applications for the related items. There were 26 speakers in favor and 26 in opposition.

A summary of the CPC public hearing appears in the report for the related action for a zoning map amendment (C 190296 ZMK).

Waterfront Revitalization Program Consistency Review

This application (C 190297 ZSK) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), 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 15-049. This action was determined to be consistent

with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that this application for a special permit (C 190297 ZSK), in conjunction with the applications for the related actions, is appropriate.

A full description of the Commission's consideration, analysis of the issues, and the reasons for approving the application appear in the report for the related zoning map amendment (C 190296 ZMK).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 129-21 of the Zoning Resolution:

(1) any modifications will aid in achieving the general purposes and intent of the Special District

(2) for #uses# modifications:

(i) such proposed #uses# are compatible with existing #uses# and are appropriate for the location;

(ii) such #uses# will be located so as to draw a minimum of vehicular traffic to and through local #streets#

(iii) access to public #streets# from such #uses# is designed to maximize pedestrian safety and minimize vehicle and pedestrian conflicts;

(iv) such #uses# will not impair the essential character or future use or development of the surrounding area.

(v) for #uses# in Use Group 3A:

- a. an adequate separation from air, noise, traffic and other adverse effects is achieved to minimize the potential conflicts from surrounding industrial uses. For #schools#, such separation shall be achieved through the use of sound-attenuating exterior wall

- and window construction or by the provision of adequate open areas along #lot lines# of the #zoning lot#; and
 - b. in selecting the site for such uses, due consideration has been given to the proximity and adequacy of mass transit facilities;
 - c. not applicable
- (vi) for #transient hotels# in Use Group 5 or 7A:
- a. an adequate separation from air, noise, traffic and other adverse effects is achieved to minimize the potential conflicts from surrounding industrial #uses#; and
 - b. such #use# is appropriate to the needs of business in the #Special Industry City District# and will not impair the essential character or future #use# or #development# of the surrounding area; and
- (3) for #bulk# modifications, the Commission shall find that:
- (i) the proposed modifications facilitate a good site plan that enhances the streetscape and promotes a harmonious relationship in scale and design with existing #buildings# and the essential character within the #Special Industry City District#;
 - (ii) such proposed modifications will not unduly obstruct access to light and air of adjoining properties or public #streets#; and
 - (iii) the distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on August 7, 2020, with respect to this application (CEQR No. 18DCP034K), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulation, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, adopted herein is one which minimizes or avoids 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 by incorporating, as conditions to the approval, pursuant to the restrictive declaration attached as Exhibit A, those project components related to the environment and mitigation measures that were identified as practicable;

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, that City Planning Commission, in its capacity as 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, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination and consideration described in this report, the application submitted by 1-10 Bush Terminal Owner L.P. and 19-20 Bush Terminal Owner L.P. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 129-21 of the Zoning Resolution to modify:

1. the use regulations of Section 42-10 (Uses Permitted As-Of-Right); and
2. the bulk regulations of Section 43-12 (Maximum Floor Area Ratio), Section 43-20 (Yard Regulations), and Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks),

in connection with a proposed commercial use development involving one or more zoning lots,

planned as a unit and comprise an area of at least 1.5 acres, on properties generally bounded by 2nd Avenue, the northwesterly centerline prolongation of 32nd Street, 3rd Avenue, and 37th Street (Block 679, Lot 1; Block 683, Lot 1; Block 687, Lot 1; Block 691, Lots 1 & 44; Block 695, Lots 1, 20, 37, 38, 39, 40, 41, 42 & 43), and 39th Street, 2nd Avenue, 41st Street and its northwesterly centerline prolongation, a line 245 feet northwesterly of 1st Avenue, the northwesterly centerline of former 40th Street, and a line 560 feet northwesterly of 1st Avenue (Block 706, Lots 1, 20, 24 & 101; Block 710, Lot 1), in M1-2 and M2-4 Districts, within the Special Industry City District, Borough of Brooklyn, Community District 7 is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 190296 ZMK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plan, prepared by S9 Architecture and Engineering, PC, filed with this application and incorporated into the resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z1.0A	Site Plan - Proposed	02/19/2019
Z2.0A	Zoning Analysis	02/19/2019
Z3.0A	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0A	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0A	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0A	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0A	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0A	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0A	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0B	Site Plan - Proposed	02/19/2019

Z2.0B	Zoning Analysis	02/19/2019
Z3.0B	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0B	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0B	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0B	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0B	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0B	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0B	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0C	Site Plan - Proposed	02/19/2019
Z2.0C	Zoning Analysis	02/19/2019
Z3.0C	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0C	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0C	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0C	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0C	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0C	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0C	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0D	Site Plan - Proposed	02/19/2019
Z2.0D	Zoning Analysis	02/19/2019
Z3.0D	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0D	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0D	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0D	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0D	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019

Z8.0D	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0D	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019

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 plan listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, Kings County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Upon failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke

any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

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

The above resolution (C 190297 ZSK), duly adopted by the City Planning Commission on August 19, 2020 (Calendar No. 14), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

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

ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III, JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners*

DAVID J. BURNEY, *Commissioner, VOTING NO*

MICHELLE R. DE LA UZ, *Commissioner, RECUSED*

EXHIBIT A

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

**KINGS COUNTY
BLOCK 679 , LOT 1;
BLOCK 683, LOT 1;
BLOCK 687, LOT 1;
BLOCK 691, LOTS 1 AND 44;
BLOCK 695, LOTS 1, 20 and 43;
BLOCK 706, LOTS 1, 24, AND 101; and
BLOCK 710; LOT 1**

