



## CITY PLANNING COMMISSION

April 22, 2009 / Calendar No. 18

C 050260 ZSM

**IN THE MATTER OF** an application submitted by Fordham University pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 82-33 of the Zoning Resolution to modify:

- a. the height and setback requirements of Section 23-632 (Front setbacks in districts where front yards are not required);
- b. the inner and outer court regulations of Section 23-841 (Narrow outer courts), Section 23-843 (Outer court recesses), Section 23-851 (Minimum dimensions of inner courts), Section 23-852 (Inner court recesses), Section 24-632 (Wide outer courts), Section 24-633 (Outer court recesses), Section 24-652 (Minimum distance between required windows and certain walls), and Section 23-863 (Minimum distance between legally required windows and any wall in an inner court);
- c. the minimum distance between buildings on a zoning lot requirements of Section 23-711 (Standard minimum distance between buildings); and
- d. the minimum distance between legally required windows and zoning lot lines requirements of Section 23-861 (General Provisions);

in connection with the proposed expansion of Fordham University, Lincoln Center Campus, bounded by Amsterdam Avenue, West 62<sup>nd</sup> Street, Columbus Avenue, West 60<sup>th</sup> Street, Amsterdam Avenue, West 61<sup>st</sup> Street, a line 200 feet easterly of Amsterdam Avenue, and a line 90 feet southerly of West 62<sup>nd</sup> Street (Block 1132, Lots 1, 20, and 35), in a C4-7 District, within the Special Lincoln Square District, Community District 7, Borough of Manhattan.

This application for a special permit was filed by Fordham University on January 19, 2005, to facilitate the construction of a master plan development consisting of approximately 1.53 million square feet of community facility floor area and 700,000 square feet of residential floor area on the block bounded by Columbus Avenue, Amsterdam Avenue, West 60<sup>th</sup> Street, and West 62<sup>nd</sup> Street in Manhattan Community District 7.

## RELATED ACTIONS

In addition to the application for a special permit which is the subject of this report (C 050260 ZSM), implementation of the proposed project also requires action by the City Planning

Commission on the following applications which are considered concurrently with this application:

- C 050269 ZSM** Special permit pursuant to Sections 82-50 and 13-561 to allow an accessory parking garage with a maximum of 68 spaces
- C 050271 ZSM** Special permit pursuant to Sections 82-50 and 13-561 to allow an accessory parking garage with a maximum of 137 spaces (pursuant to Section 11-42(c), additional time to complete the garage is also requested)
- C 090173 ZSM** Special permit pursuant to Sections 82-50 and 13-561 to allow an accessory parking garage with a maximum of 265 spaces
- N 090170 ZRM** Zoning text amendment to Section 82-50 (Off-Street Parking and Off-Street Loading Regulations, Special Lincoln Square District) to clarify the regulations regarding curb cuts on wide streets for off-street loading berths
- N 090171 ZAM** Authorization pursuant to Section 13-553 to allow a curb cut on a wide street (West 62<sup>nd</sup> Street) to provide access to two accessory parking garages
- N 090172 ZAM** Authorization pursuant to Sections 82-50(b) (as amended) and 13-553 to allow a curb cut on a wide street (West 62<sup>nd</sup> Street) to provide access to off-street loading berths

## **BACKGROUND**

The applicant, Fordham University, proposes a long-term master plan for the expansion of its Lincoln Center Campus. The existing 6.9-acre campus occupies most of a superblock bounded by Columbus and Amsterdam Avenues and West 60<sup>th</sup> and 62<sup>nd</sup> Streets in Manhattan Community District 7. The applicant acquired the subject site from the City in 1957 as part of the Lincoln Square Urban Renewal Plan and constructed a campus that houses its School of Law, several graduate schools, an undergraduate college, part-time and adult courses, and a dormitory.

### **Site Description and History**

In the 1950s, Fordham became part of the planning process advanced by Robert Moses for the

creation of a new urban renewal area on the West Side of Manhattan, which became the Lincoln Square Urban Renewal Area. The resulting Lincoln Square Urban Renewal Plan, approved in 1957 and expired in 1997, called for the creation of the current superblock and the disposition of most of the superblock to Fordham for the development of a new law school and other university buildings. The Urban Renewal Plan also facilitated the creation of Lincoln Center for the Performing Arts, the Lincoln Towers housing development, and a new headquarters for the American Red Cross (currently under redevelopment). The Law School building opened in 1961, followed by Lowenstein Hall in 1969 and McMahon Hall in 1993. The Urban Renewal Plan expired in 1997, and the associated land use controls no longer control the subject site.

In 1989, the Board of Estimate approved an amendment to the Lincoln Square Urban Renewal Plan (C 880802 HUM) to permit the construction of a 41-story residential tower at the corner of Amsterdam Avenue and West 62<sup>nd</sup> Street (Block 1132, Lot 35). Carol Management Corporation, then the owner of The Alfred, a separate residential tower constructed the previous year on the superblock, proposed to purchase the site from Fordham, which would use the proceeds to fund the construction of a new dormitory. The Commission also approved a related special permit application (C 880544 ZSM) for a 163-space public parking garage and enlargement of an existing curb cut serving loading berths on West 60<sup>th</sup> Street. Fordham did not proceed with the disposition of Lot 35, and the proposed residential tower was never constructed (the public parking garage was constructed).

The subject site is located on a superblock (Block 1132) bounded by Amsterdam and Columbus Avenues and West 60<sup>th</sup> and 62<sup>nd</sup> Streets. The Fordham Lincoln Center Campus comprises Lots 1, 20, and 35 and has a total area of 302,038 square feet, or approximately 6.9 acres. Lot 30, the site of a 402-foot residential condominium tower, the Alfred, and an unimproved open area, is not part of the subject site.

This superblock is surrounded entirely by wide streets. Amsterdam and Columbus Avenues (Tenth and Ninth Avenues below West 59<sup>th</sup> Street, respectively) are 100 foot-wide, one-way arterial streets with four lanes of northbound (Amsterdam) and southbound (Columbus) traffic

and curbside parking. West 60<sup>th</sup> and 62<sup>nd</sup> Streets are 80-foot-wide, two-way local streets; West 60<sup>th</sup> Street has curbside parking and at present is temporarily operating as a one-way eastbound street due to construction of an access shaft to the Third City Water Tunnel at West 60<sup>th</sup> Street and Amsterdam Avenue. West 61<sup>st</sup> Street, a 60-foot-wide, one-way local street carrying eastbound traffic, extends approximately 250 feet into the superblock from Amsterdam Avenue and terminates in a cul-de-sac. This street formerly continued through the block until the portion east of the present cul-de-sac was de-mapped under the Urban Renewal Plan and incorporated into the site that was subsequently conveyed to Fordham.

The Lincoln Center Campus currently consists of three buildings with a total floor area of 791,075 square feet, which results in an existing FAR of 2.62. The Law School building, located on the midblock of West 62<sup>nd</sup> Street near Columbus Avenue, has 145,688 square feet of floor area and a maximum height of 62 feet. Lowenstein Hall is located along the midblock of West 60<sup>th</sup> Street and houses the Graduate Schools of Business Administration, Social Services, and Education as well as Fordham College at Lincoln Center. It contains 374,731 square feet of floor area (including the podium, described below) and rises to a height of 185 feet. McMahon Hall, located on West 60<sup>th</sup> Street just west of Lowenstein Hall, is an undergraduate and graduate dormitory with 270,656 square feet of floor area and a maximum height of 191 feet. The total lot coverage of these buildings is 22.5 percent. There is 2,229,405 square feet of unused floor area on the applicant's zoning lot.

The campus buildings are connected by a large, one-story structure known as the "podium." Approximately 21 feet high, the podium runs along West 60<sup>th</sup> Street, comprising the ground floor of Lowenstein Hall and presenting a mostly blank wall to the street, sets back 85 feet from Columbus Avenue, and covers much of the central portion of the campus. The podium provides internal circulation between buildings for pedestrians and freight and includes the university bookstore, an arts complex, student activities space, and other academic and student support facilities, as well as building mechanical systems. The area of the podium in the center of the superblock houses the campus' Quinn Library, while the eastern portion contains the Pope Auditorium.

On top of the podium is an approximately 1.5-acre landscaped, elevated plaza that is open to the public from 9 am to 6 pm daily. The plaza is accessed via an elevator and stair adjacent to the main university entrance at Columbus Avenue and West 60<sup>th</sup> Street and via another stair on West 62<sup>nd</sup> Street just west of the Law School, as well as from the campus buildings. Just north of the main entrance along Columbus Avenue is a gravel lot with parking for approximately 30 cars. North of this parking lot is a grassy area surrounded by fencing and containing several large sculptures. A small landscaped garden exists along the northern edge of the campus west of the 62<sup>nd</sup> Street stair. The northwest portion of the campus is undeveloped and periodically leased by the University to non-university groups for events. The southwest corner of the campus, between West 60<sup>th</sup> and 61<sup>st</sup> Streets at Amsterdam Avenue, contains several tennis courts and a basketball court used primarily by Fordham students and students of several local schools. There are two existing curb cuts: one on Columbus Avenue aligned with West 61<sup>st</sup> Street providing access to the surface parking and the podium corridors for loading purposes, and the other approximately 275 feet east of Amsterdam Avenue providing access to the campus loading berths.

### **Area Description**

The subject site is located in the Lincoln Square district of Manhattan's West Side, a densely populated, mixed-use area with a number of significant community facility uses. The Lincoln Square district is generally bounded by West 68<sup>th</sup> Street to the north, Central Park to the east, West 60<sup>th</sup> Street to the south, and Amsterdam Avenue to the west. The area is distinguished in part by several superblocs, many created by the Lincoln Square Urban Renewal Plan, and its building stock consists primarily of postwar and contemporary buildings west of Broadway and Columbus Avenue, with historic brownstones and prewar apartment buildings more common on the midblocks to the east and along Central Park West. South of Lincoln Square, the Clinton neighborhood consists largely of late 19<sup>th</sup>- and early 20<sup>th</sup> century tenement buildings, with some high-rise residential buildings located on the avenues and a concentration of light industrial, television studio, and auto-related uses to the west. To the north, the Upper West Side is characterized by a mix of older brownstones located on the midblocks with mid-rise residential

buildings and ground-floor retail uses located on some of the avenues and along Broadway.

The district's principal street, Broadway, connects Lincoln Square itself with Columbus Circle and includes residential, hotel, and commercial office uses with ground-floor retail. To the east of the Fordham campus, high-rise residential buildings line Broadway and Columbus Avenue. Among three such buildings immediately opposite the campus on Columbus Avenue, the Art Deco Sofia Apartments (1930) is an individual New York City landmark. To the north, the 16-acre campus of Lincoln Center for the Performing Arts draws roughly five million visitors annually to performances by its 12 constituent organizations, which include the Juilliard School. Immediately to the north across West 62<sup>nd</sup> Street is the David H. Koch Theater (formerly the New York State Theater) and Damrosch Park, a 2.4-acre open space featuring a band shell and operated by the Department of Parks and Recreation.

The applicant's environs to the west across Amsterdam Avenue include Amsterdam Houses, a 13-building tower-in-the-park housing complex constructed in 1947 and operated by the New York City Housing Authority, and Public School 191 / Middle School 248. Residential towers and a growing number of retail uses line Amsterdam Avenue to the north, while to the south are John Jay College of Criminal Justice (currently undergoing its own expansion) and Roosevelt Hospital. Farther to the west, the Riverside South general large-scale development stretches from West 72<sup>nd</sup> to West 59<sup>th</sup> Streets and includes 10 high-rise residential buildings lining the partially-completed Riverside Park South; several more buildings are under construction or in design at the southern end of the development. High-rise residential towers dominate the blocks immediately south of the subject site, which also include the Church of St. Paul the Apostle (1885) at the northwest corner of Columbus Avenue and West 60<sup>th</sup> Street. To the southwest, the Time Warner Center at Columbus Circle marks the beginning of the Midtown central business district. Other community facility uses in the area include the Museum of Arts and Design, LaGuardia High School of Music & Art and the Performing Arts, the Martin Luther King, Jr. Educational Campus, and the Alvin Ailey American Dance Theater.

The area's major open space resources are Central Park, two blocks east of the Fordham campus,

and Riverside Park South and Hudson River Park to the west. The campus of Lincoln Center for the Performing Arts, which includes Damrosch Park, Josie Robertson Plaza, and North Plaza, is currently undergoing an extensive redevelopment program that includes the upgrading of its public spaces. Excellent access to transit is afforded by the nearby 59 Street-Columbus Circle and 66 Street-Lincoln Center subway stations as well as numerous bus lines on Broadway, the avenues, and major crosstown streets. Broadway hosts the area's major concentration of local and destination retail, including several cinemas and an upscale shopping mall in the Time Warner Center.

The area consists mostly of medium- and high-density residential and commercial zoning districts. The Special Lincoln Square District, which includes the subject site, was established in 1969 "to promote the character of the area as a unique cultural and architectural complex," among other purposes. The subject site itself lies with a C4-7 zoning district, which allows a Floor Area Ratio (FAR) of up to 10.0 for commercial, residential, and community facility uses. The maximum base FAR of 10.0 may be increased up to 12.0 with the provision of affordable housing under the Inclusionary Housing Program. This C4-7 district continues to the north, south, and east of the subject site; an R8 district (6.02 maximum FAR) is mapped along the west side of Amsterdam Avenue north of West 60<sup>th</sup> Street. The subject site is also subject to a "bulk packing" requirement under Section 82-34 (Bulk Distribution) of the Special District regulations, which specifies that at least 60 percent of the total floor area permitted on a zoning lot must be located below a height of 150 feet.

### **Proposed Project**

The applicant proposes to construct seven new buildings on the existing campus site, to be arranged mostly around the perimeter of the superblock. The proposed project as certified would include approximately 1.53 million square feet of new and replacement academic and dormitory floor area in six new buildings. In order to help fund the expansion, the applicant also proposes to sell or lease land for the development of two private residential developments with a total of approximately 700,000 square feet of floor area on the Amsterdam Avenue side of the superblock. Overall, the proposed project as certified would result in the construction of

2,229,405 square feet of floor area on the zoning lot, bringing the total floor area on the zoning lot, after the demolition of the existing Law School building and an interim lobby space, to 3,020,480 square feet. Total FAR with the proposed project as certified would be 10.0, the maximum allowed in this C4-7 district without a floor area bonus. 1,528,332 square feet of new floor area would be in academic or dormitory use, comprising new buildings for the School of Law and the Graduate Schools of Business Administration, Education, and Social Services (each with dormitories in the upper portions of their respective buildings) as well as the Quinn Library, a student center, and additional dormitories. The remaining 701,073 square feet of floor area would be allocated to the proposed residential use, which would consist of two towers located on Amsterdam Avenue at West 60<sup>th</sup> and 62<sup>nd</sup> Streets.

The landscaped plaza on the podium would be reconfigured to provide a more organized, quadrangle-like area connecting all of the proposed campus buildings and would have an area of at least 68,000 square feet (approximately 1.6 acres) following the reconfiguration. Two new below-grade accessory parking garages would serve residents of the private residential buildings, and a third accessory garage would provide parking for Fordham faculty and staff. The applicant envisions that the expansion plan would unfold in two broad phases – the first commencing following approval and lasting until at least 2014, and the second continuing at least through 2032. As part of the plan, the applicant would construct two new entrance stairs providing improved public access to its central, elevated open space as well as an interim public plaza near the current main entrance to the campus at West 60<sup>th</sup> Street and Columbus Avenue.

#### Proposed Development as Certified

*Columbus Avenue.* A new building between West 60<sup>th</sup> Street and the line of West 61<sup>st</sup> Street (Site 2 in the proposed plan) would house the Graduate School of Business Administration in its lower portion and a dormitory in its upper portion. (This configuration – an academic base with dormitory floors above – is proposed for all four of the new university buildings on Columbus Avenue and West 62<sup>nd</sup> Street.) This building would set back at street level and again at the top of its academic base, rising to a total height of 439 feet and containing 396,624 square feet of floor area. A second building, which would house either the Graduate School of Education or



the Graduate School of Social Services, would be located between roughly West 61<sup>st</sup> Street and West 62<sup>nd</sup> Street (Site 1) and would contain 224,270 square feet of floor area. This building would have two setbacks and a total height of 354 feet.

An entrance stair providing access to the podium open space would be located between the two Columbus Avenue buildings, aligned with West 61<sup>st</sup> Street and visible from Broadway. This stair would have a width of 60 feet between the buildings, widening to 80 feet above required setbacks, and would incorporate landscaping and seating areas. The stair, and another entrance stair on West 62<sup>nd</sup> Street (described below), would be publicly accessible. The applicant proposes that the ground floors of these buildings would be occupied by active university uses such as a media center, a visitors' center, and an art gallery.

*West 62<sup>nd</sup> Street.* Immediately west of the new building at Columbus Avenue, another new building in the vicinity of the existing Law School building (Site 6) would house either the Graduate Schools of Education or Social Services. This building's academic base would connect to the base of the adjoining building on Columbus Avenue, and its single setback would also match the setback of this neighboring building. The total height would be 274 feet, and the building would contain 244,917 square feet of floor area. The applicant has proposed a university bookstore for the ground floor. Immediately west of this building, another landscaped entrance stair would provide access to the podium-level open space. This stair would be located within a 77-foot opening between two academic buildings and would be aligned with the pedestrian path running north-south across Lincoln Center from West 65<sup>th</sup> Street. The applicant has proposed that the entrance to a new theater be located adjacent to the stair.

Farther west on the midblock of West 62<sup>nd</sup> Street (Sites 5/5a), the applicant would construct a new building for the School of Law. The proposed design for this building includes a setback above the first floor, intended to respond to Damrosch Park across the street. The design also features a curving façade with a projected portion in the academic base and an elliptical tower above that would contain the dormitories and is turned sharply away from the street line. The Law School building would have a total height of 300 feet and would contain 396,649 square

feet of academic and dormitory floor area. Uses proposed for the ground floor include a moot court/assembly hall, a student dining hall, and a café.

A 265-space accessory parking garage (Garage B) would be located beneath the new Law School building and part of the adjacent Graduate School of Education/Social Services building. This garage would be fully attended and would serve Fordham faculty, staff, and guests. Vehicles would access the garage by means of a new 27-foot curb cut on West 62<sup>nd</sup> Street that would also provide access to an adjoining garage serving one of the residential buildings. Approximately 33 feet east of this curb cut, another new curb cut would provide access to three loading berths serving the campus.

*Amsterdam Avenue.* The applicant would sell or lease two sites on Amsterdam Avenue to private developers for the development of residential buildings and would use the proceeds from these transactions to help fund the campus expansion. At the corner of West 62<sup>nd</sup> Street (Site 4), a residential tower would rise from a low base to a total height of 661 feet. This tower would contain 409,889 square feet of floor area, including ground-floor retail. (The applicant has not yet determined how many residential units this building would contain.) A 68-space accessory parking garage (Garage A) would be located beneath the building and would serve residents of the building. Vehicles would access the garage by means of a shared curb cut located on West 62<sup>nd</sup> Street at the western end of the new Law School building.

Between West 60<sup>th</sup> and 61<sup>st</sup> Streets (Sites 3/3a), the applicant proposes a development that would both private residential use and a university student center and dormitory. For this development, the applicant has proposed two possible massing configurations involving sheer towers above a base. In the two-tower option (Option 1), the residential portion would be located in a 558-foot tower at the corner of West 60<sup>th</sup> Street while the dormitory would be housed in a much lower tower on West 61<sup>st</sup> Street. In the single-tower option (Option 2), the uses would be stacked, with the residential program located above the dormitory in a wider tower with a total height of 600 feet. Both options would contain 291,184 square of residential floor area, 154,974 square feet of dormitory and student center floor area, and 10,000 square feet of ground-floor retail. (The

applicant has not yet determined how many residential units the development would contain.) A 137-space accessory parking garage (Garage C) serving residents of the residential development would be located underneath this site and would be accessed by means of a new curb cut on the south side of West 61<sup>st</sup> Street. An additional curb cut five feet to the east would provide access to two loading berths serving the dormitory and student center.

The proposed library building would not be located on the perimeter of the superblock but rather near the center of the campus, on top of the existing podium (Site 7). It would contain 113,011 square feet of floor area and would have a height of 133 feet. The applicant expects that the building would have an entrance pavilion that would front on the reconfigured “quad” open space on top of the podium.