RECORD AND RETURN TO:

**Fox Rothschild LLP
101 Park Avenue
New York, New York 10178
Attention: Jesse Masyr, Esq.**

DECLARATION OF LARGE-SCALE DEVELOPMENT

THIS DECLARATION ("**Declaration**"), made as of this ____ of _____, 2020, by 1-10 BUSH TERMINAL OWNER LP ("**1-10**"), having an address at 882 Third Avenue, 12th Floor, Brooklyn, New York 11232 and 19-20 BUSH TERMINAL OWNER LP (the "**19-20**") having an address at 882 Third Avenue, 12th Floor, Brooklyn, NY 11232 (1-10 and 19-10, collectively, the "**Declarant**").

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, designated for real property tax purposes as Block 679, Lot 1; Block 683, Lot 1; Block 687, Lot 1; Block 691, Lots 1 and 44; Block 695, Lots 1 and 20; Block 706, Lot 1, 24 and 101; and Block 710, Lot 1 on the Tax Map of the City of New York (the "**Tax Map**"), which is more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Subject Property**");

WHEREAS, the Subject Property comprises multiple Zoning Lots, as defined by Section 12-10 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**" or the "**ZR**"), comprising an area of at least 1.5 acres, located wholly within the Special Industry City District, and planned to be developed as a unit (which development shall hereinafter be defined as the "Development Project");

WHEREAS, in connection with the Development Project, the Declarant filed with the New York City Department of City Planning (hereinafter "**DCP**") for approval by the New York City Planning Commission (the "**CPC**") of (a) zoning text amendment (#N190298 ZRK) of the Zoning Resolution to establish the Special Industry City District and modify other ZR provisions, (b) a zoning map amendment (#C190296 ZMK) that includes the Subject Property to map the Special Industry City District and to change a large portion of such district from an M3-1 to an M2-4 zoning district, (c) a zoning special permit (#C190297 ZSK) pursuant to ZR Section 129-21 to modify use and bulk requirements (the "**Special Permit**") in the Special Industry City District, and (d) a change to the City Map (#C160146 MMK) to de-map 40th Street between 1st Avenue and 2nd Avenue; (items (a) through (d) collectively, the "**Land Use Applications**");

WHEREAS, the Special Permit contemplates that Declarant may, subsequent to the recordation of this Declaration, become the fee owner and/or acquire a leasehold interest in certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York designated on the Tax Map as Block 695, Lot 37, 38, 39, 40, 41 and 42 (collectively with Block 695, Lot 43, the "**Gateway Parcel**") and/or Block 706, Lot 20 (the "**Lot 20 Portion of Parcel 21**") (individually with the Gateway Parcel an "**Outparcel**" and collectively with the Gateway Parcel the "**Outparcels**"); in which event this Declaration and the plans attached hereto as **Exhibit D** may be amended to reflect such ownership interest and the enlargement of the boundaries of the Subject Property, and in which event the Subject Property shall be defined as including such Outparcel or Outparcels, as the case may be.

WHEREAS, the Commission acting as lead agency for the City Environmental Quality Review Application No. 18DCP034K conducted an environmental review of the Land Use Applications 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**”) prepared for the Land Use Applications on August 7, 2020;

WHEREAS, at the time of the Commission’s approval of the Land Use Applications the Commission found, as required pursuant to SEQRA, that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the decision: A) certain project components related to the environment, as defined herein (“**PCREs**”) and B) certain measures to reduce or eliminate significant adverse impacts of the project to the maximum extent practicable, as defined herein, that were identified in the FEIS as practicable (“**Mitigation Measures**”);

WHEREAS, to ensure that the development of the Subject Property pursuant to the Final Approval, as defined herein, is consistent with the analysis in the FEIS upon which the Commission has made its findings and that the development of the Subject Property incorporates the PCREs and the Mitigation Measures as conditions of the Commission’s decision on the Land Use Applications, Declarant has agreed to restrict the construction, development, operation, use, and maintenance of the Subject Property in certain respects relating to (i) construction, (ii) historic and cultural resources, (iii) subway transit, (iv) bus transit, (v) traffic and pedestrians, (vi) air quality, and (vii) noise, which restrictions are set forth in this Declaration;¹

WHEREAS, _____ (the “**Title Company**”) has certified in the certification (the “**Certification**”) attached hereto as **Exhibit B** and made a part hereof, that as of _____, 2020, Declarants are parties-in-interest (each a “**Party-in-Interest**”, collectively “**Parties-in-Interest**”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution;

WHEREAS, all Parties-in-Interest to the Subject Property have executed this Declaration, or have waived their right to execute and subordinated their interest in the Subject Property to this Declaration by written instrument attached hereto as **Exhibit C** and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

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 intend these restrictions to benefit all the land lying within a one-half-mile radius of the Subject Property.