*West 60<sup>th</sup> Street.* The applicant would not construct new buildings along West 60<sup>th</sup> Street, though the new buildings on Amsterdam and Columbus Avenues would have some frontage along this street. For approximately 196 feet of the existing blank podium wall of Lowenstein Hall along West 60<sup>th</sup> Street, the applicant proposes to install new windows and new entrances to Lowenstein and the Pope Auditorium, so that the wall will have at least 25 percent transparent area. Both McMahon Hall and Lowenstein Hall would remain part of the campus under the master plan.

*Phasing.* The applicant expects that Phase I will last through 2014 and will begin with construction of the Law School building on Sites 5/5a following approval of the required actions. Construction of the Law School building will include construction of the first phase of the university accessory garage (Garage B), which will provide 155 of an eventual 265 parking spaces. At the same time, the applicant will construct an interim stair providing access to the podium open space from West 62<sup>nd</sup> Street. This stair will be located between the new Law School building and the existing Law School, which the applicant intends to use for other academic uses until its eventual demolition to make way for the construction of a new building on Site 6. The interim stair would include landscaped seating areas near the sidewalk.

*Interim Plaza.* The applicant proposes to construct an interim landscaped public plaza on Columbus Avenue between West 60<sup>th</sup> Street and roughly West 61<sup>st</sup> Street, in the area in front of the podium wall that is currently occupied by a surface parking lot and the main entrance to the campus. During Phase II of the expansion plan, this area will become the site of the new Business School building. The Interim Plaza is intended to serve as an amenity for the public and the Fordham community during and immediately following the first phase of campus construction. The plaza will comprise approximately 16,000 square feet of open area, of which approximately 46 percent will be unobstructed, and will have approximately 258 linear feet of frontage on Columbus Avenue. It will be designed with two levels, the first at the level of the public sidewalk and the second at the level of the campus main entrance through a new glass pavilion. Both levels will have generous amounts of fixed and movable seating and tables, and the plaza will be planted with 37 trees and approximately 4,800 sf of mixed plantings. A snack and beverage kiosk will serve light refreshments during the warmer months of the year. Access to the podium level will continue to be provided by means of an existing stair and elevator located near the entrance to the campus.

Concurrently with construction of the new Law School building, a developer chosen by the applicant will begin construction of the residential tower on Site 4 (Amsterdam Avenue and West 62<sup>nd</sup> Street) and the associated accessory parking garage (Garage A). Following this, the applicant expects that construction of the combined residential/dormitory/student center development on Sites 3/3a (Amsterdam Avenue and West 60<sup>th</sup> Street) will proceed according to one of the two approved massing options described above, along with construction of the associated accessory parking garage (Garage C). Finally, the applicant has agreed to construct the Interim Plaza within three years after completion and occupancy of the new Law School building and before obtaining building permits for the development on Sites 3/3a.

The applicant expects that Phase II construction will proceed in the following order: Business School building on Site 2 and Columbus Avenue entrance stair; Education/Social Services building on Site 1; Library on Site 7; Education/Social Services building on Site 6 and West 62<sup>nd</sup> Street entrance stair.

## **REQUESTED ACTIONS**

To facilitate the proposed project, the following actions are required:

### **Special permit to modify bulk regulations (C 050260 ZSM)**

This proposed special permit, which is the subject of this report, would allow modification of regulations governing height and setback, minimum distance between buildings, courts, and minimum distance between legally required windows and walls/lot lines for a development in the Special Lincoln Square District pursuant to Section 82-33 of the Zoning Resolution. To allow some architectural flexibility, each proposed building envelope specifies general massing, including maximum height and required setbacks. In most cases, these building envelopes are slightly larger than the buildings that the applicant expects to construct, thereby affording a modest amount of flexibility for each site. The requested bulk modifications are set forth below with reference to the proposed envelopes, not the proposed buildings described above.

#### Height and Setback

The proposed buildings on the subject site are subject to height and setback restrictions contained in the underlying C4-7 zoning district. For buildings fronting on wide streets, such as Columbus and Amsterdam Avenues and West 60<sup>th</sup> and 62<sup>nd</sup> Streets, a setback of at least 15 feet from the street line is required within a height of 85 feet or six stories, whichever is less. Beyond this required initial setback point, the building must remain within the sky exposure plane, which slopes into the zoning lot at a ratio of 5.6 to 1. On a narrow street such as West 61<sup>st</sup> Street, the required initial setback distance is 20 feet, and the sky exposure plane ratio is 2.7 to 1.

On Columbus Avenue, as certified, the proposed Business School building envelope on Site 2 would set back 10 feet at a height of 83 feet, with a second 20-foot setback at a height of 322 feet before reaching a total height of 468 feet. This envelope would encroach into the sky exposure plane above a height of 85 feet. This envelope would also set back 10 feet at a height of 176 feet on West 60<sup>th</sup> Street and would therefore encroach into the West 60<sup>th</sup> Street sky exposure plane above a height of 85 feet. The proposed Education/Social Services building envelope on Site 1

would set back 10 feet at a height of 85 feet, with a further 20-foot setback at a height of 243 feet before rising to a total height of 383 feet. This envelope would encroach into the sky exposure plane above a height of 85 feet. This envelope would also set back 15 feet at a height of 85 feet on West 62<sup>nd</sup> Street and would therefore encroach into the West 62<sup>nd</sup> Street sky exposure plane above a height of 169 feet.

On West 62<sup>nd</sup> Street, the proposed Education/Social Services building envelope to the west on Site 6 would set back 85 feet at a height of 85 feet and would then rise to a total height of 342 feet; this envelope would encroach into the sky exposure plane above a height of 169 feet. Farther west, the eastern portion of the proposed Law School building envelope on Sites 5/5a would set back 15 feet at a height of 71 feet before rising to a total height of 319 feet; this portion of the envelope would encroach into the sky exposure plane above a height of 169 feet. The western portion of this envelope would rise sheer from the street line to a total height of 155 feet; this portion of the envelope would encroach into the sky exposure plane above a height of 85 feet.

On Amsterdam Avenue, the proposed residential building envelope on Site 4 would rise sheer from the street line to a total height of 661 feet; this envelope would encroach into the sky exposure plane above a height of 85 feet up to its full height of 661 feet. This envelope would likewise rise without setback to its full height of 661 feet on West 62<sup>nd</sup> Street and would therefore encroach into the West 62<sup>nd</sup> Street sky exposure plane above a height of 85 feet. In the two-tower massing option (Option 1) for the proposed residential/dormitory/student center building envelope on Sites 3/3a, this envelope would rise sheer from the street line on West 61<sup>st</sup> Street, Amsterdam Avenue, and West 60<sup>th</sup> Street to a total height of 573 feet. This envelope would encroach into all three sky exposure planes above a height of 85 feet up to its full height. In the stacked option (Option 2), the envelope would also rise sheer on West 61<sup>st</sup> Street, Amsterdam Avenue, and West 60<sup>th</sup> Street, to a total height of 600 feet. This envelope would encroach into all three sky exposure planes above a height of 85 feet up to its full height. Finally, the proposed Library envelope on Site 7 would rise sheer from the street line of West

61<sup>st</sup> Street to a total height of 162 feet; this envelope would encroach into the sky exposure plane above a height of 85 feet up to its full height.

The applicant has requested the modifications to height and setback regulations described above in order to facilitate a site plan that allows for the creation of a central, “quad”-like open space surrounded by campus buildings. The requested modifications are also intended to facilitate the separation of the densest residential and university uses in the plan by placing them on Amsterdam and Columbus Avenues, respectively. The modifications further provide for street wall presence in certain locations where it is appropriate, as on Columbus Avenue.

#### Distance between Buildings

The distance between the proposed Law School building envelope and the residential building envelope on Site 4 is 18 feet above a height of 47 feet for a vertical distance of 108 feet. The minimum required distance between a wall and windows is 50 feet. The distance between McMahan Hall and the proposed residential/dormitory/student center building envelope on Sites 3/3a in the two-tower massing option (Option 1) is no less than 20 feet for the full 207-foot height of McMahan. The minimum required distance between a wall and windows is 50 feet. In the stacked option (Option 2), the distance between McMahan Hall and the proposed envelope is 29 feet above a height of 194 feet for a vertical distance of 19 feet. This minimum required distance between building walls is 40 feet. The requested waivers would facilitate the proposed buildings on Sites 3/3a and 4, which sites are approximately 94 feet and 100 feet in width along West 60<sup>th</sup> Street and West 62<sup>nd</sup> Street, respectively.

#### Inner and Outer Courts / Distance between Legally Required Windows and Walls/Lot Lines

Both massing options for the proposed residential/dormitory/student center building envelope on Sites 3/3a would create noncompliances with the regulations governing inner and outer courts and minimum distance between legally required windows and walls/lot lines. Since these regulations are specific to use, and both residential and community facility uses would front on these courts, the applicant is requesting two sets of waivers. In the in the two-tower massing option (Option 1), the proposed outer court does not comply with the minimum width-to-depth

ratio for outer court recesses (2:1), narrow outer courts ( $1\frac{1}{3}$ :1), and wide outer courts (1:1). In addition, a portion of the outer court does not provide the required 30 feet of minimum distance between legally required windows and a wall. In the stacked option (Option 2) for this development, the proposed inner court does not comply with the minimum width-to-depth ratio for inner court recesses (2:1), nor does it provide the required minimum distance between required windows and walls in two locations. The requested waivers would help facilitate each massing option for the proposed development, which is located on a relatively constrained site adjacent to an existing dormitory building (McMahon Hall).

For the residential building envelope on Site 4, the applicant proposes to locate legally required windows on the southern façade of the building at the lot line, facing an undeveloped area on the lot to the south (Lot 30). Light and air for these windows would be secured by means of an easement located on the adjacent lot along the lot line, at least 30 feet in depth. In order to satisfy the requirements of the State Multiple Dwelling Law, the applicant proposes to provide a minimal five-inch-deep inner court along a portion of this façade. This envelope would also have an outer court that does not comply with the minimum width-to-depth ratio for narrow outer courts ( $1\frac{1}{3}$ :1).

### **Special permit for an Accessory Parking Garage (C 050269 ZSM)**

The applicant is requesting a special permit pursuant to Sections 82-50(a) and 13-561 of the Zoning Resolution to construct an accessory parking garage (Garage A) with a maximum of 68 spaces in association with the proposed residential building on Site 4. The proposed garage would be located on two cellar levels beneath the proposed residential building and would serve residents of the building. It would be fully attended, and 10 required reservoir spaces would be provided. Vehicles would access the garage from West 62<sup>nd</sup> Street, a two-way wide street, by means of a ramp from a new 27-foot curb cut (including splays). This curb cut and a portion of the ramp would also provide access to Garage B, a proposed 265-space accessory garage serving the university. Visual and audible warning devices would be placed at the entrance to the garage to warn pedestrians on the sidewalk of vehicles exiting onto West 62<sup>nd</sup> Street.



### **Special permit for an Accessory Parking Garage (C 050271 ZSM)**

The applicant is requesting a special permit pursuant to Sections 82-50(a) and 13-561 of the Zoning Resolution to construct an accessory parking garage (Garage C) with a maximum of 137 spaces in association with the proposed residential development on Sites 3/3a. The proposed garage would be located on three cellar levels beneath the proposed residential building and would serve residents of the building. It would be fully attended, and 10 required reservoir spaces would be provided. Vehicles would access the garage from West 61<sup>st</sup> Street, a two-way narrow street, by means of a ramp from a new 30-foot curb cut (including splays). Visual and audible warning devices would be placed at the entrance to the garage to warn pedestrians on the sidewalk of vehicles exiting onto West 61<sup>st</sup> Street.

### **Special permit for an Accessory Parking Garage (C 090173 ZSM)**

When the proposed project was certified on November 17, 2008, the applicant was requesting a special permit pursuant to Sections 82-50(a) and 13-561 of the Zoning Resolution for an accessory parking garage with 265 spaces located beneath the proposed university buildings on Sites 5/5a and 6 and serving Fordham faculty, staff, and guests. This application was withdrawn on April 22, 2009.

### **Zoning Text Amendment (N 090170 ZRM)**

The applicant is proposing a text amendment to Section 82-50 (Off-Street Parking and Off-Street Loading Regulations) of the Zoning Resolution. The proposed text would clarify certain inconsistencies in the Special Lincoln Square District regulations governing the location of curb cuts providing access to off-street loading berths. Specifically, at present the text allows the City Planning Commission to authorize a curb cut on a wide street (curb cuts on wide streets are generally prohibited in this part of Manhattan) where such a curb cut is needed to provide access to required loading berths. The proposed text would reaffirm that curb cuts on wide streets serving permitted and required loading berths are not allowed as-of-right in the Special District. It would further clarify that the Commission's power to authorize a curb cut on a wide street for loading purposes extends to all such curb cuts, not simply curb cuts for loading berths that are required under zoning.

**Authorization for a Curb Cut (N 090171 ZAM)**

The applicant is requesting an authorization pursuant to Section 13-553 of the Zoning Resolution to allow a curb cut on West 62<sup>nd</sup> Street, a wide street, to provide access to and from two proposed accessory parking garages. The proposed curb cut is located approximately 129 feet east of Amsterdam Avenue on West 62<sup>nd</sup> Street, which is an 80-foot-wide, two-way crosstown street. The proposed curb cut has a width of 27 feet, including splays, and will allow vehicles to access two proposed accessory parking garages serving one of the residential buildings and the university (Garages A and B).

**Authorization for a Curb Cut (N 090172 ZAM)**

The applicant is requesting an authorization pursuant to Sections 82-50(b) (as amended) and 13-553 of the Zoning Resolution to allow a curb cut on West 62<sup>nd</sup> Street, a wide street, to provide access to loading berths. The proposed curb cut is located approximately 164 feet east of Amsterdam Avenue on West 62<sup>nd</sup> Street, which is an 80-foot-wide, two-way crosstown street. The curb cut is located approximately eight feet east of another proposed curb cut, described above, that would provide access to Garages A and B. The proposed curb cut has a width of 30 feet, including splays, and will allow vehicles to access three permitted loading berths located within the proposed Law School building on Sites 5/5a and serving university buildings.

**ENVIRONMENTAL REVIEW**

This application (C 050260 ZSM), in conjunction with the applications for the related actions (C 050269 ZSM, C 050271 ZSM, C 090173 ZSM, N 090170 ZRM, N 090171 ZAM, and N 090172 ZAM) 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 05DCP020M. The lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on June 20, 2007. The Positive Declaration was distributed, published and filed, and the applicant was asked to prepare a Draft Environmental Impact Statement (DEIS). Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on June 20, 2007. A public scoping meeting on the Draft Scope of Work was held on September 10, 2007, and a Final Scope of Work, reflecting comments made during scoping, was issued on November 13, 2008.

The applicant prepared a DEIS and the lead agency issued a Notice of Completion for the DEIS on November 17, 2008. Pursuant to SEQRA regulations and CEQR procedures, a joint public hearing was held on the DEIS on March 4, 2009 in conjunction with the Uniform Land Use Review Procedure (ULURP) applications (C 050260 ZSM, C 050269 ZSM, C 050271 ZSM, C 090173 ZSM, N 090170 ZRM, N 090171 ZAM, and N 090172 ZAM). The Final Environmental Impact Statement (FEIS) was completed, and a Notice of Completion of the FEIS was issued on April 10, 2009. The Notice of Completion for the FEIS identified the following significant impacts and proposed the following mitigation measures:

#### *SHADOWS*

Shadows cast from the project's maximum building envelopes would result in significant adverse shadow impacts, as follows:

- *St. Paul the Apostle Church.* During the summer morning hours, new shadow would fall across some of the clerestory windows on the north façade of the Church of Saint Paul the Apostle located immediately south of the Fordham campus across West 60<sup>th</sup> Street. The shadow would remove the remaining sunlight from the windows for a portion of time when services may be occurring in the church. To mitigate this impact, Fordham will implement a lighting scheme reasonably acceptable to the Church that will illuminate the windows in the clerestory that are identified in the FEIS as being affected by shadow. This mitigation measure would be implemented in accordance with a City-approved Restrictive Declaration.
- *Damrosch Park.* The proposed action would substantially reduce sunlight to Damrosch Park in the fall, winter and early spring affecting primarily the seating areas and vegetation on the eastern side of the park. To mitigate this impact, Fordham will create a dedicated maintenance and horticultural fund in coordination with the New York City Department of Parks and Recreation

(DPR) to sustain the park landscape under the less favorable growing conditions created by the building shadows. This mitigation measure would be implemented in accordance with a City-approved Restrictive Declaration.

- *The Grove.* New shadow would fall on the planned seating and landscaped area (the “Grove”) between the David H. Koch Theater (formerly the New York State Theater) and Columbus Avenue, which would add approximately four hours of new shadow on this part of the Lincoln Center open space in the spring, summer and fall, and nearly two hours in the winter. Any plant materials adversely affected by shadows from the buildings on Sites 1 and 6 (after they are built in the second phase of campus development) could be replaced with more shade-tolerant species. This measure would be sufficient to mitigate the potential impact caused by the increased duration of shadows on this area that could occur as the result of the proposed project. In addition, the dedicated maintenance and horticultural fund referred to above will also be used to sustain the Grove landscape under the less favorable growing conditions created by the building shadows. This mitigation measure would be implemented in accordance with a City-approved Restrictive Declaration.

## *TRAFFIC*

The proposed action would result in significant adverse traffic impacts at three and six intersections during various analysis peak hours in 2014 and 2032, respectively. With the implementation of prescribed mitigation measures (see FEIS Table S-4), the proposed action would not result in unmitigated significant adverse traffic impacts. The traffic mitigation measures are as follows:

### *Mitigation of Impacts—2014*

*Amsterdam Avenue and West 60<sup>th</sup> Street:* Midday peak hour impacts on the eastbound approach could be mitigated by shifting one second of green time from the northbound phase to the eastbound/westbound phase.

*Ninth Avenue and West 57<sup>th</sup> Street:* Parking is currently permitted on both sides of the southbound approach during the midday peak hour. The midday peak hour impact identified for the southbound approach could be mitigated by daylighting the west curb lane for 100 feet to create an exclusive right turn lane. This mitigation could potentially result in only 2 hours a day for legal parking along the west curb. It is therefore recommended that New York City Department of Transportation (NYCDOT) remove the first 5 existing parking meters along the west curb of Ninth Avenue north of West 57<sup>th</sup> Street and impose No Standing regulations. To minimize the loss of meter parking spaces, it is also recommended that NYCDOT consider installing muni-meter parking to govern short-term parking for the remaining approximately 150 feet of the block for days and hours that are not currently restricted.

*Columbus Avenue and West 60<sup>th</sup> Street:* Impacts on the eastbound approach during the PM peak hour could be mitigated by shifting one second of green time from the

southbound phase to the eastbound/westbound phase.

Mitigation of Impacts—2032

*Amsterdam Avenue and West 60<sup>th</sup> Street:* Impacts on the eastbound approach in the AM peak hour could be mitigated by shifting one second of green time from the northbound phase to the eastbound/westbound phase. Midday peak hour impacts on the eastbound approach could be mitigated by shifting two seconds of green time from the northbound phase to the eastbound/westbound phase.

*Ninth Avenue and West 57<sup>th</sup> Street:* Parking is currently permitted on both sides of the southbound approach during the midday peak hour. The impact identified for the southbound approach could be mitigated by daylighting the west curb lane for 100 feet to create an exclusive right turn lane. As noted above in the discussion of 2014 mitigation measures, it is recommended that NYCDOT impose No Standing regulations at this location to minimize motorist confusion and facilitate enforcement. Furthermore, the number of parking spaces loss from the daylighting mitigation could be minimized via the installation of muni-meter parking. For the PM peak hour impacts on the westbound approach could be mitigated by shifting one second of green time from the southbound phase to the eastbound/westbound phase. Impacts on the westbound approach during the pre-theater peak hour could be mitigated by shifting one second of green time from the southbound phase to the eastbound/westbound phase. Parking is currently permitted on both sides of the southbound approach during the pre-theater peak hour. The impact identified for the southbound approach could be mitigated by daylighting the west curb lane for 100 feet to create an exclusive right turn lane.

*Tenth Avenue and West 57<sup>th</sup> Street:* Impacts on the westbound approach in the PM peak hour could be mitigated by shifting one second of green time from the northbound phase to the eastbound/westbound phase. Parking is currently permitted on the north side of the westbound approach during the pre-theater peak hour. The impact identified for the westbound approach could be mitigated by daylighting the north curb lane for 100 feet to create an exclusive right turn lane.

*Columbus Avenue and West 60<sup>th</sup> Street:* Impacts on the eastbound approach in the PM peak hour could be mitigated by shifting one second of green time from the southbound phase to the eastbound/westbound phase.

*Columbus Avenue and West 62<sup>nd</sup> Street:* Impacts on the eastbound approach in the PM peak hour could be mitigated by shifting one second of green time from the southbound phase to the eastbound/westbound phase.

*Broadway/Columbus Avenue and West 65<sup>th</sup> Street:* Impacts on the southbound Columbus Avenue approach in pre-theater peak hour could be mitigated by eliminating parking on the west curb of Columbus Avenue. This would necessitate extending the existing No Standing regulation by one hour.

## PEDESTRIANS

The proposed action would result in significant adverse pedestrian impacts at the north crosswalk of Columbus Avenue and West 60<sup>th</sup> Street during the PM and pre-theater peak periods. These impacts could be mitigated by shifting 3 seconds of green time from the southbound phase to the eastbound/westbound phase to allow for more time to cross Columbus Avenue.

## CONSTRUCTION

- *Historic Resources during Construction.* A Construction Protection Plan would be implemented to protect resources such as the Lincoln Center for the Performing Arts and the Church of St. Paul the Apostle, which are located within 90 feet of the proposed construction activities. The plan would be developed in consultation with and approved by New York State Office of Parks, Recreation, and Historic Preservation (SHPO) and the City's Landmarks Preservation Commission (LPC), and would conform with applicable City and state guidelines.
- *Construction Traffic.* During Phase I construction in 2011, significant adverse traffic impacts were identified at one intersection during the 3–4 PM analysis hour. During Phase II construction in 2021, significant adverse traffic impacts were identified at one intersection during the 3–4 PM analysis hour and five intersections during the 5–6 PM analysis hour. During Phase II construction in 2031, significant adverse traffic impacts were identified at two intersections during the 3–4 PM analysis hour and five intersections during the 5–6 PM analysis hour. All projected impacts in 2011, 2021, and 2031 could be mitigated with either an early implementation of the traffic mitigation strategies described above, or variations of these strategies, such as different signal timing shifts. The need for these variations on proposed mitigation measures to address the projected construction traffic impacts in 2011, 2021, and 2031 would be determined by NYCDOT during those years.
- *Construction Air Quality.* To prevent potential significant adverse impacts on air quality from construction equipment and truck emissions, the following measures would be employed: diesel equipment reduction; use of clean, ultra-low sulfur diesel fuel (ULSD); best available tailpipe emissions reduction technologies; use of Tier 2 or newer equipment; locating large emissions sources and activities away from sensitive uses (residential, schools); and any other appropriate measures, including restriction of on-site vehicle idle time to three minutes.
- *Construction Noise.* Measures would be implemented to mitigate to the extent possible noise from construction. The only residential location where significant noise impacts are predicted to occur is at The Alfred. Even though this residence has double-glazed windows and alternative ventilation (i.e., central air conditioning) which would attenuate exterior noise levels by approximately 30-35 dBA, during some limited daytime time periods

construction activities would result in interior noise levels that would be above the 45 dBA L<sub>10</sub> noise level recommended by CEQR for residences and result in significant adverse noise impacts. In addition, while noise levels at the residential terraces at The Alfred currently exceed the CEQR acceptable range (55 dBA L<sub>10</sub>) for an outdoor area requiring serenity and quiet, during the weekday daytime time periods when construction activities are predicted to significantly increase noise levels, construction activities would exacerbate these exceedances and result in significant adverse noise impacts at the terraces at The Alfred. Consequently, the proposed action would have unmitigated significant noise impacts at this location for limited periods of time. A Restrictive Declaration will establish standards for practices and measures to be implemented during construction to mitigate noise and air quality standards and will provide for an independent monitor and mechanisms to enforce the standards.

As discussed in detail in the Consideration section of this report, the City Planning Commission has elected to make modifications to the proposed project. The FEIS analyzed the proposed modifications and reached the following conclusion:

Overall, the analysis concludes that the proposed action including potential modifications would reduce to some degree the significant adverse environmental impacts identified for the proposed action in the FEIS, including shadow impacts and traffic impacts. For traffic, while overall impacts would be reduced, one turning movement (the westbound right-turn at Amsterdam Avenue and West 60<sup>th</sup> Street) would experience a significant adverse impact that otherwise would not occur with the proposed action. This traffic impact would be mitigated by the same measure already identified for this intersection. For the other technical areas, the modified project would have the same impact conclusions as those with the proposed action.

## **UNIFORM LAND USE REVIEW PROCEDURE (ULURP)**

This application (C 050260 ZSM), in conjunction with the related applications (C 050269 ZSM, C 050271 ZSM, and C 090173 ZSM), was certified as complete by the Department of City Planning on November 17, 2008 and was duly referred to Manhattan Community Board 7 (CB7) and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b). The applications for the related non-ULURP applications (N

090170 ZRM, N 090171 ZAM, and N 090172 ZAM) were also referred to CB7 and the Manhattan Borough President for information and review.

### **Community Board Public Hearing**

Community Board 7 held a public hearing on this and the related applications (C 050269 ZSM, C 050271 ZSM, C 090173 ZSM, N 090170 ZRM, N 090171 ZAM, and N 090172 ZAM) on January 21, 2009 and on that date adopted resolutions as follows:

#### Special permit to modify bulk regulations (C 050260 ZSM)

The Community Board, by a vote of 31 to zero with two abstentions and one member voting “present,” adopted a resolution recommending disapproval of the application. The Community Board’s resolution stated, in part:

While the total floor area proposed does not exceed the as-of-right limit for an R-10 zone, several factors have combined to make the proposed Fordham construction more massive than the typical R-10 as-of-right site. First, the site includes a 60 foot x 550 foot swath running east to west which comprises a de-mapped 61<sup>st</sup> Street; the resultant increase in allowable floor area (after deducting floor area lost by the widening of 60<sup>th</sup> and 62<sup>nd</sup> Streets) is approximately 90,000 square feet. Second, the academic buildings on Columbus Avenue contain several floors with exceptional ceiling heights. Thus, while the floor area of these buildings is equivalent to that of 30-34 story buildings, the building heights are equivalent to 40-47 story buildings. As a result, these buildings would contain at least 25% more bulk than their floor area would ordinarily indicate. Third, the Master Plan is dependent on the approval of waivers of height and setback and sky exposure plane regulations which would otherwise operate as a failsafe brake on overly massive development. For example, the proposed buildings on the corners of Amsterdam and 60<sup>th</sup> and 62<sup>nd</sup> Streets could not be built without sky exposure plane waivers which more than triple the height of any structure which could practically be built on those footprints as of right. Fourth, the eastern two-thirds of the site would be devoid of any street level open space. The “open space” proposed on the site once Phase II is completed is solely a portion of an existing quadrangle built on a podium which is at least 15 feet above grade on all sides, accessible only by stairway and elevator; there would be no site lines through the site at ground level. New Yorkers know from experience (e.g. the former plazas at the GM building and 55 Water Street, and the former configuration of Bryant Park), that open space does not benefit the community unless it is at or near grade level. People simply will not climb 15 foot-high



stairways to gain access to Fordham's "open space." Fifth, the Master Plan contains no commitment as to the actual design of any buildings; thus, even if an imaginative design could mitigate somewhat the effect of the massiveness and height of the proposed buildings, no such design has been incorporated in Fordham's proposal. Indeed, it is likely that the Columbus Avenue buildings will not be designed for 15-25 years.

Special permit for an Accessory Parking Garage (C 050269 ZSM)

The Community Board, by a vote of 17 to 13 with one member voting "present," adopted a resolution recommending approval of the application subject to the condition that the number of parking spaces be limited to "up to 35 percent of the number of units of the building, or 68 spaces, whichever is less."

Special permit for an Accessory Parking Garage (C 050271 ZSM)

The Community Board, by a vote of 20 to 11 with one member voting "present," adopted a resolution recommending approval of the application, subject to the condition that "the number of parking spaces accessory to the private residence be limited to 35% of the number of units actually built in the residence, or 137 spaces, whichever is less; and with the further provision that up to 50% of these accessory parking spaces may be reserved for Fordham's accessory parking use."

Special permit for an Accessory Parking Garage (C 090173 ZSM)

The Community Board, by a vote of 29 to one with one member voting "present," adopted a resolution recommending disapproval of the application and further recommending that "the projected space be used for educational purposes."

Zoning Text Amendment and Curb Cut Authorizations

(N 090170 ZRM, N 090171 ZAM, N 090172 ZAM)

The Community Board, by a vote of 26 to six with one member voting "present," adopted a resolution recommending approval of the application subject to the condition that "the Zoning Resolution is further amended to require Community Board review of the proposed authorization."

### **Borough President Recommendation**

This application (C 050260 ZSM), in conjunction with the related applications (C 050269 ZSM, C 050271 ZSM, C 090173 ZSM, N 090170 ZRM, N 090171 ZAM, and N 090172 ZAM), was considered by the Borough President, who issued a recommendation on February 25, 2009 recommending conditional approval of the applications. The recommendation was based on the applicant's commitment, as memorialized in a letter and memorandum from Fordham's representatives to the Borough President dated February 25, 2009, to make the following changes to the proposed project:

1. reduce the total floor area of the project;
2. adhere to design guidelines for new building fronting Columbus Avenue;
3. reduce the overall building heights and street wall heights along Columbus Avenue and Amsterdam Avenue;
4. tighten the proposed zoning envelopes;
5. provide mandatory sidewalk widenings along Columbus Avenue;
6. enter into a second phase review process;
7. provide ground-floor transparency and active uses along the avenue and portions of West 60<sup>th</sup> Street and West 62<sup>nd</sup> Street;
8. discontinue efforts to obtain the university parking garage, and follow Community Board 7's other recommendations on parking;
9. adhere to applicable public plaza standards for the landscaped staircases, including signage;
10. ensure that the raised open space is open to the public;
11. provide the Alfred with a minimum 10 foot-wide walkway to West 62<sup>nd</sup> Street; and landscape the one-story rear setback of Site 5A;
12. provide academically-oriented support to local public school programs; and
13. adhere to construction mitigations in the DEIS, including emissions and noise control measures.

As part of this recommendation, the Borough President also recommended disapproval of the application for an accessory parking garage serving the university (C 090173 ZSM), "as the applicant has agreed to not pursue the proposed 265-space garage that is the subject of this application."

### **City Planning Commission Public Hearing**

On February 18, 2009 (Calendar No. 7), the City Planning Commission scheduled March 4, 2009 for a public hearing on this application (C 050260 ZSM). The hearing was duly held on March 4, 2009 (Calendar No. 24), in conjunction with the hearings on the related applications (C 050269 ZSM, C 050271 ZSM, C 090173 ZSM, and N 090170 ZRM). There were 34 speakers in favor of the applications and 19 in opposition.

Six of the speakers in favor of the application were representatives of the applicant who described the proposed project. The president of Fordham University stated that Fordham had been a part of the original Lincoln Square Urban Renewal Plan and cited the success of that plan in revitalizing the district. He highlighted Fordham's special relationship with the working class of New York City and emphasized the university's role in educating the City's teachers, social workers, and other public servants. He also described the university's need to expand its Lincoln Center Campus to accommodate tremendous growth in the student population since the campus was built as well as expected future growth.

The applicant's attorney discussed the history of the site and its development as the Lincoln Center Campus; she also enumerated the requested land use actions. The project architect, made a brief presentation that reviewed the proposed plan and described the urban design principles that the applicant believes are expressed in the proposed master plan. These principles included: the placement of taller buildings on the avenues and lower buildings on the midblock; the location of residential uses on Amsterdam Avenue, away from the densest university uses; the placement of active uses and additional ground-floor façade transparency at street level; improved access during both project phases to the elevated campus "quad" open space; and varied massing of buildings along West 62<sup>nd</sup> Street. He also described the proposed designs for the new Law School and the residential tower at West 62<sup>nd</sup> Street and Amsterdam Avenue as examples of the applicant's commitment to high-quality design.

Two additional members of the project's design team reviewed the modifications that Fordham had agreed upon with the Borough President, focusing in particular on the changes to the

project's massing. One of the team members focused on the reduction of the bulk of the Columbus Avenue buildings and the two revised massing options set forth in the Borough President's recommendation. She also noted that the building envelopes contained in the application could be refined to capture the intent of the agreement with the Borough President while allowing Fordham a similar amount of flexibility. Another design team member explained that the applicant needs the requested height and setback waivers in order to create workable floor plates for academic uses and dormitories as well as to create the central quad open space. Fordham's vice president for administration summarized revisions to the project prior to certification and stated that the university is ready to move forward with construction of the new Law School upon receiving the necessary approvals. He also described the need for a major expansion of on-campus student housing in order to meet rising demand driven by Fordham's increasingly national profile.

The Manhattan Borough President spoke in favor of the application with the revisions laid out in his recommendation. He noted that the City had lost approximately 64,000 construction industry jobs in recent months and stated that the proposed project presents an opportunity not only to reclaim some of those jobs but also to strengthen the City's commitment to higher education. He asserted that Fordham must expand the Lincoln Center Campus but that the local community's interests must also be protected. The Borough President listed the points of his agreement with the applicant and noted that the Commission could play a key role in codifying the agreement. He stated that the applicant's decision to eliminate the proposed university accessory parking garage constituted a 56 percent reduction in the overall amount of parking in the proposal and affirmed that some accessory parking for the university is appropriate.

Many of the speakers in support of the application were Fordham administrators, faculty, staff, and students. The dean of Fordham's School of Law noted the school's top-tier national ranking and status as a "gateway" law school for working students who can enroll in its evening program. He also emphasized the community service contribution made by Fordham Law students, including the school's free law clinic, citing students' 100,000 hours of service last year. He stated that the Law School's space constraints have become so severe as to become an

issue for the school's continuing accreditation. Current and former deans from the Law School, the Business School, and the Schools of Social Services and Education also described serious shortages of classroom, study, and program space as well as facilities greatly in need of modernization and upgrading. Several student representatives strongly supported the expansion plan and asserted that on-campus housing is an essential part of the complete educational experience that Fordham attempts to offer its students.

Other speakers in support of the application included representatives of the Alvin Ailey American Dance Theater, New York Foundling, and the public television stations Thirteen and Channel 21, each of whom cited their institutions' partnerships with Fordham and the need for more space to facilitate these programs. Two representatives of local unions spoke about the jobs that the proposed project would create. A former Fordham dean claimed that the City is at a major disadvantage because of the constraints its universities face and discussed the Law School's need for top-quality faculty members in order to be nationally competitive. The president of the Commission on Independent Colleges and Universities discussed the importance of universities like Fordham in aiding the City's transition from an economy based on finance and business services to one based on education; he also noted that 90 percent of Fordham students receive some form of financial aid. Finally, a representative of the Real Estate Board of New York stated that the proposed plan will have "positive engagement" with the community due to the efforts of the Borough President, the Community Board, the City Planning Commission, and the City Council; she also noted that the proposed density is within the amount allowed as-of-right under zoning.

Speakers in opposition to the application included a number of residents of neighboring apartment buildings. Many of these speakers stated that the overall density of the proposed plan is excessive in an already-dense neighborhood and argued that its scale would overwhelm its surroundings; in particular, several speakers believed that the heights of the proposed buildings on Columbus Avenue would have a detrimental effect on the low-rise Lincoln Center complex. Speakers also criticized the applicant's decision to place new buildings around the perimeter of the block, which they felt would create a negative walled-off effect for the sake of preserving the

central open space on top of the podium, which they believe does not benefit the community. Two speakers asserted that the proposal does not conform to the purposes of the Special Lincoln Square District. Several speakers were concerned that the proposed master plan is too long-term and not specific enough to justify the granting of discretionary approvals for the entire project at this time. These speakers cited the fact that Fordham has not yet hired architects to design most of the buildings in the plan or engaged a developer for the southern of the two Amsterdam Avenue sites (Sites 3/3a), nor has it raised funds for most of the buildings. Several speakers stated their belief that Fordham should expand dormitories on its Rose Hill campus in the Bronx or elsewhere and allow the Lincoln Center campus to function primarily as a commuter school, as it has in the past.

Several residents of neighboring buildings voiced the opinion that the applicant should not be allowed to use its property to generate profit by disposing of parcels to for private residential development. One speaker argued that the land use controls of the Lincoln Square Urban Renewal Plan and the land disposition agreement for the site continue to restrict development of the property to institutional uses. This speaker and others also expressed concern that the applicant would profit from the sale of property that it originally obtained at artificially low cost following the use of eminent domain to remove residents and businesses from the site. These speakers also asserted that the applicant's intention to dispose of a portion of the site for residential development indicates that its space needs are not as critical as the applicant has professed.

A representative of Fordham Neighbors United, a group of residential buildings opposing the application, reiterated that the group considers the proposed project far too dense and believes that the applicant should have located new buildings in the interior of the campus to allow for open space around the perimeter of the block. He discussed several changes that would, in the group's opinion, make the plan more acceptable. He called on the applicant to greatly increase the amount of open space located on Columbus Avenue and suggested the public spaces on the Lincoln Center campus as an example. He called on the applicant to dramatically decrease the buildings' height and width, which he described as excessive and threatening. The

representative of the residents' group also said that the applicant should focus on constructing the Law School building now while acknowledging that the other buildings in its plan are "not credible" due to the long timeframe and the recent downturn in the residential real estate market.

An attorney representing Fordham Neighbors United reaffirmed the group's position that the proposal is too tall and too dense. He acknowledged that the agreement between the Borough President and Fordham contained some positive ideas but said that the overall amount of floor area proposed must still be reduced, and the Columbus Avenue buildings should be constructed instead following an as-of-right scheme that would provide more open space at street level on Columbus Avenue. Another resident of a neighboring building stated that the proposed plan with the revisions contained in the Borough President's agreement is still too big. He likened the height and density reductions in the agreement to taking the eraser off of a pencil. This speaker insisted that the requested bulk waivers would harm the neighborhood but said that he would support a smaller plan that was in context with Lincoln Center. Another resident of the same building stated that the sidewalks in the area are already overcrowded, and the proposed project would only make this worse.

Several residents of the Alfred expressed concern about the close proximity of several proposed buildings to the Alfred, in particular the Law School building. Several speakers also worried that the two new curb cuts on the south side of West 61<sup>st</sup> Street would draw vehicle traffic that would make this cul-de-sac street, on which the Alfred fronts, unsafe and inhospitable. The president of the Committee for Environmentally Sound Development and another representative from the same group expressed concern about the amount of parking included in the proposal and stated that the traffic analysis included in the DEIS showed that traffic conditions in the area are already bad.

The chair of Community Board 7 acknowledged that the board's resolution on the master plan was negative but endorsed the agreement with the Borough President on behalf of CB7 and encouraged the Commission to accept it. She stated that CB7 remained concerned about the proposed height and massing of the residential towers on Amsterdam Avenue, including the

shadows that that would be cast on the playground at PS 191 and Amsterdam Houses. The chair also expressed the board's belief that some kind of community design review of future buildings, beyond the advisory process laid out in the Borough President's agreement, is necessary to ensure that the tall buildings on Amsterdam Avenue receive a successful architectural treatment. The co-chair of the land use committee of Community Board 7 likewise stated that the proposed Amsterdam Avenue towers are too massive, even with the reductions contained in the Borough President's agreement with the applicant, but asserted that good architecture could make somewhat shorter buildings acceptable. To this end, he suggested that the applicant be required to seek Commission approval for the full requested height of these buildings in the future, at such time as the full design of the buildings can be evaluated. Another member of CB7 reiterated the board's belief that some form of binding future review of designed buildings, involving the community as well as the Commission, should be incorporated into the Commission's approval. She also stated that the proposed interim plaza should comply with the Zoning Resolution's regulations governing privately owned public spaces.

Several elected officials spoke in opposition to the application. The City Council Member for the Sixth District, which includes the subject site, stated that there were three remaining key issues to be resolved: the size, bulk, and siting of the Amsterdam Avenue buildings; the provision of public access to the podium open space; and the scope of future review. The Council Member also added that she and the community were working with Fordham to address issues of school capacity raised by the proposed residential development. A representative spoke on behalf of several elected officials: the U.S. Representative for the Eighth Congressional District, the State Senator for the 29<sup>th</sup> District, and the Assemblymembers for the 67<sup>th</sup> and 75<sup>th</sup> Assembly Districts. The representative stated that these elected officials commend the Borough President for the positive modifications in his agreement but continue to oppose the project on grounds of excessive building height and density, burden on local schools and public transit, and unsatisfactory urban design.