¹ Mitigation Measures (if any) to be confirmed.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on Declarant, its successors and assigns, as follows:

1. Development of the Development Site. The Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 10 hereof), the Subject Property, if developed in whole or part in accordance with the Special Permit, shall be developed in substantial conformity with the following plans indicated with a suffix of “A”, prepared by S9 Architecture and Engineering, PC, approved as part of the Special Permit and attached hereto as **Exhibit D** and made a part hereof:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z1.0A	Site Plan - Proposed	02/19/2019
Z2.0A	Zoning Analysis	02/19/2019
Z3.0A	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0A	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0A	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0A	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0A	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0A	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0A	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0A	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0B	Site Plan - Proposed	02/19/2019
Z2.0B	Zoning Analysis	02/19/2019
Z3.0B	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0B	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z5.0B	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0B	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0B	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0B	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0B	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0B	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0C	Site Plan - Proposed	02/19/2019
Z2.0C	Zoning Analysis	02/19/2019
Z3.0C	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0C	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0C	Waiver Plan – Zoning Lots 1 and 2	02/19/2019
Z6.0C	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0C	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0C	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0C	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0C	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019
Z1.0D	Site Plan - Proposed	02/19/2019
Z2.0D	Zoning Analysis	02/19/2019
Z3.0D	Site Plan Enlarged – Zoning Lots 1 and 2	02/19/2019
Z4.0D	Site Plan Enlarged – Zoning Lots 3 and 4	02/19/2019
Z5.0D	Waiver Plan – Zoning Lots 1 and 2	02/19/2019

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z6.0D	Waiver Plan – Zoning Lots 3 and 4	03/01/2019
Z7.0D	Use Waivers Plan – Zoning Lots 1 and 2	03/01/2019
Z8.0D	Use Waivers Plan – Zoning Lots 3 and 4	03/01/2019
Z9.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z10.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z11.0D	Enlarged Sections – Zoning Lots 1 and 2	02/19/2019
Z12.0D	Enlarged Sections – Zoning Lots 3 and 4	02/19/2019

2. If Declarant obtains fee ownership and/or acquires a leasehold interest in one or more Outparcels, Declarant may elect to include such Outparcel or Outparcels in the Development Site for the purposes of applying the Special Permit. Should Declarant make such an election, the Chair of CPC shall, upon a showing that Declarant has obtained fee ownership and/or acquired a leasehold interest in such Outparcel or Outparcels as the case may be, certify to the Department of Buildings that the Special Permit and the plans attached thereto with a suffix of “A” have been amended to reflect such enlargement of the boundaries of the Subject Property and the applicability of the Special Permit, and that the Subject Property, if developed in whole or part in accordance with the Special Permit, shall be developed in substantial conformity with the plans attached hereto as **Exhibit D** and indicated with a suffix of “B”(if the Gateway Parcel were added), “C” (if the Lot 20 Portion of Parcel 21 were added) or “D” (if both the Gateway Parcel and Lot 20 Portion of Parcel 21 were added), as the case may be. The proposal for the inclusion of the Outparcel or Outparcels shall be submitted to the Chair for approval as a minor amendment to the Declaration in accordance with the procedure for a minor amendment pursuant to Section 16 of this Declaration.

3. If Declarant seeks to develop the Subject Property other than pursuant to the Special Permit, the Special Permit shall be deemed surrendered and Declarant may not develop the Subject Property except as permitted by the zoning district regulations and any other applicable restrictions.

4. Environmental Protection Measures. If the Subject Property is developed in whole or part in accordance with the Special Permit, Declarant shall implement the following PCREs and Mitigation Measures in accordance with the FEIS and as further set forth in this Section 4 for any development of the Subject Property pursuant to this Declaration

(a) PCRE Measures Related to Construction of the Project. Declarant shall implement and incorporate as part of its construction of the Proposed Development as appropriate the following PCREs related to construction to the extent feasible and practicable. Any implementation plans referenced in this Section 4 below must be reviewed and approved by the Monitor, as defined hereinafter, which approval shall not be

unreasonably withheld or delayed, prior to Declarant accepting Building Permits for the Development Project, as provided for below.

- a. To ensure the safety of the construction workers and the pedestrians and vehicles passing through the area, the Declarant shall prepare Maintenance and Protection of Traffic ("MPT") plans for any required staging area, temporary sidewalk, lane, and/or street closures. Approval of these plans and implementation of the closures would be coordinated with New York City Department of Transportation ("DOT")'s Office of Construction Mitigation and Coordination ("OCMC"). Measures specified in the MPT plans that are anticipated to be implemented would include parking lane closures, safety signs, safety barriers, and construction fencing. Declarant shall submit a MPT to DOT for review and approval, which shall not be unreasonably withheld or delayed, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.
- b. Declarant shall employ a number of measures to ensure public safety during the construction of the Development Project, including the erection of sidewalk bridges to provide overhead protection; safety signs to alert the public about active construction work; safety barriers to ensure the safety of the public passing by the project construction areas; and flag persons to control trucks entering and exiting the project construction areas and/or to provide guidance for pedestrians and bicyclists safety.
- c. A pest management program shall be implemented to reduce the presence of rodents at and near the project site. Prior to the start of construction, Declarant shall cause its contractor to bait appropriate areas of the project site, using only United States Environmental Protection Agency ("EPA") and New York State Department of Environmental Conservation ("DEC")-registered rodenticide. During construction, the contractor would carry out a maintenance program, as necessary. Signage would be posted, and coordination would be conducted with the appropriate public agencies.
- d. To avoid inadvertent demolition and/or construction-related damage from ground-borne construction period vibrations, falling debris, collapse, etc. on nearby historic resources, Declarant shall prepare a Construction Protection Plan ("CPP") for historic resources. The CPP would include one or more of the following buildings at such time in which construction is proposed with ninety (90) feet of such building(s): Bush Terminal Historic Buildings 1–10, 19, 20, 22–26, and Building B. The CPP would include provisions for preconstruction inspections, monitoring the buildings for cracks and movement, installation of physical protection as appropriate at the Bush Terminal buildings, and provisions for stopping work as appropriate if monitoring thresholds are exceeded or damage occurs to any of the affected Bush Terminal Historic District Buildings. The CPP would be prepared in coordination with the New York City Landmarks Preservation

Commission and implemented in consultation with a licensed professional engineer. Declarant shall not seek or accept demolition, excavation, or building Permits for any structure proposed with ninety (90) feet of an above-referenced building until LPC certifies to the New York City Department of Buildings (“DOB”) that the Declarant has submitted an approved CPP.