There were no other speakers, and the hearing was closed.



## **CONSIDERATION**

The Commission believes that that the special permit (C 050260 ZSM), as modified herein, in conjunction with the related applications for special permits (C 050269 ZSM and C 050271 ZSM), as modified herein, a zoning text amendment (N 090170 ZRM), and authorizations (N 090171 ZAM and N 090172 ZAM), is appropriate. The related application for a special permit (C 090173 ZSM) has been withdrawn at the time of this report.

### **Special permit to modify bulk regulations (C 050260 ZSM)**

The Commission recognizes the importance of facilitating the growth and expansion of Fordham University in Manhattan. Fordham is a major educational institution and is responsible for training a significant number of the City's teachers, attorneys, civil servants, social workers, and businesspeople. Universities such as Fordham play a vital role in the City and State economies by generating the knowledge and skills that facilitate diversified economic growth and make the region an attractive place to do business.

The Commission notes that the applicant has stated that the proposed expansion is critical to its continued growth and to the competitiveness of the graduate and undergraduate programs located on the Lincoln Center Campus. According to the applicant, at present approximately 1,250 faculty members provide instruction to over 8,000 students enrolled in programs at the Lincoln Center Campus. The campus offers students, faculty, and staff immediate proximity to Lincoln Center, as well as access to the central business districts and cultural resources of Midtown and Lower Manhattan, and thus is a uniquely advantageous location for academic programs that depend in part on a high level of engagement with the social, cultural, and professional life of the City. The current level of enrollment represents more than double the number of students that the applicant has stated the current campus was intended to accommodate. As a result, according to the applicant, the campus currently provides roughly one-quarter the average amount of space per student provided by other U.S. colleges and universities of comparable size, and the university currently rents approximately 150,000 square feet of space outside the campus for academic and administrative purposes. The applicant anticipates that its student enrollment at

the Lincoln Center Campus, already larger than the Rose Hill Campus, will grow by a third and its faculty by almost 20 percent over the next few decades. The applicant has stated that the proposed expansion will allow it to ease chronic shortages of academic space, provide dedicated and improved facilities for programs such as the undergraduate performing arts program, and meet increased demand for on-campus student housing.

The Commission believes that the proposed project should be modified. Most of the modifications will implement the intentions of the Borough President's points of agreement with the applicant. Other modifications will reduce the size of the proposed building envelopes to more closely correspond to the shape of the proposed buildings. The modifications will also memorialize the widened sidewalk and changes to the entrance stair on Columbus Avenue and will incorporate other points of the agreement, such as the applicant's commitment to design the entrance stairs in accordance with zoning standards for public plazas, into the restrictive declaration. The specific modifications related to the Borough President's points of agreement are as follows:

- The overall floor area in the proposed project is reduced by approximately 144,000 square feet by removing floor area from Sites 1, 2, and Sites 3/3a (Option 2), bringing the total proposed floor area on the zoning lot to approximately 2.88 million square feet.
- For the Education/Social Services and Business School buildings on Columbus Avenue (Sites 1 and 2, respectively), two massing options are included in the application, as follows:
  - In Option 1, the maximum heights of the building envelopes are reduced from 383 feet and 468 feet to 343 feet and 396 feet, respectively. (The expected building heights would be 29 feet lower than the envelope heights in each case.) Each envelope also includes a set of design controls that, among other requirements, specify a range for required base heights and second setback heights; limit the width of each distinct portion of the towers to no more than 90 feet; specify a minimum 30 feet of difference between the two portions of each building top as well as a minimum

- 40 feet of difference between the two building heights; and require a minimum five feet of difference between the two façade planes in each tower, and,
- In Option 2, the maximum heights of the building envelopes are reduced from 383 feet and 468 feet to 363 feet and 436 feet, respectively. (The expected building heights would be 29 feet lower than the envelope heights in each case.) Each envelope also includes a set of design controls that, among other requirements, specify a range for required base heights and second setback heights; limit the width of each tower to no more than 110 feet; and require a minimum 40 feet of difference between the two building heights;
- On Columbus Avenue, a ground-floor setback of 10 feet is required in front of the Business School building on Site 2. In addition, the building envelope is pulled back an additional 15 feet from the street line for 50 feet of the building adjacent to the entrance stair, and the stair is extended south into this open area;
  - Required ground-floor transparency for the buildings fronting on Columbus and Amsterdam Avenues is increased from the 50 percent required by the Special District regulations to 70 percent; and
  - The maximum height of the building envelope for the residential tower at Amsterdam Avenue and West 62<sup>nd</sup> Street (Site 4) is reduced from 661 feet to 630 feet. (The expected building height would be 10 feet lower than the envelope height.) For the combined residential/dormitory/student center development at Amsterdam Avenue and West 60<sup>th</sup> Street (Sites 3/3a), the maximum envelope height is reduced as follows:
    - In Massing Option 1 (two towers), from 573 feet to 533 feet, and,
    - In Massing Option 2 (stacked), from 600 feet to 580 feet.

The Commission also believes that certain additional modifications not included in the applicant's points of agreement with the Borough President will further the intent of that understanding and strengthen the project's urban design. These modifications are as follows:

- The Columbus Avenue entrance stair is extended to the north and the Education/Social Services building on Site 1 is pulled back for 40 feet of the building’s width adjacent to the stair to make the stair more visible from the north;
- A retail use (Use Groups 6A or 6C) is required at the corner of Columbus Avenue and West 62<sup>nd</sup> Street with at least 30 feet of frontage on both streets, in recognition of this location’s importance as a link between Fordham and Lincoln Center and the southern anchor of the larger Lincoln Square “bow-tie” public space;
- At least four street trees must be planted in the widened sidewalk area south of the entrance stair on Columbus Avenue, in order to green this area;
- Required hours of operation for the Interim Plaza (7 am to 8 pm from November 1 through April 14 and 7 am to 10 pm from April 15 through October 31) are established to match the regulations in the Zoning Resolution governing permitted nighttime closings of public plazas;
- On West 62<sup>nd</sup> Street, the minimum required distance between the Education/Social Services buildings on Site 1 and Site 6 is increased from 30 feet to 40 feet; the height of the Site 6 building envelope is reduced from 342 feet to 302 feet and a required minimum base height range is established; and a minimum 15-foot ground-floor setback is required in front of the Site 6 building for 40 feet immediately adjacent to the West 62<sup>nd</sup> Street entrance stair;
- The proposed building envelope for the new Law School on Sites 5/5a is revised to memorialize key features of the proposed design; and
- For the combined residential/dormitory/student center development at Amsterdam Avenue and West 60<sup>th</sup> Street (Sites 3/3a), the base heights are reduced as follows:

- In Massing Option 1 (two towers), the portion of the building envelope between the two towers on Amsterdam Avenue sets back 20 feet at a height of 130 feet before rising to its full height of 150 feet, which is reduced from 179 feet at certification, and,
- In Massing Option 2 (stacked), the base height of the building envelope is reduced from 187 feet to 152 feet.

The Commission believes that the proposed site plan and building massing for the long-term expansion of Fordham’s Lincoln Center Campus, as modified, are superior to as-of-right development in several respects. The Commission notes that the proposed project as modified has less total floor area than an as-of-right plan and the same amount of residential development that would be allowed as-of-right. The proposed project also provides publicly accessible open space in the form of the Interim Plaza and entrance stairs as well as a reconfigured open space on top of the podium, whereas an as-of-right scheme could lack any campus open space and would not be required to provide public access to any open space that did exist. The proposed project likewise includes requirements for ground-floor transparency and active uses that are more extensive than the Special District regulations. In short, the Commission believes that the proposed project represents a significant improvement in urban design quality over what could reasonably be expected to result from an as-of-right scenario.

The Commission notes that the proposed project will create a new, quadrangle-like open space at least one and a half acres in size on top of the existing podium. This open space, along with the buildings surrounding it, will help Fordham to establish a stronger identity for the Lincoln Center Campus. The Commission notes that the applicant proposes to provide greatly improved access to this open space by the creation of two landscaped entrance stairs on Columbus Avenue and West 62<sup>nd</sup> Street. Both of these stairs will be located to form important connections with Lincoln Center, Broadway, and Central Park, thereby strengthening the campus’ links to the surrounding community. The entrance stairs will be open to the sky and will be generously sized to provide welcoming access to the open space and to the university. The project includes seating, planting, and lighting as part of the entrance stairs, and the Commission believes that with these amenities,

the stairs will function as attractive, useful public spaces as well as access points for the campus. The Commission also notes that the application, as well as the restrictive declaration required as a condition of approval, include design requirements for the stairs, and the restrictive declaration requires the Chair of the City Planning Commission to certify that the eventual design of each stair complies with these requirements. The Commission further notes that public access to the podium open space will be improved during Phase I of the proposed project with the provision of an interim stair with seating and plantings on West 62<sup>nd</sup> Street as part of construction of the new Law School building.

The Commission notes that the proposed project as modified places the tallest buildings on the avenues with lower buildings on the midblock, in keeping with sound planning practice. The proposed project also locates residential development on Amsterdam Avenue, separated from the densest academic and dormitory development, which is located on Columbus Avenue. The Commission notes that the project extends the requirements of the Special District regarding ground-floor transparency, which require at least 50 percent transparency on Columbus and Amsterdam Avenues, to the buildings on West 62<sup>nd</sup> Street and increases this requirement to 70 percent ground-floor transparency for Columbus and Amsterdam Avenues as well as a portion of West 62<sup>nd</sup> Street near Columbus. The project will also create new ground-floor transparency and entrances in portions of what is currently a blank wall along West 60<sup>th</sup> Street west of Columbus Avenue. Additionally, street frontage in the new buildings will consist of active university and retail uses – for example, a new university art gallery on Columbus Avenue and retail businesses on Amsterdam Avenue – that will enhance the streetscape and strengthen the university’s engagement with its urban context. The general categories of these uses are established in the application, and the applicant has identified possible active uses in an illustrative ground-floor plan.

The Commission further believes that the proposed massing, as modified, for the buildings on and near Columbus Avenue (Sites 1, 2, and 6) is generally consistent with the existing built context to the east, south, and northeast, which includes several towers with heights over 400 feet and several buildings on Columbus Avenue immediately opposite the campus that rise with

minimal setbacks to heights of approximately 270 to 315 feet. The proposed Business School and Education/Social Services buildings on Columbus Avenue will step down to the Lincoln Center campus to the north, and the massing of these buildings will incorporate a desirable variation in total height and the height of required setbacks. The Commission notes that the opening for the Columbus Avenue entrance stair will be 60 feet wide, increasing to 80 feet above required setbacks, and will ensure unobstructed views into the campus from the east. On West 62<sup>nd</sup> Street, the Commission believes that the proposed modified massing effectively breaks up the bulk of the proposed buildings, in particular by requiring a 77-foot opening for the second entrance stair. The Commission notes that the proposed design for the new Law School building responds to Damrosch Park across the street, provides a substantially articulated façade, and effects an improved relationship with its close neighbor, the Alfred, by means of a tower portion that is turned and shaped to present its narrowest face to the Alfred.

The Commission believes that the proposed Interim Plaza on Columbus Avenue will constitute a valuable amenity for local residents, the general public, and the Fordham community. Though this plaza will eventually be removed to make way for a new university building, the Commission anticipates that it could exist for 10 years or more, given the requirements for timing of the plaza's construction in the proposed restrictive declaration and the applicant's expectation of a hiatus between phases of the master plan. The Commission notes that the Interim Plaza will contain substantial and varied seating and planting, as well as a snack kiosk and a new glass entry pavilion for the campus, and that these and other features of the proposed design are memorialized in plans that are attached to the restrictive declaration.

The Commission believes that the applicant's points of agreement with the Borough President substantially improve the proposal in a number of respects. The Commission notes that the floor area reduction of approximately 144,000 square feet lowers the project's total FAR to 9.5, less than the 10.0 FAR allowed in this district without a floor area bonus. On Columbus Avenue, the massing revisions described in the list of modifications, above, introduce two massing options, both of which will reduce the heights of the buildings on Sites 1 and 2 to levels more consistent with their immediate context. Either option will improve the arrangement of bulk on these sites

by breaking up slabs into separate masses (in Option 1) or by narrowing the proposed towers (Option 2). The Commission expects that the widened sidewalk on Columbus Avenue with the entrance stair extended to the north and south will increase the visibility of this important element and improve pedestrian flows to and from the campus and the subway station at Columbus Circle. The Commission further notes that the reductions of the heights of the proposed residential towers on Amsterdam Avenue will bring these buildings more in line with the existing context of tall buildings in the area, which includes a midblock tower on West 60<sup>th</sup> Street and the Rose Building at West 66<sup>th</sup> Street and Amsterdam Avenue. Increasing the required minimum ground-floor transparency on Columbus and Amsterdam Avenues to 70 percent will, in the Commission's opinion, have a beneficial effect on the streetscape.

The Commission believes that the design review and consultation process detailed in the Borough President's points of agreement and included in the modifications will afford the community an opportunity for have input into the future design of building on the site and notes that this process has been incorporated into the proposed restrictive declaration. The Commission notes the applicant's commitment, included in the modifications, that the eventual design of the entrance stairs will substantially comply with the Zoning Resolution's requirements governing privately owned public spaces. The Commission observes that the applicant has committed, subject to private agreements, to create a private walkway between the new Law School and the residential building on Site 4 that will provide access to West 62<sup>nd</sup> Street for residents of the Alfred. The Commission further observes that the applicant has committed to expand its academic after-school programs for City youth, which it currently operates in the Bronx, into School District 3.

As a condition of the Commission's approval, the proposed project as modified will include a restrictive declaration which establishes and requires, among other provisions, the community design review process detailed in the Borough President's points of agreement; hours of operation and public access requirements for the Interim Plaza and entrance stairs; the process for certification of the final design of the entrance stairs by the Chair of the City Planning



Commission; further design requirements for the Interim Plaza; and restrictions on residential accessory parking described below.

The Commission believes that with these modifications, the requested special permit will facilitate good design in the proposed project and therefore is appropriate.

**Special permit for an Accessory Parking Garage (C 050269 ZSM)**

The Commission believes that the proposed accessory parking garage with a maximum of 68 attended spaces (Garage A) is appropriate.

The Commission understands that within the study area used for the project's environmental analysis, based on a study conducted for the DEIS, the average demand for parking is equivalent to 27 percent of the total number of residential units. The proposed 68 parking spaces in Garage A are equal to approximately 27 percent of the approximate number of units that the applicant expects to develop in the associated residential building on Site 4. (This expected number of units is half the 512 units that the applicant analyzed in the EIS, which was a worst-case estimate based on the assumption of the smallest possible average unit size.) The Commission therefore believes that the proposed garage will serve the needs of the residents of the residential building. However, in response to the applicant's points of agreement with the Borough President, the Commission is modifying the application to require that the maximum number of spaces in the garage be limited to 68 spaces *or* 35 percent of the number of units constructed in the Site 4 residential building, whichever is less.

The Commission notes that according to a parking survey conducted for the EIS, there is presently little off-street parking available in the immediate vicinity of Site 4. The only public parking garage in the immediate vicinity is located on West 61<sup>st</sup> Street, adjacent to the Alfred; this garage currently operates at 80 percent capacity during the midday peak period and 85 percent capacity in the evening peak. There are no other public garages located in the immediate vicinity of the site. According to an analysis of off-street parking availability in 2014, at the end of Phase I of the proposed project, three public garages located on West 59<sup>th</sup> Street, the next

nearest garages to Site 4, are expected to see their utilization increase into the 70-90 percent range during the midday peak period. In addition, the Commission observes that new development south and west of the subject site continues to deplete the amount of available public parking while adding to demand. For example, the proposed Riverside Center development on the superblock bounded by West End Avenue, the future Riverside Boulevard, West 61<sup>st</sup> Street, and West 59<sup>th</sup> Street would result in the elimination of an existing public parking facility with approximately 1,850 spaces. The Commission further notes that new accessory off-street parking facilities are not permitted as-of-right in the Special Lincoln Square District.

The Commission notes that the project's EIS analysis shows that traffic flow on West 62<sup>nd</sup> Street, where access to Garage A would be located, is currently low to moderate at all times. The Commission also notes that the 50-foot roadbed width of West 62<sup>nd</sup> Street, a two-way street, will allow vehicles to make turns into and out of the garage without blocking the flow of traffic. In addition, West 62<sup>nd</sup> Street dead-ends at Amsterdam Avenue and therefore does not serve as a continuous through street in this area. The Commission understands that stop signs and visual and audible warning devices will be placed at the garage exit to reduce potential vehicle/pedestrian conflicts.

The Commission recognizes that access to Garage A on West 62<sup>nd</sup> Street is immediately accessible from Columbus and Amsterdam Avenues, both of which are arterial streets. Because West 62<sup>nd</sup> Street is two-way, vehicles coming to the proposed garage will not need to circle the block in order to access it. As stated above, West 62<sup>nd</sup> Street does not continue west of Amsterdam Avenue into the Amsterdam Houses complex. Finally, the Commission notes that the required 10 reservoir spaces will be provided on the street and cellar levels of the garage.

#### **Special permit for an Accessory Parking Garage (C 050271 ZSM)**

The Commission believes that the proposed accessory parking garage with a maximum of 137 attended spaces (Garage C) is appropriate.

The Commission understands that within the study area used for the project's environmental analysis, based on a study conducted for the DEIS, the average demand for parking is equivalent to 27 percent of the total number of residential units. The Commission further understands that the proposed 137 parking spaces in Garage C are equal to approximately 35 percent of the approximate number of units that the applicant expects to develop in the associated residential development on Sites 3/3a. Though this is somewhat higher than the average estimated demand, the Commission notes that outside the Special District in Community District 7, new residential developments are allowed a number of accessory parking spaces equal to 35 percent of the number of units. The Commission also notes that under the terms of the applicant's points of agreement with the Borough President, the applicant has agreed to eliminate the proposed 265-space accessory garage serving the university (Garage B). The Commission is modifying the application to specify that the applicant may use up to half of the spaces in Garage C for its own accessory use. The Commission therefore believes that the proposed garage will serve the needs of the residents of the residential building. However, in response to the applicant's points of agreement with the Borough President, the Commission is modifying the application to require that the maximum number of spaces in the garage be limited to 137 spaces *or* 35 percent of the number of units constructed in the residential development on Sites 3/3a, whichever is less.

The Commission notes that according to a parking survey conducted for the EIS, there is presently little off-street parking available in the immediate vicinity of Sites 3/3a. The only public parking garage in the immediate vicinity is located on West 61<sup>st</sup> Street, adjacent to the Alfred and immediately opposite the proposed access to Garage C; this garage currently operates at 80 percent capacity during the midday peak period and 85 percent capacity in the evening peak. There are no other public garages located in the immediate vicinity of the site. According to an analysis of off-street parking availability in 2014, at the end of Phase I of the proposed project, three public garages located on West 59<sup>th</sup> Street, the next nearest garages to Sites 3/3a, are expected to see their utilization increase into the 70-90 percent range during the midday peak period. In addition, the Commission observes that new development south and west of the subject site continues to deplete the amount of available public parking while adding to demand. For example, the proposed Riverside Center development on the superblock bounded by West

End Avenue, the future Riverside Boulevard, West 61<sup>st</sup> Street, and West 59<sup>th</sup> Street would result in the elimination of an existing public parking facility with approximately 1,850 spaces. The Commission further notes that new accessory off-street parking facilities are not permitted as-of-right in the Special Lincoln Square District.

The Commission notes that access to the proposed garage would be via a new curb cut on the south side of West 61<sup>st</sup> Street, which is a two-way narrow street that terminates in a cul-de-sac turnaround area approximately 250 feet east of Amsterdam Avenue. This portion of West 61<sup>st</sup> Street also provides access to an existing public parking garage with 100 spaces on the north side of the street, and the applicant proposes to locate a curb cut providing access to two loading berths approximately five feet east of the curb cut accessing Garage C. The Commission notes that this portion of West 61<sup>st</sup> Street is a dead-end street without through traffic and further notes that pedestrians are likely to access the other university buildings located on the street – the proposed Library on Site 7 and the dormitory and student center on Sites 3/3a – from the campus, or in the case of the dormitory, from a lobby on Amsterdam Avenue, instead of from West 61<sup>st</sup> Street. The Commission understands that stop signs and visual and audible warning devices will be placed at the garage exit to reduce potential vehicle/pedestrian conflicts.

The Commission observes that access to Garage C on West 61<sup>st</sup> Street is located just off Amsterdam Avenue, an arterial street that runs much of the length of Manhattan and contains a mix of uses. The Commission also observes that access to Garage C is located west of the entrance to the Alfred and therefore will draw minimal traffic to the portion of the street in front of the Alfred. Finally, the Commission notes that the required 10 reservoir spaces will be provided on the street and cellar levels of the garage.

#### **Zoning Text Amendment (N 090170 ZRM)**

The Commission believes that the proposed text amendment to Section 82-50 (Off-Street Parking and Off-Street Loading Regulations) of the Zoning Resolution, to clarify certain inconsistencies in the Special Lincoln Square District regulations governing the location of curb cuts providing access to off-street loading berths, is appropriate. The proposed text amendment

would make clear that no curb cuts providing access to loading berths are allowed on wide streets as-of-right in the Special District. The proposed text would further clarify that curb cuts on wide streets for all loading berths (permitted and required) may be allowed by authorization of the Commission pursuant to the findings in Section 13-553 of the Zoning Resolution.

#### **Authorizations for Curb Cuts (N 090171 ZAM and N 090172 ZAM)**

The Commission believes that the proposed authorization pursuant to Section 13-553 to allow a curb cut on a wide street (West 62<sup>nd</sup> Street) to provide access to an accessory parking garage (Garage A), and the proposed authorization pursuant to Sections 82-50(b) (as amended) and 13-553 to allow a curb cut on a wide street (West 62<sup>nd</sup> Street) to provide access to off-street loading berths, are appropriate. The Commission notes that the project's EIS analysis shows that traffic flow on West 62<sup>nd</sup> Street, where the proposed curb cuts would be located, is currently low to moderate at all times. The 50-foot roadbed width of West 62<sup>nd</sup> Street, a two-way street, will allow vehicles to make turns into and out of the garage and loading berths without blocking the flow of traffic. In addition, West 62<sup>nd</sup> Street dead-ends at Amsterdam Avenue and therefore does not serve as a continuous through street in this area. The Commission further notes that in the application as modified, the distance between the two curb cuts is approximately 33 feet, which provides ample space for pedestrians to wait between the curb cuts if vehicles are entering or exiting. West 62<sup>nd</sup> Street does not have a bus lane or a public transit facility and is not a specially designated street.

#### **FINDINGS**

Based upon the above consideration, the Commission hereby makes the following finding pursuant to Section 82-33 (Modification of Bulk Regulations):

- (a) That the requested modifications of regulations governing height and setback, minimum distance between buildings, courts, and minimum distance between legally required windows and walls/lot lines are necessary to facilitate good design.

(b) [Not applicable]

(c) [Not applicable]

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on April 10, 2009, with respect to this application (C 050260 ZSM), the City Planning Commission finds that the requirements of Part 617, New York State Environmental Quality Review have been met and that, consistent with social, economic, and other essential considerations:

1. From among the reasonable alternatives thereto, the action, with the modifications set forth and analyzed in Chapter 27 of the FEIS, is one that avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts revealed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigation measures that were identified as practicable

The report of the City Planning Commission, together with this FEIS, constitute 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**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration and findings described in this report, the application submitted by Fordham University for the grant of a special permit pursuant to Section 82-33 of the Zoning Resolution to modify:

- a. the height and setback requirements of Section 23-632 (Front setbacks in districts where front yards are not required);

- b. the inner and outer court regulations of Section 23-841 (Narrow outer courts), Section 23-843 (Outer court recesses), Section 23-851 (Minimum dimensions of inner courts), Section 23-852 (Inner court recesses), Section 24-632 (Wide outer courts), Section 24-633 (Outer court recesses), Section 24-652 (Minimum distance between required windows and certain walls), and Section 23-863 (Minimum distance between legally required windows and any wall in an inner court);
- c. the minimum distance between buildings on a zoning lot requirements of Section 23-711 (Standard minimum distance between buildings); and
- d. the minimum distance between legally required windows and zoning lot lines requirements of Section 23-861 (General Provisions);

in connection with the proposed expansion of Fordham University, Lincoln Center Campus, bounded by Amsterdam Avenue, West 62nd Street, Columbus Avenue, West 60<sup>th</sup> Street, Amsterdam Avenue, West 61<sup>st</sup> Street, a line 200 feet easterly of Amsterdam Avenue, and a line 90 feet southerly of West 62<sup>nd</sup> Street (Block 1132, Lots 1, 20, and 35), in a C4-7 District, within the Special Lincoln Square District, Community District 7, Borough of Manhattan, is approved subject to the following conditions:

1. The application that is the subject of this application (C 050260 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Cooper, Robertson & Partners (CRP), Pei Cobb Freed & Partners (PCF), and Lee Weintraub Landscape Architecture (LWLA), filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
		April 22, 2009 for all drawings
Z-7	Site Plan – Proposed (CRP)	
Z-11	Zoning Analysis (CRP)	
Z-12	Site Plan: Diagrammatic Building Envelopes (CRP)	
Z-13	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	
Z-13.1	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	
Z-13.2	Block Sections: Diagrammatic Building Envelopes and Illustrative Massing (CRP)	
Z-14	Encroachment Diagrams (CRP)	
Z-14.1	Encroachment Diagrams (CRP)	
Z-14.2	Encroachment Diagrams (CRP)	
Z-15	Encroachment Diagrams (CRP)	
Z-15.1	Encroachment Diagrams (CRP)	
Z-18	Parking and Loading – Garage A (CRP)	
Z-18.2	Parking and Loading – Garage C (CRP)	
—	Interim Stair Plan & Section (PCF)	
ZL-0.0	Illustrative Plan (LWLA)	
ZL-0	Survey (LWLA)	
ZL-0.1	Site Demolition & Protection Plan (LWLA)	
ZL-1	Materials Plan (LWLA)	
ZL-2	Dimensions, Elevations and Drainage Plan (LWLA)	
ZL-3	Planting Plan (LWLA)	
ZL-4	Lighting Plan (LWLA)	
ZL-5	Illustrative Sections (LWLA)	
ZL-6	Illustrative Sections & Entry Sign Detail (LWLA)	
ZL-7	Site Details (LWLA)	
ZL-8	Bench Details & Site Furnishings (LWLA)	



2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. The development shall incorporate those mitigative measures disclosed in the Final Environmental Impact Statement (CEQR No. 05DCP020M) issued on April 10, 2009. With respect to shadow and construction mitigative measures, such measures are more fully set forth in the Restrictive Declaration attached as Exhibit A.
5. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
6. 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.
7. Development of Site 4 pursuant to this resolution shall be allowed only after evidence that a light and air easement agreement, as described in this report and approved by the Department of City Planning, has been duly recorded and filed in the Office of the Register of the City of New York, County of New York and submission of evidence demonstrating such recording that is acceptable to Counsel to the Department of City Planning.

8. Development pursuant to this resolution shall be allowed only after the Restrictive Declaration, set forth in Exhibit A attached hereto, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed by Fordham University and recorded in the Office of the Register of the City of New York, County of New York.
  
9. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution 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.
  
10. 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 050260 ZSM), duly adopted by the City Planning Commission on April 22, 2009 (Calendar No. 18), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,**  
**RICHARD W. EADDY, SHIRLEY A. McRAE, JOHN MEROLO,**  
**KAREN A. PHILLIPS, Commissioners**

**NATHAN LEVENTHAL, Commissioner, Recused**

**EXHIBIT A**

**RESTRICTIVE DECLARATION**

**DATED AS OF APRIL 22, 2009**

**NEW YORK COUNTY  
BLOCK 1132, LOTS 1, 20 AND 35**

**RECORD AND RETURN TO:  
GREENBERG TRAUIG LLP  
200 PARK AVENUE  
NEW YORK, NEW YORK 10166  
ATTN: DEIRDRE A. CARSON, ESQ.**

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## RESTRICTIVE DECLARATION

THIS DECLARATION, made as of the 22nd day of April, 2009 by FORDHAM UNIVERSITY, a New York educational corporation established by the Legislature of the City of New York, having its principal address at 441 East Fordham Road, Bronx, New York 10458 (“Declarant”).

### W I T N E S S E T H:

#### WHEREAS:

A. Declarant is the fee owner of certain real property located in the Borough of Manhattan, City, County and State of New York, designated for real property tax purposes as Lots 1, 20 and 35 of Block 1132 on the Tax Map of the City of New York, which real property is more particularly described on Exhibit A to this Declaration (the “Property”);

B. Pursuant to the Zoning Resolution of the City of New York, effective December 15, 1961, as amended through the date hereof and as may hereafter from time to time be amended (the “Z.R.” or the “Zoning Resolution”), the Property is located within a C4-7 zoning district within the Special Lincoln Square District, in which the maximum permitted floor area ratio for each of commercial, residential and community facility uses is 10; and

C. Declarant wishes to (i) develop certain portions of the Property that have heretofore been undeveloped as academic buildings to service the University’s program, (ii) demolish the existing building servicing the University’s School of Law, and (iii) raise funds for the University’s endowment that will support the construction of new facilities for the University by selling two sites on the Campus to private developers to be developed as market-rate housing; and

D. To that end, Declarant has proposed a Master Plan for the development of the Campus that is intended to be implemented in two phases occurring over the next twenty-five years (the “Master Plan”) and consisting of up to seven new academic buildings, two residential buildings, two garages and a loading dock; and

E. In order to implement the Master Plan, certain modifications of the requirements of the Zoning Resolution are required and, to obtain them, Declarant has made applications to the City Planning Commission of the City of New York (the “CPC”): (a) under Application Number 050260ZSM for a special permit pursuant to Z.R. § 82-33 for modifications of height, setback, minimum distance between buildings on a single zoning lot, inner and outer court and minimum distance between legally required window and wall/lot line regulations (the “Envelope Special Permit”); (2) under Application Numbers 0520269ZSM and 050271ZSM and pursuant to Z.R. § 13-561 for special permits to permit the construction of two accessory parking garages, entered, respectively, from West 62<sup>nd</sup> Street (for 68 spaces) and West 61<sup>st</sup> Street (for 137 spaces) (the “Garage Special Permits”), together with additional time to complete the West 61<sup>st</sup>



Street garage pursuant to Z.R. §11-42(c); (3) under Application Number N09070ZRM, a zoning text amendment to Z.R. §82-50 to clarify the intention of the Zoning Resolution regarding curb cuts on wide streets for off-street loading berths (the "**Zoning Text Amendment**"); (4) under Application Number N09071ZAM, pursuant to Z.R. §13-553 for authorization of a curb cut for the construction of the parking garage on West 62<sup>nd</sup> Street (the "**Garage Curb Cut Authorization**"); and (4) under Application Number N090172ZAM, pursuant to Z.R. § 82-50(b), for authorization of a curb cut for access to new permitted loading berths on West 62<sup>nd</sup> Street (the "**Berth Curb Cut Authorization**") (the Garage Curb Cut Authorization and the Berth Curb Cut Authorization, collectively, the "**Curb Cut Authorizations**") (the Envelope Special Permit, the Garage Special Permits, the Zoning Text Amendment, the Garage Curb Cut Authorization and the Berth Curb Cut Authorization, collectively, the "**Actions**" and the applications to CPC for the Actions, collectively, the "**Applications**"); and

F. The Master Plan organizes the Campus buildings around an open area that is the continuation of the existing raised plaza on the Campus, but which is intended to be made more readily accessible for public use according to the Master Plan by the construction of two new grand access stairs at 61<sup>st</sup> and 62<sup>nd</sup> Streets and, on an interim basis through an Interim Stair (hereafter defined) to be located between the existing Fordham School of Law and the new building to be constructed on Site 5 (as described in Drawing Z-12, hereafter defined); and

G. The CPC adopted resolutions approving the Actions on April 22, 2009, under Calendar Numbers 18, 19, 20, 22, 23 and 24 (the resolutions adopted by CPC, collectively, the "**Approvals**"); and

H. As a condition to the Approvals, Declarant has executed this Declaration regarding the development, maintenance, operation and use of an Interim Open Space (hereafter defined) to be constructed in the existing open parking area of the Property along Columbus Avenue; the development and conditions of use of the Access Stairs (hereafter defined); and compliance with construction air and noise mitigation measures as set forth in Article III of this Declaration and as hereafter defined; and

I. CPC acted as lead agency and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and

J. CPC prepared a Final Environmental Impact Statement for the Fordham Lincoln Center Campus ("**FEIS**") and issued a Notice of Completion of FEIS on April 10, 2009; and

K. To ensure that the development of the Property is consistent with the analysis in the EIS upon which it is anticipated that the CPC will make findings pursuant to the New York Environmental Quality Review, 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 (“**SEORA**”), and that the construction procedures at the Property incorporate certain mitigation measures identified in the Draft Environmental Impact Statement (“DEIS”), a Notice of Completion for which was issued on November 17, 2008 (“DEIS”), Declarant has agreed to restrict the development, operation, use and maintenance of the Property in certain respects, which restrictions are set forth in this Declaration; and

L. First American Title Insurance Company has certified in a certification attached to this Declaration as **Exhibit B**, that, as of March 30, 2009, Declarant is the sole “party-in-interest” (as defined in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution), in the Property; and

M. Declarant represents and warrants that, except with respect to mortgages or other instruments specified herein, the holders of which have given their consent or waived their right to object hereto, no restrictions of record on the development or use of the Property, nor any present or presently existing estate or interest in the Property, nor any lien, obligation, covenant, easement, limitation or encumbrance of any kind precludes, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration or the development of the Property in accordance herewith.

NOW, THEREFORE, Declarant does hereby declare that the Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations and agreements, which shall run with the Property and bind Declarant, its successors and assigns as herein set forth.

## ARTICLE I

### CERTAIN DEFINITIONS

For purposes of this Declaration:

“**61<sup>st</sup> Street Access Stair**” shall mean the Access Stair (hereafter defined) and the associated and adjacent sidewalk widening, to be constructed to provide access to the Central Plaza (hereafter defined) on the Property that will be aligned with 61<sup>st</sup> Street and accessed from Columbus Avenue, and which is identified as Outdoor Landscaped Area I on Drawings Z-7 and Z-12 (hereafter defined).

“**62<sup>nd</sup> Street Access Stair**” shall mean the Access Stair (hereafter defined) and the associated and adjacent sidewalk widening, to provide access to the Central Plaza, to be constructed 233’2” west of the intersection of Columbus Avenue and West 62<sup>nd</sup> Street, and which is identified as Outdoor Landscaped Area II on Drawings Z-7 and Z-12.

“**Access Stairs**” shall mean the 61<sup>st</sup> Street Access Stair and the 62<sup>nd</sup> Street Access Stair, also identified as Outdoor Landscaped Areas I and II, respectively, as reflected in Drawings Z-7 and Z-12 that provide public access to the Central Plaza, consisting of the 61<sup>st</sup> Street Access Stair and the 62<sup>nd</sup> Street Access Stair.

**“Actions”** shall have the meaning given it in Paragraph E of the Recitals to this declaration.

**“Agencies”** shall mean the Departments of City Planning and Environmental Protection, collectively.

**“Applications”** shall have the meaning given in Paragraph E of the Recitals of this Declaration, as the same may be hereafter modified.

**“Approvals”** shall have the meaning given in Paragraph G of the Recitals of this Declaration, as same may be hereafter modified.

**“Building Permit”** shall mean, with respect to any New Building (hereafter defined), a work permit under a new building application to the DOB authorizing the construction of a New Building.

**“Campus”** shall have the same meaning as Property.

**“Central Plaza”** shall mean the raised, landscaped plaza around which certain buildings on the Campus currently exist and new buildings will be developed under the Master Plan.

**“Chair”** shall mean the Chair of the CPC from time to time, or any successor to its jurisdiction.

**“Circumstances Beyond the Control of Declarant”** shall mean: delays from any and all causes beyond Declarant’s reasonable control, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls), (ii) 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 Campus), (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems), (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price), (v) acts of God (including inordinately severe weather conditions), (vi) removal of hazardous substances that could not have been reasonably foreseen, (vii) 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 of which Declarant has given the CPC notice, (xiii) a taking of the whole or any relevant portion of the Property by condemnation or eminent domain; (ix) unforeseen soil conditions substantially delaying construction of any relevant portion of the Property; (x) denial to Declarant by any party of a right of access to any adjoining real 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; (xi) 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; (xii) unusual delays in transportation. Declarant shall notify the CPC of Circumstances Beyond the Control of Declarant promptly following the occurrence of the same and, in any event not later than thirty (30) days following Declarant's knowledge of the occurrence thereof.

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

“**Council**” shall mean the Council of the City of New York, or any successor to its jurisdiction.

“**CMM**” shall mean the Construction Mitigation Measures as defined and described in Article III of this Declaration.

“**CPC**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration.

“**Curb Cut Authorizations**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration;

“**Declarant**” shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 8.7 of this Declaration.

“**Declaration**” shall mean this Declaration, as same may be amended or modified from time to time in accordance with its provisions.

“**DEP**” shall mean the Department of Environmental Protection of the City of New York, or any successor to the jurisdiction thereof under the New York City Charter.

“**DOB**” shall mean the Department of Buildings of the City of New York, or any successor to the jurisdiction thereof under the New York City Charter.

“**Drawing Z-7**” shall mean the drawing labeled Z-7, dated as of April 22, 2009, which is attached to and forms a part of the Applications, a copy of which is attached as part of **Exhibit C**.

“**Drawing Z-12**” shall mean the drawing labeled Z-12, dated as of April 22, 2009, which is attached to and forms a part of the Applications, a copy of which is attached as part of **Exhibit C**.

“**Drawings**” shall mean Drawing Z-7 and Drawing Z-12, collectively.

“**Envelope Special Permit**” shall have the meaning given it in Paragraph G of the recitals to this Declaration.

“**Effective Date**” shall have the meaning given it in Section 6.1 of this Declaration.

**“Final Approval”** shall mean the date that is fifteen (15) days after expiration of the time period for action on the Applications, other than the Curb Cut Authorizations, by the Council under subdivisions c or d, as applicable, of Section 197-d of the New York City Charter, provided that the Council shall have approved the Applications, and further provided that if the Mayor of the City of New York has filed a written disapproval of the Applications in accordance with the provisions of subsection f of Section 197-d of the New York City Charter, the Council shall have approved an override of such disapproval.

**“Final Completion”** shall mean that all items of work required to be performed under the Open Space Plans (hereafter defined), the Stair Drawings (hereafter defined) or the Stair Plan (hereafter defined) have been completed.

**“Floor Area”** shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

**“Interested Party”** shall mean only (a) fee owner(s) of the Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of the Property or all or substantially all of any Parcel or portion thereof; (c) a cooperative corporation which holds beneficial ownership of any portion of the Property or any building built on the Property; (d) the board of managers of any portion of the Property that is subject to a declaration of condominium; (e) the lessee or occupant of any individual residential or commercial unit, or the owner of the beneficial interest of any residential or commercial unit, held in cooperative or condominium ownership; (f) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership or owned by a cooperative corporation; (g) the holder of a mortgage or lien encumbering any other interest in the Property, including, but not limited to a fee estate or a ground lease; or (h) the holder of any other interest in any portion of the Property or any improvements constituting a part of the Master Plan, , including any such residential or commercial unit or apartment or building held in condominium ownership, or owned by a cooperative corporation that qualifies as a Party-in-Interest under applicable law, including the Zoning Resolution.

**“Interim Open Space”** shall mean the interim open space to be constructed along the Columbus Avenue frontage of the Campus in the area located between the eastern wall of the Campus buildings existing on the date hereof and the street line of the Property on Columbus Avenue, from the street line of West 60th Street, for a distance of 205 feet north of the intersection of West 60th Street and Columbus Avenue, as shown on the Open Space Plans.

**“Interim Stair”** shall mean the access stairs to the Central Plaza to be constructed and maintained between the location of the existing School of Law at 140 West 62<sup>nd</sup> Street at the date hereof and the New Building to be constructed on Site 5, as shown in the Drawings, until the development of Site 6 occurs.