(b) **PCRE Measures Related to Construction-Period Air Quality.** To reduce air pollutant emissions during construction, Declarant agrees to implement the following PCRE measures to the extent feasible and practicable.

- a. **Dust Control.** All measures required by the New York City Department of Environmental Protection (“DEP”) Construction Dust Rules regulating construction-related dust emissions shall be implemented. The rules require implementation of a dust control plan including a robust watering program. All trucks hauling loose material shall be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Subject Property; and water sprays shall be used for all demolition, excavation, and transfer of soils to ensure that materials are dampened as necessary to avoid the suspension of dust into the air. Loose materials shall be watered, stabilized with a chemical suppressing agent, or covered.
- b. **Idling Restriction.** In accordance with Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code, the local law restricting unnecessary idling on roadways, vehicle idle time shall be restricted to three (3) minutes, except for vehicles using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.
- c. **Clean Fuel.** In accordance with diesel fuel standards established by the EPA, (40 Code of Federal Regulations 80, Subpart I) and the Rules of the New York City, ultra-low sulfur diesel shall be used exclusively for all diesel on-road and non-road engines.
- d. **Diesel Equipment Reduction.** In accordance with the New York City Noise Control Code (the “Noise Code”), electrically powered equipment shall be preferred over diesel-powered and gasoline-powered versions of that equipment to the extent practicable. Equipment that uses the grid power in lieu of diesel engines includes, but may not be limited to, hoists, the tower cranes that would be employed during construction, and small equipment such as welders.
- e. **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 Tier 4 or 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.

- f. **Best Available Tailpipe Reduction 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 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 shall utilize DPFs to the extent practicable, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by the EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used.

(c) **PCRE Measures Related to Construction-Period Noise.** To minimize noise emissions during construction, Declarant agrees to implement the following PCRE measures to the extent feasible and practicable:

- a. In terms of source controls (i.e., reducing noise levels at the source or during the most sensitive time periods), at a minimum, the following measures would be implemented in accordance with the New York City Noise Code:
 - i. Equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code would be utilized from the start of construction;
 - ii. Where feasible and practicable, construction sites would be configured to minimize back-up alarm noise. In addition, trucks would generally not be allowed to idle more than three minutes at the construction site as mandated by Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code; and
 - iii. Contractors and subcontractors would be required to properly maintain their equipment and mufflers.
- b. In addition to noise control measures required by the New York City Noise Control Code, construction of the Development Project would include the following path controls to the extent feasible and practicable:
 - i. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations.
 - ii. As early in the construction period as logistics would allow, diesel- or

gas-powered equipment would 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.

- iii. Noise barriers constructed from plywood or other materials would be utilized to provide shielding (e.g., the construction sites would have a minimum 8-foot barrier);
- iv. Where logistics allow, truck deliveries would take place behind the noise barriers; and
- v. Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) would be used for certain dominant noise equipment to the extent feasible and practical based on the results of the construction noise calculations. The details to construct portable noise barriers, enclosures, tents, etc. are shown in DEP's "Rules for Citywide Construction Noise Mitigation."

(d) Mitigation Measures Relating to Historic and Cultural Resources.

- a. To partially mitigate the impacts of demolishing the three story-factory building at 116 39th Street (Block 706, Lot 20), in the event the Declarant obtains an ownership interest in this lot and this Declaration is amended to reflect such ownership interest and the enlargement of the boundaries of the Subject Property, Declarant will complete a Historic American Buildings Survey (HABS) Level II documentation of the factory building prior to any demolition of this building by Declarant. The HABS documentation would be provided to LPC and to an appropriate local repository.
- b. At such time that specific designs for the proposed Gateway Building and/or Building 11, as defined in the FEIS, are advanced, the Declarant shall share with LPC renderings of the proposed building(s). Design plans shall be submitted at the preliminary (35%) and pre-final (75%) completion stages for LPC staff-level comment for the purposes of resolving or reducing potential impacts on cultural resources. The Declarant shall also submit the final design for LPC review. If, following review, LPC staff determines that the scale and/or design of the proposed buildings are still out of context with the neighboring Finger Buildings within the Bush Terminal Historic District, the impact would remain unmitigated.

Mitigation Measures Relating to Subway Transit. In an effort to redistribute future Industry City subway ridership to other nearby stations and lessen the potential impact on the 36th Street station, prior to obtaining a certificate of occupancy (temporary or permanent) for more than 245,000 square feet of academic use in the Development Project, the Applicant shall expand the free subway shuttle bus service it currently

provides to the 36th Street station, to the adjacent subway stops at 25th Street and 45th Street.

- (e) **Mitigation Measures Relating to Bus Transit.** To mitigate impacts to bus routes in the vicinity of the Development Project, Declarant shall fund, and work with NYCT to implement, the installation of new bus shelters with real-time bus arrival information at: two B35/B70 eastbound bus stops located along 39th Street; one located between 1st Avenue and 2nd Avenue; and one located at the southeast corner of 2nd Avenue and 39th Street.
- (f) **Mitigation Measures Relating to Traffic and Pedestrians.** Declarant shall cooperate with DOT to implement the Mitigation Measures related to pedestrians and to operational and construction-period traffic specified in the FEIS (e.g., crosswalk widening, street furniture modifications and/or relocations, signal timing changes and lane restriping). To the extent required by DOT, Declarant shall comply with DOT requirements necessary to implement the Mitigation Measures specified in the FEIS or measures having comparable benefits as specified by DOT. Declarant shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT for the ordinary and customary costs of implementing such improvements (including but not limited to the costs of the design and construction of such improvements).
- (g) **Mitigation Measures Relating to Air Quality.** To ensure that there are no potential significant adverse impacts of air toxic compounds from specific use groups in the project, the site would be subject to the following restrictions²:
 - a. Use restrictions on Block 679, at the portion of Lot 1 within 130 feet west of 3rd Avenue; Block 683, Lot 1; Block 687, Lot 1; Block 691, Lot 1 and 44; Block 695, Lots 1 and 20; Block 706, Lots 1 and 24; and Block 710, Lot 1:
 - i. For the use category of glass or large glass products, including structural or plate glass or similar products: emissions of particulate matter are prohibited.
 - ii. For the use category of metal or metal ores, reduction, refining, smelting, or alloying: emissions of trichloroethylene, tetrachloroethylene, sulfuric acid, nickel chloride, nickel sulfate, nitrogen dioxide, benzidine, cadmium oxide, arsenic, cadmium, sodium nitrite, sodium dichromate, and chromic acid are prohibited.
 - iii. For the use category of metal alloys or foil, miscellaneous, including solder, pewter, brass, bronze, or tin, lead or gold foil, or similar products:

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Sources of air toxic emissions that require an air permit must be discharged at a minimum height of 60 feet above grade.

emissions of lead and cadmium are prohibited.

- iv. For the use category of metal casting or foundry products, heavy, including ornamental iron work, or similar products, emissions of zinc oxide are prohibited.
 - v. For the use category of plastic, raw: emissions of formaldehyde, phosphoric acid, vinyl chloride, butyl benzyl phthalate, acrylonitrile, dioctyl phthalate, and chromic acid are prohibited.
 - vi. For the use category of rubber, natural or synthetic, including tires, tubes, or similar products: emissions of formaldehyde, nickel oxide, ammonia, zinc oxide, and chromic acid are prohibited.
 - vii. For the use category of soaps or detergents: emissions of particulate matter are prohibited.
 - viii. For the use category of steel, structural products, including bars, girders, rails, wire rope, or similar products: emissions of formaldehyde, trichloroethylene, glycol ethers, tetrachloroethylene, nickel, and chromic acid are prohibited.
 - ix. For the use category of stone processing or stone products, including abrasives, asbestos, stone screenings, stone cutting, stone work, sand or lime products, or similar processes or products: emissions of particulate matter are prohibited.
- b. Building restrictions:
- i. Finger Building 1: Exhaust stack for industrial uses on Building 1 must be at least 120 feet from the eastern lot line facing 3rd Avenue.
 - ii. Finger Building 2: Exhaust stack for industrial uses on Building 2 must be at least 140 feet from the eastern lot line facing the 3rd Avenue.
 - iii. Finger Building 3: Exhaust stack for industrial uses on Building 3 must be at least 120 feet from the lot line facing the 3rd Avenue.
 - iv. Finger Building 8: Exhaust stack for industrial uses on Building 8 are prohibited from locating within either areas as defined by:
 - 1. Within 40 feet of the northern lot line facing 33rd Street and within 210 feet of the lot line facing 2nd Avenue; or
 - 2. Within 40 feet of the northern lot line facing 33rd Street and

within 240 feet of the lot line facing 3rd Avenue.

- v. Building 21: Exhaust stack for industrial uses on Building 21 must be located above the tallest portion of the building roof.
 - vi. Building 22: Exhaust stack for industrial uses on Building 22 must be at least 70 feet from the eastern lot line facing the 1st Avenue.
 - vii. Building 26: Exhaust stack for industrial uses on Building 26 must be at least 70 feet from the eastern lot line facing the 1st Avenue.
- (h) **Mitigation Measures Relating to Noise.** To mitigate the project's predicted noise impacts to the building at 166 41st Street, through-window air conditioning units will be offered by the Applicant to apartments within this building that do not already have an alternate means of ventilation (i.e. air conditioning)
- (i) **Mitigation Measures Relating to Construction-Period Noise.** To mitigate the Development Project's predicted construction-period noise impacts to the building at 968 3rd Avenue, through-window air conditioning units will be offered by the Applicant to apartments within this building that do not have alternate means of ventilation (i.e. air conditioning). To mitigate the Development Project's construction-period noise impacts to Industry City Buildings 9 and 10, a minimum of 28 dBA window/wall attenuation will be provided for newly introduced academic spaces in these buildings, as well as an alternate means of ventilation (i.e. air conditioning).
5. Appointment and Role of independent Monitor.
- (a) Declarant shall, with the consent of DCP, retain an independent third party (the "Monitor") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the PCRE measures related to construction of the Project required under Section 4(a) of this Declaration (the "PCREs"). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the PCREs. DCP shall advise Declarant of its approval, which approval shall not be unreasonably withheld or conditioned, 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.
- (b) 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. Such Monitor Agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of

Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant); (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement, following a fifteen (15)-day Notice period by DCP to Declarant and the failure of Monitor to correct or remedy the unsatisfactory activity; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed.