**“Law School Design”** shall mean the design for the construction of the New Building to house the Fordham School of Law on the Campus designed by Pei Cobb

Freed & Partners and reflected in the drawings attached to this Declaration as “**Exhibit D.**”

“**Lot Owner**” shall mean only (a) fee owner(s) of the Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of the Property or all or substantially all of any Parcel or portion thereof; (c) the cooperative corporation which holds beneficial ownership of any portion of the Property or any building built on the Property; (d) the board of managers of any portion of the Property that is subject to a declaration of condominium; and (e) the lessee or occupant of any individual residential, commercial or community facility unit or the owner of the beneficial interest of any residential or commercial unit held in cooperative or condominium ownership.

“**Master Plan**” shall mean the arrangement of buildings, open spaces and uses, with their corresponding approved maximum envelopes, to be constructed on the Campus as set forth in the Applications and reflected in the Drawings.

“**Mortgage**” shall mean a mortgage given as security for a loan in respect of all or any portion of the Property.

“**Mortgagee**” shall mean the holder of a Mortgage.

“**New Building**” shall mean any of the new buildings to be constructed on any of the Sites (hereafter defined) in the Master Plan, as reflected on the Drawings.

“**Notice**” shall have the meaning given in Section 8.5 of this Declaration.

“**Obligations**” shall mean any requirement of this Declaration, including, without limitation, the mitigation requirements set forth in Article III, and the Open Space requirements set forth in Article IV.

“**Open Space Plans**” shall mean the plans for the development of the Interim Open Space annexed hereto as **Exhibit E.**

“**Parcels**” shall mean any tax lot hereafter created as the result of a new subdivision of the Property first occurring after the date of this Declaration.

“**Parking Special Permits**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration.

“**Party-in-Interest**” shall have the meaning given it in Paragraph L of the Recitals to this Declaration.

“**Plans**” shall mean the Open Space Plans, the Revised Access Stair Drawings and the Stair Plan, collectively.

“**Possessory Interest**” shall mean either (1) a fee interest in the Property or any portion thereof or (2) the lessee's estate in a ground lease of all or substantially all the Property or all or substantially all of any Parcel or portion thereof.

“**Property**” shall have the meaning given in Paragraph A of the Recitals to this Declaration.

“**Register**” shall have the meaning given in Section 6.2 of this Declaration.

“**Register's Office**” shall have the meaning given in Section 6.2 of this Declaration.

“**Site**” shall mean any of the nine (9) sites identified on Drawing Z-7 for future development on the Campus pursuant to the Master Plan and “**Sites**” shall mean any combination of two or more of the foregoing.

“**Stair**” shall mean any of the two Access Stairs or the Interim Stair. “**Stairs**” shall mean any combination of two or more of the foregoing.

“**Stair Plan**” shall mean the plan for the development of the Interim Stair annexed hereto as Exhibit F.

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

“**Substantial Completion**” or “**Substantially Complete**” shall mean that construction and furnishing of the Interim Open Space or Stairs (as the case may be) have been completed to such an extent that such amenity is available to and open for use by the public and no further material work is required to be performed by Declarant with respect to such amenity to make the Interim Open Space or Stairs safe, suitable for public access and open to the public, construction has been completed substantially in accordance with the Plans, including all of the design elements contained therein as to seating, pavement, plantings and landscaping (including trees and shrubs), lighting, signage and provision and location of facilities (including, without limitation, access ramps, kiosk, drinking fountain, refuse disposal containers and bike rack), in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed and notwithstanding that some landscaping, planting of vegetation or other tasks which must occur seasonally has not been completed, provided that Declarant supplies assurances in a manner reasonably acceptable to the Chair that such task will be completed in the appropriate season.

“**Unit Owner**” shall mean (a) the lessee or occupant of any individual residential or commercial unit, or the owner of the beneficial interest of any residential or commercial unit, held in condominium ownership, or (b) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership.

“**Use Group**” shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the effective date of this Declaration.

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

Certain additional terms are defined in the Sections in which they first appear or to which they most closely pertain.

## ARTICLE II

### DEVELOPMENT OF THE PROPERTY AND NEW BUILDING DESIGN

2.1 **Development of the Property.** Declarant shall develop the Property in substantial conformity with the following plans and drawings and in compliance with this Declaration:

<b><u>Drawing No.</u></b>	<b><u>Drawing Title</u></b>	<b><u>Drawing Date</u></b>
Z-7	Site Plan - Proposed (CRP)*	4/22/09
Z-11	Zoning Analysis (CRP)	4/22/09
Z-12	Site Plan: Diagrammatic Building Envelopes (CRP)	4/22/09
Z-13	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	4/22/09
Z-13.1	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	4/22/09
Z-13.2	Block Sections: Diagrammatic Building Envelopes and Illustrative Massing (CRP)	4/22/09
Z-14	Encroachment Diagrams (CRP)	4/22/09
Z-14.1	Encroachment Diagrams (CRP)	4/22/09
Z-14.2	Encroachment Diagrams (CRP)	4/22/09
Z-15	Encroachment Diagrams (CRP)	4/22/09
Z-15.1	Encroachment Diagrams (CRP)	4/22/09
Z-18	Parking and Loading - Garage A (CRP)	4/22/09
Z-18.2	Parking and Loading - Garage C (CRP)	4/22/09
	Interim Stair Plan & Section (PCF)**	4/22/09
ZL-0.0	Illustrative Plan (LWLA)***	4/22/09
ZL-0	Survey (LWLA)	4/22/09



ZL-0.1	Site Demolition & Protection Plan (LWLA)	4/22/09
ZL-1	Materials Plan (LWLA)	4/22/09
ZL-2	Dimensions, Elevations & Drainage Plan (LWLA)	4/22/09
ZL-3	Planting Plan (LWLA)	4/22/09
ZL-4	Lighting Plan (LWLA)	4/22/09
ZL-5	Illustrative Sections (LWLA)	4/22/09
ZL-6	Illustrative Sections & Entry Sign Detail (LWLA)	4/22/09
ZL-7	Site Details (LWLA)	4/22/09
ZL-8	Bench Details & Site Furnishings (LWLA)	4/22/09

- \* Cooper, Robertson and Partners (CRP)
- \*\* Pei Cobb Freed Partners (PCF)
- \*\*\* Lee Weintraub Landscape Architects, LLC (LWLA)

2.2 **Design Review and Consultation Process.** In order to provide the community in which the Campus is located with an opportunity to comment upon elements of the design of each New Building, Declarant shall participate in the design review and consultation process (“**DRCP**”) described below, if the Borough President for the Borough of Manhattan (the “**Borough President**”) shall hereafter elect to conduct such process.

(a) If a DRCP Committee (the “**Committee**”) is hereafter established by the BP, it shall consist of five (5) members, of whom three (3) members shall be appointed by the Borough President and two (2) members shall be appointed by the Councilmember for the district in which the Campus is located (the “**Councilmember**”).

(b) Within sixty (60) days after the award by Declarant of a design contract to an architect for the design of a New Building (the “**Design Architect**”), Declarant shall give notice of the design award to the Committee, specifying the name of the architect and providing such architect’s address for purposes of giving notices hereunder. Upon receiving the notice, the Committee may convene a meeting (the “**Initial Design Meeting**”) to be held within thirty (30) days after receipt of the notice, at which Declarant and the Design Architect shall present the general concept for the design of the New Building, using such presentation materials as they, in their sole discretion, deem appropriate and necessary. The issues to be considered at the Initial Design Meeting shall be the overall configuration of the New Building (height, setbacks, street wall treatments, street level program and appearance and façade materials (the “**Design Elements**”). If the Committee shall fail to convene an Initial Design Meeting within the time herein provided, then the Committee shall be deemed to have waived the right to participate in the DRCP established by this Section 2.2.

(c) Within fifteen (15) days after the Initial Design Meeting, the Committee may provide written comments to Declarant and the Design Architect, setting forth its specific concerns about the Design Elements of the Building.

(d) Upon completion of the conceptual design of the New Building, Declarant, through its Design Architect, shall give notice of completion to the Committee and, within thirty (30) days of its receipt of the notice, the Committee may convene a meeting with Declarant to consider and review the Design Elements as set forth in the conceptual design (the “**Conceptual Design Meeting**”). In order to facilitate the Committee’s consideration and review of the Design Elements, Declarant, through its Design Architect, shall provide to the Committee the following materials: at least one section of the New Building and elevations; a plan showing the layout of the ground floor; a roof plan; one rendering of the New Building in the context of the block of which it forms a part; and zoning calculations. If the Committee shall fail to convene a Conceptual Design Meeting within the time herein provided, then the Committee shall be deemed to have waived the right to such a meeting and to participate in further proceedings under this DRCP.

(e) Within fifteen (15) days after the Conceptual Design Meeting, the Committee may provide written comments to Declarant and the Design Architect, setting forth its concerns about the Design Elements of the New Building as set forth in the conceptual design.

(f) Upon Declarant’s completion of schematic drawings for the New Building, but in no event fewer than sixty (60) days after the Conceptual Design Meeting, and, in any event, prior to filing an application with the DOB for approval of plans for the construction of the New Building, Declarant through its Design Architect shall provide the Committee with copies of its schematic drawings, noting any changes that have been made to any Design Elements that were shown to the Committee during the Conceptual Design Meeting. If there have been changes in any such Design Elements, then, the Committee may convene a meeting with Declarant and its Design Architect within thirty (30) days after its receipt of the schematic drawings (a “**Schematic Design Meeting**”) to consider and review the modified Design Elements shown in the schematic drawings. If the Committee shall request such a meeting, then Declarant shall not file plans with the DOB until after the meeting has occurred. If the Committee shall fail to convene a Schematic Design Meeting, then it shall be deemed to have waived the right to conduct such a meeting or to participate in any further proceedings under the DRCP.

(g) Within fifteen (15) days after the Schematic Design Meeting, the Committee may submit written comments to Declarant and the Design Architect concerning the modifications shown in the schematic designs. Declarant shall not file any application with the DOB for approval of plans for the New Building for a period of not fewer than thirty (30) days after the date on which such comments are given.

(h) Declarant shall not accept a Building Permit for the construction of a New Building unless it has completed each of the procedures described in Sections

2.2(b) through 2.2(g) of this Section 2.2 (or at such time as the Committee has waived or is deemed to have waived any further participation in the DRCP).

(i) If Declarant through its Design Architect shall make any material modifications in the Design Elements subsequent to the presentation of its schematic drawings, then it shall repeat the process set forth in Sections 2.2(f) and 2.2(g) of this section.

(j) All notices required or permitted to be given under this Section 2.2 shall be given to Declarant as provided in Section 8.5 of this Declaration, to the Design Architect at the address specified pursuant to the procedure set forth in Section 2.2(b) of this Section and to the Committee, c/o the Office of the Borough President, 1 Centre Street, 19<sup>th</sup> Floor, New York, New York 10007, Att: Director of Land Use. The Borough President may change addresses for the giving of notices to it in the same manner as is provided for the change of addresses for the giving of notices in Section 8.5 of this Declaration and notices shall be given in the same manner and be effective at the same time as provided in such section.

(k) All Design Elements shall be consistent with the Approvals. Under no circumstances shall Declarant or its Design Architect be required to respond to any comments that would require the modification of any Design Element in a manner that would require a modification of the Approvals.

(l) The design for the New Building proposed to be constructed on Sites 5 and 5a shall be exempt from this design review process, provided that such New Building is designed substantially in accordance with the Law School Design. With the consent of the Borough President, the Councilmember and the Community Board, designs for additional buildings in the Master Plan may be exempted from the DRCP.

2.3 **Parking Limitation.** Notwithstanding anything to the contrary contained in the Applications or Approvals, Declarant shall limit the number of accessory parking spaces to be constructed in each of Garages A and C to the lesser of 35% of the number of dwelling units actually constructed in the private residential buildings on either of Sites 3 (in the case of Garage C) or 4 (in the case of Garage A) or the number of spaces authorized by the Approvals. In the case of Garage C, up to fifty percent (50%) of the spaces may be designated for use by the community facility use on the zoning lot.

### ARTICLE III

#### ENVIRONMENTAL MITIGATION MEASURES

3.1 **Construction Impacts.** In order to mitigate certain potentially adverse environmental impacts associated with Construction of each New Building under the Master Plan, Declarant covenants and agrees to implement the measures hereinafter set forth.

(a) **Noise Controls (Source Controls).** At the earliest possible point in construction of each New Building, but in any event prior to commencement of

demolition or excavation (whichever first occurs), Declarant will implement the following source controls to control the noise created by construction equipment and procedures:

(i) use of equipment that meets the sound level standards of Subchapter 5 of the New York City Noise Control Code (i.e., Local Law 113), as amended, along with a wide range of equipment, including construction trucks, which produce lower noise levels than typical construction equipment;

(ii) adherence to mandated noise levels for select construction equipment as specified in the table annexed to this Declaration as **Exhibit G**;

(iii) replacement of diesel or gas-powered welders, water pumps, bench saws, table saws and hoist (“**Equipment**”) with electrical-powered Equipment as soon as possible following electrification of a Site;

(iv) site configuration to reduce or eliminate back-up alarm noise and enforcement of statutory limitations on idling;

(v) restriction of number of pieces of equipment on a Site at single time to maintain noise levels in accordance with the table attached as **Exhibit H**;

(vi) enforceable contractual requirements with contractors and sub-contractors requiring maintenance and operation of equipment in accordance with industry standards for best practices and installation of quality mufflers meeting manufacturers’ specifications.

(b) **Noise Controls (Path Controls)**. At the earliest possible point in the construction of each New Building, but in any event, prior to commencement of demolition or excavation (whichever first occurs) Declarant will also implement and maintain continuously throughout Construction, the following path controls:

(i) location of cranes, concrete pumps, concrete trucks and delivery trucks as far away as possible from the sensitive receptor locations identified in the table attached as **Exhibit I**;

(ii) erection of a minimum 8-foot noise barrier enclosing the construction sites along West 62<sup>nd</sup> Street between Amsterdam and Columbus Avenue and 16-foot noise barriers on Amsterdam Avenue between West 60<sup>th</sup> and 62<sup>nd</sup> Streets, on Columbus Avenue between West 60<sup>th</sup> and West 62<sup>nd</sup> Streets, on West 60<sup>th</sup> Street between Amsterdam and Columbus Avenues and between Sites 4, 5 and 5a and the Alfred Condominium;

(iii) truck deliveries (A) within the excavated pit, where excavation occurs on a Site, or (B) if the foundation is not excavated, from commencement of construction of the foundation, and, in any event, behind such barriers once foundation construction is completed;

(iv) use of portable noise barriers and acoustical tents during operation of especially noisy equipment such as mortar mixers, concrete pumps, hoists, tower cranes, impact wrenches, hole diggers, jack hammers, pile drivers, masonry saws, ram hoes, tampers and trowelling machines, to achieve the noise levels specified for such equipment with path controls set forth in **Exhibit G**;

(v) restriction of construction trucking operations at Site 2 to Columbus Avenue and at Site 3 to Amsterdam Avenue;

(vi) use of acoustical curtains for internal construction activities at Sites 2, 3 and 3A.

(vii) All barriers, enclosures, tents and other path controls will comply with the DEP's Citywide Construction Noise Mitigation guidelines.

(c) **Air Quality Emissions Control Measures.** To ensure that the construction of each New Building in the Master Plan results in the lowest feasible diesel particulate matter ("DPM") emissions, the Declarant shall require its contractors to construct each New Building on the Property in compliance with the following measures:

(i) minimize the use of diesel engines and use electric engines operating on grid power instead, in the case of welders, water pumps, bench saws, table saws, and material/personnel hoists, as soon as possible after electrification of the Site;

(ii) use ultra-low sulfur diesel fuel in all diesel engines;

(iii) use best available tailpipe emissions reduction technologies consisting of diesel particle filters (either original manufacture or retrofit) for nonroad diesel engines with a power rating of 50 horsepower (hp) or greater and truck fleets under long-term contracts, such as contract mixing and pumping trucks, to achieve emission reductions of diesel particulate matter of at least 90 percent when compared with normal private construction practices;

(iv) use Tier 2 or later construction equipment for nonroad diesel engines greater than 50 hp;

(v) locate large emission sources such as concrete pumps, concrete mixers and cranes, away from residential buildings and playgrounds to the extent practicable;

(vi) establish a fugitive dust control plan, including stabilized truck exit areas for wheel washing of exiting trucks; and

(vii) enforce statutory restrictions on truck idling time.

(d) **Bid Specifications.** Provisions to implement the measures set forth in subparagraphs (a), (b) and (c) of this **Section 3.1** will be included in Declarant's bid specifications as requirements for incorporation in its construction contracts.

(e) Electrification of Site. To facilitate the use of electrically powered equipment and minimize the use of generators, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Site (whichever first occurs), Declarant will apply to Con Ed to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to the Department at the time the application is first sent to Con Ed.

(f) Innovation; Alternatives. In complying with Section 3.1(a) through and including Section 3.1(c) of this Declaration, Declarant may, at its election, and with the concurrence of the Monitor (hereafter defined) implement innovations, technologies or alternatives that are or become available, which would result in equal or better methods of achieving the relevant mitigation, in each case subject to the approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) Appointment and Role of Independent Monitor.

(i) Declarant shall, with the consent of the Agencies, appoint an independent third party (the “**Monitor**”) acceptable to the Agencies to oversee, on behalf of the City, the implementation and performance by Declarant of the CMMs under this Declaration with respect to the development of each Site in the Master Plan. The Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management, including familiarity with the means and methods for implementation of the CMMs. In the event that the Declarant that is signatory to this Declaration shall have disposed of any of the Sites to a third party that becomes a successor Declarant with respect to such Site, then, with the prior written approval of the Agencies, such approval not to be unreasonably withheld, conditioned or delayed, there may exist more than one Monitor with respect to multiple developments proceeding simultaneously on the Property, pursuant to separate Monitor Agreements (hereafter defined).

(ii) The scope of services described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the “**Monitor Agreement**”) shall be subject to prior review by and approval of the Agencies, such approval not to be unreasonably withheld, conditioned or delayed and such agreement may include provision for the retention by the Monitor (or, if reasonably acceptable to the Agencies, by Declarant) of consultants with expertise appropriate to assisting the Monitor in its performance of its obligations. If the City shall fail to act upon a proposed Monitor Agreement within thirty (30) days after submission of a draft form of Monitor Agreement to the offices of the General Counsel for each of the Agencies, the form of Monitor Agreement so submitted shall be deemed acceptable. The Monitor Agreement shall provide for the commencement of service by the Monitor at the commencement of demolition or excavation on the Site, whichever first occurs, for which the Monitor has been retained and for the termination of the Monitor’s services upon issuance of a temporary certificate of occupancy with respect to such Site.

(iii) The Monitor shall provide reports of Declarant’s compliance with the CMM’s on a schedule reasonably acceptable to the City, but not

more frequently than once a month. The Monitor may at any time also provide Declarant and the City with notice of her determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination. The Monitor (A) shall have full access to the Site as to which she has been retained, subject to compliance with all generally applicable site safety requirements imposed by law or pursuant to construction contracts in effect for the Site, (B) shall be provided with access to all books and records on the Site which she reasonably deems necessary to carry out her duties, including the preparation of her periodic reports, and (C) shall be entitled to conduct any tests on the Site she reasonably deems necessary to verify Declarant's implementation and performance of the CMMs.

(iv) Declarant shall be responsible for payment of fees and expenses due the Monitor and any consultants retained by the Declarant or the Monitor. All amounts payable by Declaration under this Section 3.1(g)(iv) shall be payable pursuant to the terms of the Monitor Agreement.