If DCP shall fail to act upon a proposed Monitor Agreement within fifteen (15) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to commencement of construction of any New Building or Enlargement (as defined in the Zoning Resolution) at the Subject Property (hereinafter defined as "Construction Activities") (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that Construction Activities are occurring on the Subject Property until issuance of the first TCO for any portion of Construction Activities, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 5.

If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any Construction Activities until it shall have retained a new Monitor in compliance with the provisions of this Section.

- (c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying PCREs in connection with determinations required under this Declaration as a prerequisite to the commencement of Construction Activities; (ii) provide reports of Declarant's compliance with the PCREs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the PCREs. The Monitor may at any time also provide Declarant and DCP with Notice of a determination that a PCRE has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such Notice shall be delivered to both parties. If the

Monitor has provided DCP with such Notice of a determination and supporting documentation that a PCRE has not been implemented, the Monitor shall have the following additional oversight rights (collectively, “Additional Oversight Rights”): (x) Monitor shall have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law or the construction manager’s safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable Notice and during normal business hours, Monitor shall be provided with access to all books and records of Declarant pertaining to both the PCREs alleged not to have been implemented and the applicable portion of the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) Monitor shall be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant’s implementation and performance of the PCREs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant’s construction activities and use of the Subject Property by the occupants of and visitors; and (r) conducted in a manner that will minimize any interference with the Proposed Development. 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 5, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

- (d) Subject to compliance with all generally applicable site safety requirements or the construction manager’s safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant’s implementation and performance of the PCREs; provided, however, that any such inspections shall be (i) coordinated with Declarant’s construction activities and use of the Subject Property by the occupants of and visitors to the Subject Property, and (ii) conducted in a manner that will minimize any interference with or delay of construction of, or create any safety hazard at, the Proposed Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not unreasonably delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency). Notwithstanding the foregoing, Declarant shall not be obligated to provide DCP or any other City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarant (such as individual condominium units).

- (e) Declarant shall be responsible for payment of all commercially reasonable fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 5(b)) in accordance with the terms of the Monitoring Agreement.
- (f) If DCP determines, based on information provided by the Monitor and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a PCRE (hereinafter a “PCRE Default”), DCP may thereupon give Declarant written Notice of such alleged violation (each, a “PCRE Default Notice”), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 12. Notwithstanding any provisions to the contrary contained in Section 13(c) of this Declaration, following receipt of a PCRE Default Notice, Declarant shall: (i) effect a cure of the alleged violation within thirty (30) days; (ii) seek to demonstrate to DCP in writing within fifteen (15) days of receipt of the PCRE Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within fifteen (15) days of receipt of the PCRE Default Notice that a cure period greater than thirty (30) days would not be harmful to the environment or that the required cure cannot be accomplished within thirty (30) days (such longer cure period, a “Proposed Cure Period”). If DCP accepts within two (2) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall provide written Notice of their withdrawal the PCRE Default Notice pursuant to the Notice requirements set forth in Section 13 hereof and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the “New Cure Period”), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the thirty (30) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP’s satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP’s request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarant is unable to reasonably satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor, and DCP are unable to agree upon a method for curing the violation within a time period reasonably acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant’s performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation, subject to the cure provisions of Section 13(c) hereof. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

6. Development of Publicly Accessible Open Space. Declarant hereby covenants and agrees that in the event that Declarant is conveyed a leasehold interest in a portion of the parcel of land designated as Block 662, Lot 1 on the Tax Map (the “**Building-24-Adjacent Apron**”), as is more particularly described in a metes and bounds description attached hereto as **Exhibit [E]**, Declarant shall be subject to the following restrictions:

(a) Prior to the issuance of any certificate of occupancy (temporary or permanent) that would permit the building located at 3915 1st Avenue (Block 706, Lot 24) (“**Building 24**”) to be comprised of uses that are not “predominantly” (as that term is defined in Section 62-11 of the Zoning Resolution) uses within Use Groups 16, 17 and/or 18 of the Zoning Resolution Declarant shall be required to construct publicly accessible open space (the “**PAA Space**”) on the **Building-24-Adjacent Apron** and the unbuilt-upon portion of parcel of land on which the building at 3915 1st Avenue (Block 706, Lot 24) is located that meets the following requirements:

1. The minimum area of such PAA Space shall be 10,000 square feet
2. The PAA Space shall be directly accessible from an open street, public park or other public place;
3. The PAA Space shall contain a minimum of 100 linear feet of seating;
4. A minimum of 20 percent of such PAA Space shall be landscaped with in-ground or raised planters, planting beds, shrubs, trees, and/or groundcover;
5. The PAA Space shall comply with the illumination requirements set forth in Section 37-743 of the Zoning Resolution

(b) Declarant shall not seek, nor shall DOB grant a permit to allow a development, enlargement or change of use pursuant to subsection (a) of this Section 6 unless and until the Chair certifies to Declarant and DOB that the design of the PAA Space expressed in drawings submitted to the Chair demonstrates compliance with the requirements of Section 6(a) (the “PAA Certification”)

- (i) The PAA Certification may be made only upon the written approval of the Chair, which approval shall not be unreasonably withheld or delayed.
- (ii) Within forty-five (45) days of such submission, the Chair shall either (A) issue the PAA Certification, or (B) notify Declarant in writing of any lacking Section 6 requirements, in which case Declarant shall submit revised PAA Certification Plans which shall address such defects, and, if such defects are addressed, the Chair shall issue the PAA Certification within fifteen (15) days after receipt thereof.

(c) Notwithstanding the requirements set forth in Section 6(a), the design of any portions of the PAA Space subject to review and approval of the NYC Public Design Commission (“**PDC**”) shall be in accordance with the PDC approval and the requirements of Section 6(a) may be reduced or modified by the PDC.

(d) Declarant shall execute and record a declaration of restrictions as well as a maintenance and operation agreement with the City of New York, indexed against the Subject Property, binding the owners, successors and assigns to provide and maintain the PAA Space in accordance with the requirements of this Section 6, the drawings of the PAA Space certified by the Chair of CPC and reviewed and approved by the PDC, and other design or maintenance standards detailed in such declaration of restrictions and/or maintenance and operations agreement.

7. Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property pursuant to the Special Permit as set forth herein.

8. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided, however, that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as Declarant or any successor to Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability 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 a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

9. Recordation. Declarant shall file and record this Declaration in the Office of the City Register of the City of New York (the "City Register") indexing it against the Subject Property on or after the date of final approval of the Land Use Applications in accordance with the process pursuant to Section 197-a of the New York City Charter (the "Land Use Approvals Date"). Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so record this Declaration by the Land Use Approval Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by CPC shall be borne by Declarant.

10. Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 9 above.

11. Invalidity.

(a) Notwithstanding anything to the contrary in this Declaration, if the Special Permit is at any time declared invalid or is otherwise voided by 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 entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarant and shall be of no further force or effect and CPC shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect.

12. Notice. All notices, demands, requests, consents, approvals, and other communications (each, a “**Notice**”) which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

- (i) if to Declarant:
Andrew Kimball
Chief Executive Officer
Industry City
220 36th Street, 2nd Floor
Brooklyn, NY 11232

with a copy to:

Jesse Masyr, Esq.
Fox Rothschild LLP
101 Park Avenue, 17th Floor
New York, NY 10178

- (ii) if to CPC:

New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attention: Chairperson

with a copy to:

the General Counsel of CPC at the same address

- (iii) if to a Party-in-Interest other than Declarant:
at the address provided in writing to CPC in

accordance with this Section 12

- (iv) if to a Mortgagee (defined below):
at the address provided in writing to CPC in accordance with this Section 12.

Declarant, CPC, any Party-in-Interest, and any Mortgagee may, by Notice provided in accordance with this Section 12, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to any of the Declarants shall also be sent to every Party-in-Interest of whom CPC has notice, and no Notice shall be deemed properly given to any Declarant without such notice to such every other Party-in-Interest. Any Notice from the CPC shall be provided to all Declarants of whom CPC has notice.

13. Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City of New York (the “City”) and the general public. If Declarant fails to perform any of Declarant’s obligations under this Declaration, the City shall have the right to enforce this Declaration solely 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 shall be subject to the cure provisions and periods set forth in Section 13(c) 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 certificate of occupancy, temporary or permanent, for any portion of the Development Project on the Subject Property subject to the Special Permit; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

(b) Notwithstanding any provision of this Declaration, only the Declarant and its successors and assigns and the City, acting through CPC, 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 or entity 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 approval of the Land Use Applications.

(c) Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give Declarant, every mortgagee of all or any portion of the Subject Property (a “**Mortgagee**”) and every Party-in-Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party-in-Interest and Mortgagee shall have the opportunity, but not the obligation to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. 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 or entity benefited hereunder, including CPC and the City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended 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. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to Declarant from whom the City has received notice in accordance with Section 13 hereof, and the right to cure shall apply equally to all Declarants.

(d) 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 violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 13 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.

(e) Uncontrollable Circumstances.

(i) In the event that, as the result of Uncontrollable Circumstances, Declarant is unable to perform or complete any obligation under this Declaration (A) at the time or times required by this Declaration; (B) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (C) if required by this Declaration, prior to submitting an application for a building permit for the Development Project or other permit or certificate of occupancy (TCO or PCO) which is tied to the completion of such requirement, where applicable, Declarant shall promptly, but in no event later than thirty (30) days, after the occurrence of Uncontrollable Circumstances becomes apparent, so notify the Chair of CPC in writing. Such notice (the “Delay Notice”) shall include

a description of the Uncontrollable Circumstances, their cause and probable duration, and the steps proposed to be taken by Declarant to mitigate the effects of the Uncontrollable Circumstances. In the exercise of his or her reasonable judgment the Chair of CPC shall, within thirty (30) days of its receipt of the Delay Notice (A) certify in writing that the Uncontrollable Circumstances have occurred; or (B) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstances have occurred. Upon a certification that Uncontrollable Circumstances have occurred, the Chair of CPC may grant Declarant appropriate relief and, as a condition thereto, may require that Declarant post a bond, letter of credit or other reasonable security in a form reasonably acceptable to the City in order to ensure that the obligation will be completed in accordance with the provisions of this Declaration.