(h) CMM Violations. If the Monitor determines, either in a monthly report or otherwise, that Declarant has failed to implement or to cause its contractors to implement a CMM, the monitor shall notify each of the General Counsels of the Agencies of such alleged violation, and provide documentation establishing the basis for her determination. If the Chair determines that there is a basis for concluding that such a violation has occurred, the Chair may thereupon give Declarant written notice of such alleged violation (each, a **“CMM Default Notice”**), transmitted via overnight courier service to the address for notices for Declarant set forth in Section 8.5(a). Notwithstanding any provisions to the contrary contained in Sections 7.1 and 7.2 of this Declaration, Declarant shall have twenty-four (24) hours after receipt of a CMM Default Notice to (i) effect a cure of the alleged violation; (ii) demonstrate to the City why the alleged violation did not occur and does not then exist, or (iii) demonstrate that a cure period greater than 24 hours would not be harmful to the environment (such longer cure period, a **“Proposed Cure Period”**). If the City accepts the Proposed Cure Period in writing, then this shall become the applicable cure period for the alleged violation (the **“New Cure Period”**). The City shall act with respect to a Proposed Cure Period within twenty-four (24) hours after receipt of a writing suggesting a Proposed Cure Period from Declarant. If Declarant fails to (A) effect a cure of the alleged violation; (B) cure the alleged violation within a New Cure Period, if one has been established, or (C) demonstrate to the City's satisfaction that a violation has not occurred, then representatives of Declarant shall, at the City's request, and upon a time and date acceptable to the City, convene a meeting at the Site with the Monitor and authorized representatives of the City. If Declarant is unable reasonably to satisfy the authorized representatives of the City that no violation exists or is continuing and the Declarant, the Monitor and the City are unable to agree upon a method for curing the violation within a time period acceptable to the City, the City 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 Site against which the CMM Default Notice has been written, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates that it has cured the violation.

(i) Circumstances. In the event that, as the result of Circumstances Beyond the Control of Declarant, Declarant is unable to implement any required CMM at the time or times required by this Declaration, Declarant shall, within forty-eight (48) hours after the occurrence of such Circumstances Beyond the Control of Declarant become apparent so notify the City in writing. Such notice (the “**Delay Notice**”) shall include a description of the Circumstances Beyond the Control of Declarant, and, if known to Declarant, their cause and probable duration. In the exercise of its reasonable judgment the City shall, within thirty (30) days of its receipt of the Delay Notice, (a) certify in writing that the Circumstances Beyond the Control of Declarant have occurred, or (b) notify Declarant that it does not reasonably believe that the Circumstances Beyond Control of Declarant have occurred. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that the Circumstances Beyond the Control of Declarant have occurred. Upon a certification or deemed certification that Circumstances Beyond the Control of Declarant have occurred, the City may grant Declarant a waiver of any of the obligations imposed with respect to CMM’s by this Declaration, either in whole or in part, or for a period of time to be specified by the City, if the City determines in its reasonable discretion that failure to implement the CMM in whole or in part during the period of the Circumstances Beyond the Control of Declarant, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS. As a condition of the granting of such relief, the City may require that Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the CMM will be implemented or reinstated as soon as feasible in accordance with the provisions of this Declaration. Any delay caused in reimplementation of the CMM as the result of Circumstances Beyond the Control of Declarant shall be deemed to continue only as long as the Circumstances Beyond the Control of Declarant continue. Upon cessation of the Circumstances Beyond the Control of Declarant causing such delay, the Declarant shall within forty-eight (48) hours implement the CMM or proceed with work without the CMM which is the subject of a Delay Notice under this paragraph, unless and until it is determined that the Circumstances Beyond the Control of Declarant have occurred, or Circumstances Beyond the Control of Declarant are deemed to have occurred, and the City determines in the manner set forth above that failure to implement the CMM in whole or in part would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

3.2 Shadow Impacts. In order to mitigate shadow impacts identified in the FEIS:

(a) Commencing on the date Declarant receives a Building Permit the (“**Building Permit Date**”) for the construction of a New Building on Site 1 (or Site 6, if construction of Site 6 shall commence prior to construction on Site 1), Declarant shall be obligated to pay to the New York City Department of Parks and Recreation (“**DPR**”) an amount that is equal to \$250,000, with interest compounded annually until the Building Permit Date (the “**Funds**”) at the following rates: (i) 3% per annum, for the period between the Effective Date and June 30, 2021, (ii) 2% per annum for the period between July 1, 2021 and June 30, 2026, and (iii) 1% per annum for the period between July 1, 2026 and June 30, 2031. There shall be no further interest earned or compounded on the



Funds after June 30, 2031. The amount of the Funds shall be fixed and determined at the Building Permit Date and shall be paid to DPR in ten (10) equal annual installments, the first of which shall be paid on the date that is no later than thirty (30) days after the date of issuance of such Building Permit and each succeeding payment (each, a **“Payment”** and more than one Payment, **“Payments”**) shall be made on the annual anniversary of the first Payment until the entire amount of the Funds has been paid (unless the obligation to pay is terminated as hereafter provided). By way of example, if the Building Permit were to be issued on June 30, 2022, and the Effective Date were July 1, 2009, then the amount of the Funds would be \$250,000 compounded at 3% from the Effective Date through June 30, 2021 which equals \$367,133.43, plus that amount compounded at 2% through June 30, 2022 which equals \$374,476.10. The Funds shall be used solely for the purpose of maintenance and horticulture care within Damrosch Park and the Grove (collectively, the **“Park”**), to the extent that DPR has responsibility for maintenance of the Grove. The Funds shall not be used for any other purpose, including capital expenditures other than tree replacement, other ordinary repair and maintenance of the Park or other programs or services within the Park, nor shall the City use the Funds to reduce its level of support, in the form of services and expenditures for the operation and maintenance of the Park, in effect prior to the date the Payments begin. The Funds shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. In the event that, during the term of payment of the Funds, the area of the Park is reduced as the result of (i) construction of a new building (as used in this paragraph only, the term “new building” shall not include kiosks, sheds, temporary installations or similar structures), or (ii) the area of the Park containing trees is reduced, then the amount of each Payment shall be reduced to the extent that the Park area affected by the incremental shadow created by the New Buildings on the Property, as set forth in the FEIS, has thereby been reduced. DPR shall provide a report to Declarant thirty (30) days after the close of each City fiscal year after Payment of the Funds has commenced, detailing the purposes for which the Funds have been expended, including the personnel services associated with the maintenance and replacement work on which such Funds were expended. Declarant shall have no liability to the City, DPR, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys’ fees and disbursements, incurred in connection with or arising from the operation or maintenance of the Park or the use of the Funds.

(b) Declarant shall not apply for or accept a Building Permit for the construction of a New Building on Site 2 until it has implemented a lighting scheme reasonably acceptable to the Church of St. Paul the Apostle that will illuminate the windows in the clerestory that are identified in the FEIS as being affected by shadow between the hours of 7:00 a.m. and 9:00 p.m. on June 21<sup>st</sup>.

## ARTICLE IV

### OPEN SPACE AND PUBLIC AMENITIES

#### 4.1 Construction of Interim Open Space.

(a) At such time, if any, as Declarant has completed the development of Sites 5 and 5a (Sites as indicated on Drawing Z-7) and obtained a certificate of occupancy authorizing the use and occupancy of a New Building thereon, Declarant shall construct and Substantially Complete the Interim Open Space either (i) within three (3) years after issuance of a certificate of occupancy for Sites 5 and 5a or (b) upon issuance of Building Permit for Site 3 and 3A, whichever of (i) or (ii) shall first occur. The Completion of the Interim Open Space shall be substantially in accordance with the Open Space Plans, including all of the design elements contained therein as to seating, pavement, plantings and landscaping (including trees and shrubs), lighting, signage and provision and location of facilities (including, without limitation, access ramps, kiosk, drinking fountain, refuse disposal containers and bike rack). The Interim Open Space shall be opened to the public, pursuant to the terms of this Declaration, within sixty (60) days following the receipt of the Chair's certification that the construction of the Interim Open Space according to the Plans is Substantially Complete. The Interim Open Space shall be opened to the public in accordance with the provisions of Section 4.1(d)(i) of this Declaration and shall remain open for public use a minimum of five (5) years from the date the Chair certifies the Interim Open Space is Substantially Complete pursuant to Section 4.1(c)(i).

(b) Certificate of Occupancy/Building Permit.

(i) The DOB shall not issue and Declarant shall not apply for or accept a temporary certificate of occupancy (a "TCO") for any new building on Site 3 and/or 3a until the Chair has certified that the construction of the Interim Open Space according to the Open Space Plans is Substantially Complete, except as provided in subparagraphs (b) and (c) of this Section 4.1.

(ii) Upon application by the Declarant to CPC, and notwithstanding anything to the contrary contained in any other provision of this Declaration, the Chair, in the exercise of the Chair's reasonable judgment, may certify that Substantial Completion of the work required by the Open Plans is delayed due to Circumstances Beyond the Control of Declarant, as provided in subparagraph (iii) of this Section 4.1(b).

(iii) If Declarant reasonably believes that full performance of its obligation to develop the Interim Open Space has been delayed as a result of Circumstances Beyond the Control of Declarant, Declarant shall promptly notify the Chair upon learning of such circumstances. Declarant's notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact such circumstances are reasonably anticipated to have on the completion of the Interim Open Space construction. The Chair

shall, within twenty (20) business days of its receipt of Declarant's written notice, (i) determine in writing that Circumstances Beyond the Control of Declarant have occurred, including a determination of the expected duration of such delay or (ii) notify Declarant that it does not reasonably believe Circumstances Beyond the Control of Declarant have occurred. The Chair's determinations regarding Circumstances Beyond the Control of Declarant shall be a final administrative determination. If the Chair determines that Circumstances Beyond the Control of Declarant have occurred, the Chair may authorize DOB to issue TCOs for a portion or the entirety of Site 3 and/or 3a, notwithstanding Declarant's failure to complete the Interim Open Space; however, Declarant shall diligently seek to complete and shall complete the Interim Open Space as soon as possible after the Circumstances Beyond the Control of Declarants have ceased. As a condition to granting such relief, the City may require that Declarant post a bond, letter of credit or other security in a form and amount reasonably acceptable to the City in order to ensure that the Interim Open Space will be completed as soon as feasible in accordance with the provisions of this Declaration.

(c) Substantial and Final Completion.

(i) Declarant shall notify the Chair when, in the opinion of Declarant, the Interim Open Space is Substantially Complete. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Open Space Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the Open Space Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(ii) Upon receipt of the certificate of Substantial Completion, Declarant may apply for and obtain a TCO for Site 3; however, no permanent certificate of occupancy shall be issued for any building on Site 3 until the Interim Open Space has achieved Final Completion, as certified by the Chair. The procedure for establishing Final Completion shall be the same as the procedure set forth in subparagraph (i) of this Section 4.1(c) for Substantial Completion, except that, in each instance, the term "**Final Completion**" shall be substituted for the term "**Substantial Completion.**" In the discretion of the Chair, upon request of Declarant, a single certificate signifying Final Completion may be issued and the procedure set forth above for Substantial Completion may be eliminated.

(d) Public Access and Continuation of Use

(i) Commencing the date the Chair issues a certificate of Substantial Completion, the entire Interim Open Space shall be open to the public seven days a week. The hours during which the Interim Open Space are open shall be conspicuously posted at the entrances to the Interim Open Space as indicated on the Open Space Plans and in locations within the Interim Open Space. The Interim Open Space shall be open from 7:00 a.m. to 8:00 p.m. from November 1 through April 14 and from 7:00 a.m. to 10:00 p.m. from April 15 through October 31, free of charge, subject to Declarant's rights under subparagraph (ii) of this Section 4.1(c). The kiosk shown in the Open Space Plans shall serve beverages and light refreshments at least 225 days a year, including at least April through October 15 of each year and a sign clearly and legibly stating the hours of the kiosk's operation shall be posted at a location within the Interim Open Space where it is clearly visible to persons within the vicinity of the kiosk.

(ii) Declarant may close the Interim Open Space (A) at least once a year to prevent the public's acquisition of any property interest therein by dedication; (B) at any time, to perform necessary maintenance and repairs; (C) to address actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters or other events endangering public safety or property, provided that no such closure pursuant to this subparagraph (C) shall continue for more than twenty-four (24) consecutive hours without Declarant having consulted with the New York City Police Department or Fire Department, as the case may be, and obtained their concurrence that closure is warranted for a longer period; (D) to perform soil borings or other necessary environmental sampling in anticipation of satisfaction of Declarant's obligations with respect to the remediation of any hazardous substances that may exist on the Site. Declarant shall promptly notify the Department in writing of any closure which continues for more than twenty-four (24) hours. Declarant agrees that in the performance of construction, maintenance or repairs, it will close or permit to be closed only those portions of the Interim Open Space which reasonably must be closed to perform the work and/or protect the public and will exercise due diligence in the performance of such work so that it is completed expeditiously. All temporarily closed areas will be reopened to the public promptly following completion of the applicable work. In connection with each closure permitted pursuant to this Section 4.1(d)(ii), Declarant shall, except in the case of an emergency requiring immediate action, send a prior notice to the Department not less than five (5) days prior to the closure and post signs throughout the Plaza giving the public prior notice of the closure.

(iii) The activities, uses and conduct permitted within the Interim Open Space shall comply with all applicable laws, statutes, ordinances, rules and regulations of the City (and any other governmental entity having jurisdiction thereover), in addition to being subject to the regulations and policies set forth in the schedule annexed hereto as **Exhibit J**. Declarant may modify the regulations and policies set forth in **Exhibit J** with the prior written approval of the Department, which shall not be unreasonably withheld, conditioned or delayed.

(iv) Declarant shall at all times keep the Interim Open Space in a safe, secure, clean condition and in good repair and shall make such periodic replacements of equipment, finishes and materials as are reasonably necessary to

maintain the facilities required to be provided pursuant to the Open Space Plans for the duration of the Interim Open Space's existence.

(v) Declarant shall erect no enclosures around the Interim Open Space or any portion thereof, except as shown in the Open Space Plans, or upon written application to the Chair of the CPC for permission to erect such enclosures and modify this Declaration.

(e) Discontinuation of Use. At such time as Declarant shall have received a building permit for the construction of the entire development to be constructed on Site 2, and provided that the Interim Open Space has then been open to and in use by the public for at least five (5) years, Declarant may close and discontinue the Interim Open Space use. At least thirty (30) (but not more than sixty (60)) days prior to such closure, Declarant shall post notices in and around the periphery of the Interim Open Space advising members of the public of the impending closure. Declarant shall continue to maintain the Interim Open Space as required by Section 4.1(c)(iv) of this Declaration and shall not interfere with or prohibit public use of any portion of the Interim Open Space until the actual posted date of closure.

(f) Alteration of Interim Open Space. If Declarant shall hereafter elect to develop Site 1 prior to the development of Site 2 and, as a consequence, shall be required to develop the 61<sup>st</sup> Street Access Stair in conjunction with the development of Site 1, Declarant shall be permitted to modify the design of the Interim Open Space, to reduce its area to accommodate such access stair and to close all or a portion of the Interim Open Space during any period of active construction of the 61<sup>st</sup> Street Access Stair. In such event, in redesigning the Interim Open Space, Declarant shall submit a proposed modified design that retains to the maximum extent feasible the characteristics and amenities included in the Open Space Plans and complying as nearly as possible with the standards set forth in Section 37-70 of the Zoning Resolution for the modification of the Interim Open Space (the "**Modification Plan**"). The Modification Plan shall be subject to review and certification by the Chair according to the same procedures and same standards as are set forth for approval of the design of the Access Stairs in Section 4.2 of this Declaration.

#### 4.2 **Construction of Access Stairs.**

(a) No later than the first date on which Declarant has obtained a building permit for the construction of a new building on Sites 1 or 2 (such sites as shown in Drawing Z-12), Declarant shall commence construction of the 61<sup>st</sup> Street Access Stair according to plans for the design of such stair to be certified pursuant to the procedures set forth in Section 4.2 of this Declaration and shall thereafter complete such construction. Declarant shall include plans for the design and construction of the (i) Interim Stair in its application for a building permit for the construction of a new building on Site 5 as shown on Drawing Z-12, and (ii) the 62<sup>nd</sup> Street Access Stair in its application for a building permit for the construction of a new building on Site 6 (as shown in Drawing Z-12), provided that, in the case of the Interim Stair, such plan shall substantially conform to the Stair Plan, and in the case of the 62<sup>nd</sup> Street Access Stair,

such plans shall have been certified pursuant to the procedures set forth in subparagraph (b) of this Section 4.2 of this Declaration. Prior to obtaining a final CO for any new building on Site 5, Declarant shall complete construction of the Interim Stair substantially in accordance with the Stair Plan.

(b) Design Approval for Access Stairs

(i) The DOB shall not issue, and Declarant shall not accept a building permit (other than a permit for demolition, site preparation or excavation) for any of Sites 1, 2 or 6 until the Chair certifies, in accordance with subparagraph (ii) of this Section 4.2, that the design for the Access Stairs satisfies all requirements specified for such stairs in Drawing Z-7 and Drawing Z-12, as well as the then-applicable public open space signage, lighting, planting, landscaping and public seating elements for publicly accessible open spaces (the “**Required Elements**”) and that the procedures set forth in paragraph (b) of this Section 4.2 to obtain certification of the Access Stairs designs have been completed.

(ii) Declarant shall prepare a preliminary drawing or drawings for each Access Stair associated with a site for which a building permit is sought, which shall include the Required Elements (each, a “**Preliminary Access Stair Drawing**”). Declarant shall transmit the Preliminary Access Stair Drawing to the Department for review and comment and shall simultaneously provide a copy of such drawing to and shall attend at least one (1), but shall not be required to attend more than three (3), meetings with a duly constituted committee of Manhattan Community Board 7 to present the Preliminary Access Stair Drawing. Declarant shall attend a meeting with the staff of the Department, to be held not later than thirty (30) days after first submission of the Preliminary Stair Drawing to the Department, to receive the Department’s comments on the proposed design, including, without limitation, a determination whether the Preliminary Stair Drawing contains the Required Elements. After such meeting, Declarant shall prepare a revised drawing or drawings (each, a “**Revised Access Stair Drawing**”) in response to such comments, or a written statement explaining why such comments cannot feasibly be incorporated into the revised drawing or drawings, and shall submit the Revised Access Stair Drawing(s) to the Chair. Within fifteen (15) days of such submission, the Chair shall review the Revised Access Stair Drawing(s) and shall either (i) issue a certificate that the Access Stair Drawing includes all of the Required Elements (each, a “**Stair Certification**”), (ii) notify Declarant in writing of any Required Elements that are not included in the Access Stair Drawing (a “**Required Elements Notice**”), or (iii) issue additional comments, which may address aspects of design other than the Required Elements. If the Chair issues a Required Elements Notice, Declarant shall submit a further revised Access Stair Drawing including the Required Elements specified as missing in the Required Elements Notice and the Chair shall issue a Stair Certification within fifteen (15) days after receipt thereof. If the Chair issues additional comments, Declarant shall submit a further revised Access Stair Drawing, in response to such comments, or a written statement explaining why such comments cannot feasibly be incorporated into the revised Access Drawing, and the Chair shall issue a Stair Certification within fifteen (15) days after receipt thereof.

(iii) Declarant shall use the requirements of Section 37-70 of the Zoning Resolution as a guide in the design and selection of amenities to be provided in the Access Stairs, but the Chair shall not decline to issue a Stair Certification solely because any of the materials, fixtures, plantings or landscaping employed by Declarant in the design of the Access Stairs does not comply with such requirements, if Declarant provides a statement explaining why the element in question cannot feasibly be used and such Statement is accepted by the Chair, in her reasonable discretion.

(c) Certificate of Occupancy for Buildings Associated with Access Stairs

(i) The DOB shall not issue and Declarant shall not apply for or accept, a TCO for any New Building on any of Sites 1, 2 or 6 or a final CO for Site 5 until the Chair has certified that the Stair appurtenant to such site is Substantially Complete, except as provided in subparagraphs (ii) and (iii) of this Section 4.2(c). Once Declarant has constructed the 61<sup>st</sup> Street Access Stair in connection with construction of a New Building on either Site 1 or Site 2, then Declarant may apply for and DOB may issue a TCO on the other Site (of Sites 1 and 2) without regard to the provisions of this Section 4.2.

(ii) Upon application by the Declarant to CPC, and notwithstanding anything to the contrary contained in any other provision of this Declaration, the Chair, in the exercise of the Chair's reasonable judgment, may certify that Substantial Completion of a Stair is delayed due to Circumstances Beyond the Control of Declarant, as provided in subparagraph (iii) of this Section 4.2(c).