(ii) Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, Declarant shall promptly recommence the work or implement the measure needed to complete the obligation, in accordance with any applicable directive of the Chair of CPC previously issued in connection with a grant of relief, unless an alternative has been specified and agreed to in accordance with this Section 13(e).

(iii) “Uncontrollable Circumstances” shall mean occurrences beyond Declarant’s reasonable control, and for which Declarant has taken all steps within Declarant’s control reasonably necessary to control or minimize, which cause delay in the performance of obligations under this Declaration, including, without limitation, delays resulting from (A) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls); (B) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property); (C) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems); (D) acts of God (including severe weather conditions); (E) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire or other casualty; (F) a taking of the whole or any relevant portion of the Subject Property by condemnation or eminent domain; (G) soil conditions that could not have been foreseen that substantially delay construction of any relevant portion of the Subject Property or substantially impair the ability to develop the Subject Property in the manner contemplated by this Declaration; (H) denial to Declarant by any party of a right of access to any adjoining real property or to the Subject Property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration;

(I) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; and, (J) any extraordinary material delay by any department or agency of the City, State of New York or United States government in the issuance of approvals required in order to permit Declarant to carry out its obligations under this Declaration that is not caused by any act or omission of the Declarant, as determined by the Chair of CPC in accordance with this Section 13(e). In no event shall any of the following constitute Uncontrollable Circumstances: (A) failure to obtain or timely obtain financing, (B) removal of hazardous substances or (C) the inability to (1) pay a sum of money or (2) obtain or timely obtain any approval or cooperation of a mortgagee.

14. Applications.

(a) Declarant shall include a copy of this Declaration and a copy of the Master Zoning Table, signed by a registered Architect or Engineer and substantially in the form at attached hereto as **Exhibit F**, with any application made to the DOB for a foundation, new building, or Alteration Type 1 permit (a “**Permit**”) for any portion of the Development Project subject to the Special Permit.

(b) Nothing in this Declaration shall be construed to prevent either Declarant or any of Declarant’s successors or assigns from making any application of any sort to any governmental agency or department (each an “**Agency**”) in connection with the development of the Subject Property; provided that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 14(b) shall be construed as superceding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

15. Surrender. In the event that Declarant does not construct the Development Project pursuant to the Special Permit, Declarant may surrender the Special Permit to CPC, and Declarant may proceed with any use or development of the Subject Property permitted by the Zoning Resolution as if such Special Permit had not been granted. In the event of such a surrender of the Special Permit, any reference in this Declaration to the Special Permit shall be automatically severed from the remainder of this Declaration and cancelled without further action by Declarant. Such severed and canceled references to the Special Permit shall be of no further force or effect and CPC shall, if requested by any Declarant, provide such Declarant with a letter in recordable form stating that the any such reference in this Declaration to the Special Permit has been so canceled and is of no further force and effect.

16. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding

to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the contrary contained in Section 16(a) hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC. Any modification of the PAA Space requirements of Section 6 of this Declaration shall be a minor amendment of this Declaration.

17. Severability. In the event that any of the provisions of the Declaration shall be 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.

18. Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.


19. Failure to Comply. Declarant acknowledges that failure to comply with the terms of this Declaration may constitute the basis for a denial of a certificate of occupancy (permanent or temporary), or revocation thereof, or constitute grounds for CPC to disapprove any application for a modification or amendment of this Declaration.

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


SIGNATURE PAGES FOLLOW

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

1-10 BUSH TERMINAL OWNER LP

By:  _____
Name:
Title:

19-20 BUSH TERMINAL OWNER LP

By:  _____
Name:
Title:

ACKNOWLEDGEMENT

State of New York)
) ss:
County of New York)

On ____ day of _____, 2019 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 entity upon behalf of which the individual acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT

State of New York)
) ss:
County of New York)

On ____ day of _____, 2019 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 entity upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

Legal Description of Subject Property

EXHIBIT B

Title Company Certificate of Parties-in-Interest

[Attached]

EXHIBIT C

Waiver

[Attached]

EXHIBIT D

Plans

[Attached]

EXHIBIT E

Description of Building-24-Adjacent Apron


EXHIBIT F

Master Zoning Table


[Attached]

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

1-10 BUSH TERMINAL OWNER LP

By: 
Name: Andrew Kimball
Title: CEO

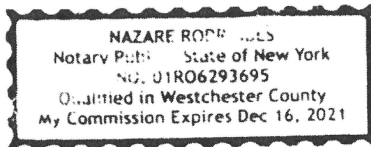
19-20 BUSH TERMINAL OWNER LP

By: 
Name: Andrew Kimball
Title: CEO

ACKNOWLEDGEMENT

State of New York)
) ss:
County of New York)

On 19th day of August, ~~2019~~ ²⁰²⁰ before me, the undersigned, a notary public in and for said state, personally appeared Andrew Kimball, 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 entity upon behalf of which the individual acted, executed the instrument.

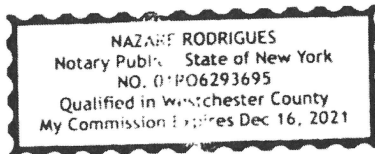


Nazare Rodrigues
Notary Public

ACKNOWLEDGEMENT

State of New York)
) ss:
County of New York)

On ____ day of _____, 2019 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 entity upon behalf of which the individual acted, executed the instrument.



Nazare Rodrigues
Notary Public