(iii) If Declarant reasonably believes that full performance of its obligation to develop a Stair has been delayed as a result of Circumstances Beyond the Control of Declarant, Declarant shall promptly notify the Chair upon learning of such circumstances. Declarant's notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and, in Declarant's reasonable judgment, the impact such circumstances are reasonably anticipated to have on the completion of construction. The Chair shall, within twenty (20) business days of its receipt of Declarant's written notice, (i) determine in writing that Circumstances Beyond the Control of Declarant have occurred, including a determination of the expected duration of such delay or (ii) notify Declarant that it does not reasonably believe Circumstances Beyond the Control of Declarant have occurred. The Chair's determinations regarding Circumstances Beyond the Control of Declarant shall be a final administrative determination. If the Chair determines that Circumstances Beyond the Control of Declarant have occurred, the Chair may authorize DOB to issue TCOs for a portion or the entirety of Site 1, Site 2, Site 5 or Site 6, depending upon the Stair that is the subject of the Chair's determination, notwithstanding its failure to complete such Stair; however, Declarant shall diligently seek to complete and shall complete such Stair as soon as possible after the Circumstances Beyond the Control of Declarant have ceased. As a condition of the granting of such relief, the City may require that Declarant post a bond, letter of credit or other security in a form and amount reasonably acceptable to the

City to ensure that such Stair will be completed as soon as feasible in accordance with the provisions of this Declaration.

(d) Substantial and Final Completion of Access Stairs

(i) Declarant shall notify the Chair when, in the opinion of Declarant, each Stair is Substantially Complete. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (A) issue a certification of Substantial Completion, or (B) notify Declarant of any work that, according to the Access Stair Drawing for the Access Stair in question, or the Stair Plan, in the case of the Interim Stair remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed in accordance with an Access Stair Drawing or Stair Plan, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (Y) issue a certification of Substantial Completion, or (Z) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(ii) Upon receipt of the certificate of Substantial Completion, Declarant may apply for and obtain a TCO for Site 1, Site 2, Site 5 or Site 6, as applicable; however, no permanent certificate of occupancy shall be issued for any building on such sites until the Stair appurtenant to such site has achieved Final Completion, as certified by the Chair. The procedure for establishing Final Completion shall be the same as the procedure set forth in subparagraph (i) of this Section 4.2(d) for Substantial Completion, except that, in each instance, the term "**Final Completion**" shall be substituted for the term "**Substantial Completion**." In the discretion of the Chair, upon request of Declarant, a single certificate signifying Final Completion may be issued for a Stair and the procedure set forth above for Substantial Completion may be eliminated.

(e) Public Access and Continuation of Use for Access Stairs

(i) Commencing upon the date the Chair issues a certificate of Substantial Completion, the Stair for which such certificate has been issued shall be open to the public seven days a week, from 7:00 a.m. to 8:00 p.m. from November 1 through April 14 and from 7:00 a.m. to 10:00 p.m. from April 15 through October 31, or, in the alternative, during all hours in which the Central Plaza is open for use by the public, whichever results in the longest hours of opening, subject to Declarant's rights under subparagraph (ii) of this Section 4.2(e).

(ii) Declarant may close any Stair, (A) at least once a year to prevent the public's acquisition of any property interest therein by dedication; (B) at any time, to perform necessary maintenance and repairs; (C) to address actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties,



disasters or other events endangering public safety or property, provided that no such closure pursuant to this subparagraph (C) shall continue for more than twenty-four (24) consecutive hours without Declarant having consulted with the New York City Police Department or Fire Department and obtained their concurrence that closure is warranted for a longer period. Declarant shall promptly notify the Department in writing of any closure which continues for more than twenty-four (24) hours. Declarant agrees that in the performance of construction, maintenance or repairs, it will close or permit to be closed only those portions of each Stair which reasonably must be closed to perform the work and/or protect the public and will exercise due diligence in the performance of such work so that it is completed expeditiously. All temporarily closed areas will be reopened to the public promptly following completion of the applicable work. In connection with each closure permitted pursuant to this Section 4.2(e)(ii), Declarant shall, except in the case of an emergency requiring immediate action, send a notice to the Department not less than five (5) days prior to the closure and post signs at the top and bottom of each Stair giving the public prior notice of the closure.

(iii) Declarant shall at all times keep each Stair in a safe, secure, clean condition and in good repair and shall make such periodic replacements of equipment, finishes and materials as are reasonably necessary to maintain the facilities required to be provided pursuant to the Access Stair Drawings and the Stair Plan.

(iv) Declarant shall erect no permanent or fixed barriers to entry to any Access Stair, except as shown in the Access Stair Drawings, as approved by the chair pursuant to Section 4.2(b)(ii), or after written application to the Chair of the CPC for permission to erect such barriers and modify the terms of this Declaration, and such application is approved by the Chair.

4.3 **Chair Actions.** In any case under this Article IV in which the Chair is required to act within a stated period of time and fails to act within the period stated, Declarant may give a second notice to the Chair (which notice shall state in bold upper case type both at the top of the first page thereof and on the envelope thereof “SECOND NOTICE PURSUANT TO SECTION 4.3 OF THE FORDHAM LINCOLN CENTER DECLARATION”)(each such notice, a “**Second Notice**”), requesting that the Chair immediately take the action specified in the Second Notice and referencing the provision in this Declaration that required the Chair’s action within the time stated. If the Chair shall fail to act within ten business days after receipt of the Second Notice, then the Chair shall be deemed in each such instance to have acted favorably to the Declarant with respect to the action requested by the Second Notice.

## ARTICLE V

### INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** Declarant shall indemnify and hold harmless the City, including the CPC and the Department and their respective officers, employees and agents from any and all claims, actions or judgments (including reasonable out-of-pocket attorneys’ fees) for loss, damage or injury including death, personal injury or property

damage of whatsoever kind or nature, arising out of Declarant's default in the performance of its obligations under this Declaration or Declarant's performance of such obligations in a negligent, reckless or willfully wrongful manner. Such indemnity shall extend to the negligent, reckless or willfully wrongful acts of Declarant's agents, servants or employees in undertaking such obligations; provided however that should any such claim be made or action brought, Declarant shall have the right to defend such claims or action with an attorney selected by it but reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City, which shall not be unreasonably withheld, conditioned or delayed.

5.2 **Insurance.** Declarant shall at all times after Substantial Completion of the first to be completed of the Interim Open Space or one or more of the Stairs carry paid-up insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence to protect Declarant and the City as an additional insured party, against any and all claims, loss or damage, whether in contract or tort, for injuries to, or death of persons, or damage to property, whether such injuries, death or damages be attributable to the negligence or any other acts of Declarant, its employees or otherwise. Such policy or policies of insurance shall be obtained from a company, or companies, duly licensed to do business in the State of New York and shall name the Department, CPC and the City as parties insured thereunder, and shall provide that, in the event of cancellation, the Department shall be notified at least thirty (30) days in advance thereof. Two (2) duplicate certificates or evidence of insurance ("**Certificates**") shall be delivered to the Department for approval as to form prior to issuance of a TCO for the use of any of the Interim Open Space or the Stairs. Within fifteen (15) days of receipt of such certificates, the Department shall notify Declarant either that such Certificates are acceptable or that such Certificates will be acceptable if specified changes are made.

## ARTICLE VI

### EFFECTIVE DATE; CANCELLATION, AMENDMENT OR MODIFICATION OF THIS DECLARATION

6.1 **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Applications (the "**Effective Date**").

6.2 **Recording.** Promptly, and no later than ten (10) days after such Final Approval of the Applications and prior to application for any Building Permit, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Application and required by this Declaration to be recorded in public records (the "**Recording Documents**"), in the Register's Office, indexing them against the entire Property, and deliver to the CPC within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation, recording and endorsement cover pages for each document submitted for recording and recording payment receipts. Declarant shall

deliver to the CPC a copy of all Recording Documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents. If Declarant fails to record the Recording Documents, then the City may record duplicate originals of the Recording Documents; however, all fees paid or payable for the purpose of recording the Recording Documents and obtaining certified copies thereof, whether undertaken by Declarant or by the City, shall be borne by Declarant.

### 6.3 **Cancellation.**

(a) Notwithstanding anything to the contrary contained in this Declaration, if the Council does not approve the Applications, or (ii) the Mayor shall have filed a written disapproval of the Applications and the Council shall not have approved an override of such disapproval, then, upon expiration of the times provided in Sections 197-c and 197-d for the Council and Mayor to act in respect of the Approvals, this Declaration shall be null and void and of no further force and effect, whether or not executed prior to the granting of any Approvals by CPC.

(b) Notwithstanding anything to the contrary contained in this Declaration, if the Approvals are declared invalid or otherwise voided, in whole or in part, by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration and all other Recording Documents shall be cancelled and shall be of no further force or effect and an instrument discharging them may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and requires that any provisions herein stated to survive a cancellation in fact survive such termination. Upon recordation of such instrument, Declarant or Successor Declarant (as hereinafter defined) shall provide a copy thereof certified by the Register's Office to the CPC.

(c) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall elect to develop the Campus without employing the Approvals, or if the Approvals are not implemented or their time extended within the time period provided in Z.R. §74-99, Declarant shall notify the Chair of Declarant's intent to relinquish the Approvals and discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and requires that any provisions herein stated to survive a cancellation in fact survive such cancellation. Upon recordation of such instrument, Declarant or Successor Declarant (as hereinafter defined) shall provide a copy thereof certified by the Register's Office to the CPC and the Approvals shall be of no further force and effect.

### 6.4 **Modification and Amendment.**

(a) This Declaration may be amended or modified (other than pursuant to Sections 6.1 and 6.3 hereof) only upon application by Declarant, with the express

written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(b) Notwithstanding the provisions of Section 6.4(a), any change to this Declaration or to the plans annexed as **Exhibits E and F** proposed by Declarant that the Chair deems to be a minor modification may be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest, except as expressly required by Article II of this Declaration. Such minor modifications shall not be deemed amendments requiring the approval of the CPC.

(c) Any modification or amendment of this Declaration that is not a minor modification permitted pursuant to Section 6.4(b) of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 6.4(a) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.

(d) Declarant acknowledges and agrees that if Declarant is in default in the performance of any of its obligations under this Declaration and such default shall not have been corrected after notice and opportunity to cure as provided in Sections 3.1(h) and 7.1 of this Declaration, as applicable, such default may be deemed by CPC or the Chair to be sufficient grounds for disapproval or withholding of consent to any proposed amendment or modification of this Declaration.

(e) (i) For so long as Declarant is the owner in fee of the Property or any portion thereof, all Interested Parties (other than Declarant) and their heirs, successors, assigns and legal representatives hereby irrevocably (A) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (B) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (C) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Interested Parties' consent or waiver of rights, as set forth in this Section 6.4(e).

(ii) Notwithstanding the foregoing paragraph, if Declarant shall hereafter sell any portion of the Property to a third party, Declarant shall not seek any modification, cancellation, revision or change to this Declaration that would subject such third party to any additional liability or expense or materially impair or impact the proposed or then existing use and operation of the portion of the Property acquired by such third party, without its express written consent.

**ARTICLE VII  
COMPLIANCE; DEFAULTS; REMEDIES**

7.1 **Default.** Except as otherwise provided in Section 3.4 of this Declaration, if Declarant fails to observe any of the terms or conditions of this Declaration, the Chair shall give Declarant twenty (20) business days' written notice of such alleged violation, during which period the Declarant shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarant commences to effect such cure within such twenty (20) business day period (or if cure is not capable of being commenced within such twenty (20) business day period, Declarant commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid twenty (20) business day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. If more than one Declarant exists at any time on the Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 8.5 hereof, and the right to cure shall apply equally to all Declarants. Declarant shall have the right to contest the Chair's finding that a violation exists either administratively or judicially, and any action by the City to enforce the claim that a violation has occurred shall be stayed until a final administrative or judicial determination has been made as to the validity of the violation. If, after the notification procedures set forth above or the issuance of a final nonappealable judgment declaring the Declarant's claim regarding the finding of a violation adversely to Declarant, Declarant fails to cure such alleged violation of Declarant's obligations under this Declaration, the City 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 and may decline to approve and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material Obligation under this Declaration. The time period for curing any violation by Declarant shall be subject to extension for Circumstances Beyond the Control of Declarant.

7.2 **Rights of Mortgagees.** Except as otherwise provided in Section 7.1 of this Declaration, if Declarant shall fail to observe or perform any of the covenants or provisions contained in this Declaration and such failure continues beyond the cure period set forth in Section 7.1 hereof, the City shall, before taking any action to enforce this Declaration, give notice to any Mortgagee, setting forth the nature of the alleged default. A Mortgagee shall have available to it an additional cure period of the same number of days as Declarant had in which to cure such alleged default, as extended by Circumstances Beyond the Control of Declarant. If such Mortgagee has commenced to effect a cure during such period and is proceeding with reasonable diligence towards effecting such cure, then such cure period shall be extended for so long as such Mortgagee is continuing to proceed with reasonable diligence with the effectuation of such cure. With respect to the effectuation of any cure by any Mortgagee, such Mortgagee shall have all the rights and powers of the Declarant pursuant to this Declaration necessary to cure such default. If a Mortgagee 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 the CPC and the City, as if performed by Declarant.

7.3 **Denial of Public Access.** Notwithstanding any provisions of Sections 7.1 and 7.2 of this Declaration to the contrary, in the event of a denial of public access to the Interim Open Space or Stairs of an on-going nature in violation of Sections 4.1(d)(i) and 4.2(e)(i) of this Declaration, Declarant shall have the opportunity to effect a cure within twenty four (24) hours after receipt of Notice thereof. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction. In addition, if the City has reason to believe that the use and enjoyment of the Interim Open Space or the Stairs by any member of the public has been denied by Declarant, the City may treat the denial of access as a violation of the Zoning Resolution and seek civil penalties at the Environmental Control Board for the violation relating to privately owned public space.

7.4 **Benefits to Property and City.** Except to the extent otherwise explicitly provided herein, this Declaration is for the benefit of the City and Declarant only and creates no enforceable interest or rights in any third person or entity. The City, acting through the agencies described in this Declaration, shall be deemed to be the only entity with standing to enforce the provisions of this Declaration, and nothing herein contained shall be deemed to confer upon any other person or entity, public or private, any interest or right in enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications, including any claim by any public or private landowner to be the beneficiary of any privileges of access appurtenant to lands adjoining the Property which could or might be affected by enforcement of the provisions of this Declaration. Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Property and benefit the city. Declarant consents to enforcement by the City, administratively, at law or equity, of the covenants, obligations, conditions and restrictions contained herein, subject to the City's compliance with the procedures regarding default set forth above and provided that once a Building Permit or temporary or permanent certificate for any New Building has been issued, the failure to comply with any Obligation associated with any other New Building shall not cause the revocation of such previously issued Building Permit or temporary or permanent certificates of occupancy.

7.5 **Indemnification of Certain City Expenses.** If Declarant is found by a court of competent jurisdiction to have been in default in the performance of an Obligation and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of such Obligation

**ARTICLE VIII  
MISCELLANEOUS**

8.1 **Incorporation by Reference.** All exhibits, appendices or attachments referenced in this Declaration are incorporated by reference herein and made an integral part of this Declaration.

8.2 **Binding Effect.** Except as specifically set forth in this Declaration and, subject to applicable law, Declarant shall have no obligation to act or refrain from acting with respect to the Property. The provisions of this Declaration shall be considered covenants running with the land and shall inure to the benefit of and be binding upon Declarant and all heirs, successors, legal representatives, assigns, sublessees and mortgagees of Declarant's interest or any portion thereof in the Property. The obligations contained in this Declaration shall be binding upon Declarant and any other individual or entity, only for the period during which Declarant or such other individual or entity is the holder of a fee or other interest in the Property and only to the extent of its interest in the Property and upon the sale, transfer, assignment or conveyance (each, a "Disposition") of the Declarant's interest in the Property or a portion of such interest, Declarant shall be released from and have no further obligations with respect to, this Declaration or any covenant, obligation or indemnity undertaken, provided or given hereunder as to the entire Property (upon Disposition of Declarant's interest in the entire Property) or (in the case of a Disposition of a portion of the Property), as to such portion(s).

8.3 **Laws of the State of New York.** This Declaration shall be governed by and construed in accordance with the laws of the State of New York. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

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

8.5 **Notices**

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:

(a) if to Declarant: to 113 West 60<sup>th</sup> Street, New York, New York 10023, Attention: Vice President for Lincoln Center, with a copy to Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, Attention: Deirdre A. Carson, Esq.;

(b) if to the Chair or the CPC, at its then-official address, Attention: Chair, with a copy to Department of City Planning, Office of the General Counsel, 22 Reade Street, New York, New York 10007 (or the then official address);

(c) if intended for a Mortgagee or other Party in Interest, by mailing or delivery to such Mortgagee or Party in Interest at the address given in its notice to the Department.

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8.5, 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 mailing; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder one business day after placed under the control of the delivery service, provided that a receipt for the delivery is obtained, 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 Declarant shall also be sent to every Mortgagee of whom CPC has notice (each, a “**Named Mortgagee**”), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

**8.6 Limitation of Liability** Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, or its successors and assigns or the subsequent holders of any interest in the Property, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its trustees, partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event Declarant shall hereafter sell one or more Sites to a third party and the City shall, prior to such sale, obtain a judgment against Declarant, the City shall look only to the estate and interest of the Declarant in the portions of the Property still owned by such Declarant at the time of levy, execution or other enforcement procedure for the satisfaction of the City’s remedies and shall not pursue such remedies against the portion of the Property that has been sold. In the event that any building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Owner’s Individual Assessment Interest. The “Individual Assessment Interest” shall mean the Unit Owner’s percentage interest in the common elements of the condominium in which such condominium unit is located applied to the total assessment imposed by the Board of Managers or other governing body of the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners’ unpaid Individual Assessment Interest, which lien shall include such Unit Owner’s obligation for the costs of collection of such Unit Owners’ unpaid



Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of any such condominium for unpaid common charges of the condominium. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, and the Board of Managers of any condominium association. In the event that a condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the Board of Managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

8.7 **Certificates.** The City will at any time and from time to time upon not less than thirty (30) days' prior notice by Declarant or a Named Mortgagee execute, acknowledge and deliver to Declarant or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant or such Named Mortgagee may reasonably request. In connection with issuing such statement, the City may request that the Declarant provide an update report regarding compliance with Section 3.1 of this Declaration. If the City fails to respond within such thirty (30) day period, Declarant may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: "SECOND NOTICE PURSUANT TO SECTION 8.6 OF THE FORDHAM LINCOLN CENTER DECLARATION"). If the City fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to have certified (i) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as Declarant or such Named Mortgagee had requested, and such deemed certification may be relied on by Declarant or such Named Mortgagee.

8.8 **Successors of Declarant.** References in this Declaration to "Declarant" shall be deemed to include successors of Declarant, if any, which are holders of a fee interest in the Property, provided that if all or substantially all of the Property or all or substantially all of any Parcel or portion thereof is leased pursuant to a ground lease to another person or entity by Declarant, then the lessee under such lease shall be deemed included as a "Declarant" for all purposes of this Declaration. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the

Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the “Declarant” hereunder unless such holder commences to develop the Property or has acquired its interest from a Party who has done so.

8.9 **Parties-in-Interest.** Declarant shall provide the City with an updated Certification of parties-in-interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Property or portion thereof to waive execution and subordinate its interest in the Property to this Declaration. Any and all mortgages or other liens encumbering the Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

8.10 **Applications.** Declarant shall include or shall cause a copy of this Declaration to be included as part of any application pertinent to the construction, improvement, operation or maintenance of the Property or the development of any of the sites on the Campus to which the provisions of this Declaration are applicable, submitted to any governmental agency or department having jurisdiction over the Property, including, without limitation, the Department, DOB and the New York City Board of Standards and Appeals. If Declarant files any application with the Attorney General of the State of New York to subdivide the Property, or any portion of the Property, for the purposes of creating a condominium or other form of joint property ownership association, Declarant shall include in any written or printed offering materials associated with the offer to sell interests in such condominium or other association (including, without limitation, an offering plan, prospectus or no action letter), a true copy of this Declaration or a complete and accurate summary of the material terms hereof, except as otherwise directed by the Attorney General, and shall otherwise ensure that all terms of the offering are consistent with the terms of this Declaration.

8.11 **Right to Convey.** Nothing contained herein shall be construed as requiring the consent of the CPC, the Department, the city or any agency thereof, or of any other person or entity, to any sale, transfer, conveyance, mortgage, lease or assignment of any direct or indirect interest of Declarant in the Property.

**[Balance of Page Intentionally Left Blank]**

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration as of the day and year first hereinabove set forth.

FORDHAM UNIVERSITY

By: \_\_\_\_\_

Name:

Title:

STATE OF NEW YORK)

COUNTY OF BRONX)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_, before me, the undersigned, a Notary Public in and for the State of New York 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon whose behalf the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC