



## CITY PLANNING COMMISSION

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April 2, 2014/Calendar No. 5

C 140157 ZSM

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**IN THE MATTER OF** an application submitted by the Rockefeller University pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-682 of the Zoning Resolution to allow the development of a building within the demapped air space above the Franklin D. Roosevelt Drive, and in conjunction therewith, modify the rear yard requirements of Section 24-36 (Minimum required Rear Yards), in connection with the proposed expansion of an existing university, within a Large-Scale Community Facility development bounded by York Avenue, the easterly centerline prolongation of East 68<sup>th</sup> Street, the U.S. Pierhead and Bulkhead line and East 62<sup>nd</sup> Street and its easterly prolongation (Block 1480, Lot 10 & 9010; and Block 1475, Lots 5 & 9005), within R9 and R10 districts, Borough of Manhattan, Community District 8.

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This application for a special permit pursuant to Section 74-682 of the Zoning Resolution was filed by the Rockefeller University on October 30, 2013, to allow the development of a two-story research building, one-story interactive conference center in the demapped air space over the Franklin D. Roosevelt Drive (FDR) Drive and a one-story building for a recreational facility within the existing Rockefeller University campus situated on the east side of York Avenue between East 64<sup>th</sup> and East 68<sup>th</sup> streets in Manhattan Community District 8.

### RELATED ACTIONS

In addition to the special permit which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

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| C 140086 (A) MMM | A city map amendment involving the elimination, discontinuance and closing of volumes of the FDR Drive between East 64 <sup>th</sup> and East 68 <sup>th</sup> streets. |
| M 821257(D) ZAM  | A modification of a previously approved authorization of a Large Scale Community Facility Development pursuant to Section 79-00.  |

N140158 CMM

Certification by the City Planning Commission pursuant to Article 12A of the 1973 Agreement as amended, with findings related to construction of building structural support columns in the FDR Drive and East River Esplanade.

N140159 CMM

Certification by the Director of City Planning pursuant to Article 12B of the 1973 Agreement as amended, in order to demonstrate conformance to the standards and provisions of the Agreement.

## **BACKGROUND**

New York State legislation approved in 1971 authorized the City of New York (the “City”) to close and discontinue air space over the FDR Drive between East 62<sup>nd</sup> Street and the midblock line between East 71<sup>st</sup> and East 72<sup>nd</sup> Streets, and air space over East 63<sup>rd</sup>, East 70<sup>th</sup> and East 71<sup>st</sup> streets between York Avenue and the western edge of the FDR Drive, in order to convey such air space to the abutting property owners, Rockefeller University, New York Presbyterian Hospital (“NYPH”), and the Hospital for Special Surgery (“HSS”).

To implement the New York State legislation, the City Planning Commission and the Board of Estimate approved the demapping of the air-space and an agreement between the three institutions and New York City in 1973 (the “1973 Agreement” or the “Agreement”). The Agreement outlined the conditions and procedures by which the institutions could develop the air space above the FDR Drive and over the streets. At the time, the Commission recognized the need for the institutions to expand and ultimately modernize their facilities and noted that expansion over the FDR Drive would help to minimize disruption within the neighboring residential communities located to the west of the hospital and academic campuses. As part of the Agreement, Rockefeller University, NYPH and HSS were obligated to provide waterfront public improvements, including constructing what was proposed to be an elevated walkway along the FDR Drive, adjacent to the East River, and access ramps over the FDR Drive to such walkway. These improvements were to be completed concurrent with development by the institutions. Importantly, the Agreement recognized that development of buildings over the FDR Drive would require the placement of

structural support columns along the walkway and outlined an approval process, including demapping actions, for such work.

In 1983 and 1993, the Agreement was amended to be consistent with new City waterfront goals, including changing the proposed elevated walkway to an at-grade walkway and changing the location of access ramps to the walkway. Through the development of buildings over the FDR Drive by Rockefeller University (approved by the CPC in 1983 and 1989), NYPH (approved by CPC in 1992), and HSS (approved by CPC in 1992), the waterfront improvements were completed and the walkway, now called the East River Esplanade, exists today for passive and active public recreation.

### **Prior CPC actions**

Rockefeller University was founded in 1901 as a research and educational institution focused on biomedical research. In 1983, the Rockefeller University Large Scale Community Facility Development (LSCFD) was created (M 821257 ZAM), covering two blocks bounded by East 62<sup>nd</sup> Street, East 68th Street, York Avenue and the FDR Drive. The LSCFD allowed the transfer of floor area and lot coverage from the north block to the south block. At the same time, the University received a special permit approval to build the first university building over the FDR Drive pursuant to ZR Section 74-682. Several other approvals were granted in conjunction with the LSCFD including the demapping of column volumes within the FDR Drive for the construction of a privately-built public pedestrian ramp and elevated walkway over East 63<sup>rd</sup> Street, and construction of the 36-story staff dwelling in the airspace over the FDR Drive pursuant to the 1973 Agreement.

Subsequent approvals were also granted to the University for development over the FDR Drive and for modification to the LSCFD to allow for developments on the north block. In 1989, Rockefeller University was granted a special permit (C 880671 ZSM) pursuant to ZR Section 74-682 to allow the development of a 15-story research building, Rockefeller Research Center, in the previously demapped air space over the FDR Drive. The LSCFD was concurrently modified (C 821257 (A) ZAM) in 1989 to reflect the construction of the research building. Approval was granted in 1998 to allow the construction of a pedestrian bridge in demapped airspace across East 63<sup>rd</sup> Street. Most recently, in 2009, approval was granted to enlarge three existing research

buildings (totaling approximately 95,023 square feet of floor area) on its campus (M 821257 (C) ZAM).

### **Area Description**

The project site is located between York Avenue and the FDR Drive between East 63<sup>rd</sup> and 68<sup>th</sup> streets. It is located at the southern end of a large medical and academic corridor consisting of New York Presbyterian Hospital between East 68<sup>th</sup> and East 71<sup>st</sup> Streets, Hospital for Special Surgery between East 70<sup>th</sup> and East 72<sup>nd</sup> streets, Memorial Sloan Kettering on the west side of York Avenue between East 66<sup>th</sup> and 69<sup>th</sup> Streets and Weil Cornell Medical College on the west side of York Avenue between East 70<sup>th</sup> and East 72<sup>nd</sup> Streets. In addition, the remaining western frontage of York Avenue south of East 66<sup>th</sup> Street consists of pre-1960 and modern high density residential developments, some of which is housing for medical staff. To the east of the site is the FDR Drive consisting of three moving lanes in each direction. Abutting to the east is the East River Esplanade (the “Esplanade”), a stretch of city owned and operated land consisting of walkways, landscaped areas, and seating area along East River between East 60<sup>th</sup> and East 68<sup>th</sup> streets.

In the immediate vicinity of the project site the Esplanade is accessible from two pedestrian bridges located at East 63<sup>rd</sup> Street to the south and East 71<sup>st</sup> Street to the north. The segment of the Esplanade adjacent to the University campus (between East 62<sup>nd</sup> and East 68<sup>th</sup> streets) is approximately 51,540 square feet (1.18 Acres) with varying widths. The Esplanade at this section narrows from 35 feet wide on the southern end to 20 feet wide at the northern end as it approaches NYPH.

The surrounding area is primarily zoned for residential use with R10 districts mapped along York Avenue and R8, R8B and R9 in the midblocks.

### **Project Description**

The University campus was founded in 1901 to foster bio-medical research. It consists of two blocks- the south block and north block. The south block is located between East 62<sup>nd</sup> and East 63<sup>rd</sup> Streets, and consists of a 36-story staff dwelling -scholar’s residence. The north block is located between East 63<sup>rd</sup> and East 68<sup>th</sup> Streets. The north block is the bio-medical science

research campus primarily consisting of research laboratories, administrative offices, support facilities, dormitories and president's residence.

The Rockefeller University is located partially in an R10 district (along the eastern frontage of York Avenue between East 62<sup>nd</sup> and East 68<sup>th</sup> Streets up to a depth of 125 feet) with the remainder located in an R9 district (to the East River). Both R9 and R10 districts are high density residential districts that allow 10 FAR for community facility uses. The demapped air space over the FDR Drive does not generate floor area.

Since the University's inception, the first research facilities were built around 1915 within the campus. Subsequent facilities were added in the 1960's when the campus was formalized around the Dan Kiley landscape plan. As part of its ongoing modernization program, in 1989 the University built the Rockefeller Research Center over the FDR Drive in demapped air space, and most recently in 2012, the University renovated and enlarged two existing older research facilities –Flexner and Smith Halls.

Although these ongoing improvements would address the University's immediate needs, the layout and forms of the existing buildings with narrow floor plates and multiples stories are not suited to modern laboratory layout standards. The University also firmly believes that research space should allow for free-flowing interaction amongst researchers and encourage greatest collaboration across all disciplines.

As a result, Rockefeller University is proposing to build a new structure that would serve its existing population and provide the modern bio-medical research space it believes is necessary to maintain top-level research and faculty. The University would construct a continuous horizontal structure that would maximize the number of laboratories on a single floor and allow for side by side interconnected laboratories with shared technical support facilities. At the same time the applicant states that the layout of the laboratories needs to be flexible to allow for practical changes in space needs and research requirements. In particular, the laboratories must be designed to:

- decrease the ratio between laboratory bench areas and the technical support space, as well as more core space relative to bench space;
- accommodate changes in layouts, including expansion and contraction;

- maximize horizontal connectivity to reduce vertical stratification of multi-level buildings;
- accommodate facilities such as lounges, informal congregation areas, seminar rooms and food and beverage areas which are important to the free flow of ideas among researchers; and
- improve climate control and stricter vibration standards to allow for more sensitive instrumentation.

The building would span over the demapped air space of the FDR Drive between East 64<sup>th</sup> and East 68<sup>th</sup> Streets. It would consist of two floors of primarily dry and wet research laboratories, on top of which would be two separate one-story pavilions consisting of research facilities and a cafeteria. The pavilions would be surrounded by open space and an open amphitheater. The landscaping on the roof of the River Building would be an extension of the existing private open space located on the campus. In addition, the University is proposing a separate interactive conference center with its outdoor space, over within the demapped air space over the FDR Drive to the north of the proposed research building. The interactive center would expand the University's ability to hold on-campus retreats, conferences and functions.

The research facility would span approximately 750 linear feet on the first floor (lower level) and 690 linear feet on the second floor (upper level) with a typical floor depth of 96 feet. The total zoning floor area within this structure would be approximately 141,531 square feet. Measured from the Esplanade, the roof of the research facility would be at a height of 71 feet and the top of the pavilion would be at a height of 89 feet. The roof of the research facility would be landscaped as a compatible extension of the existing landscaped campus. The proposed research facility would be located adjacent and internally connected to existing facilities.

The proposed interactive conference center would be located on the northern end of the platform over the FDR Drive. It would contain an approximately 3,353-square foot single story conference center. The conference center would be 15 feet tall, at a total height of 46 feet from the Esplanade. It would have an outdoor space of approximately 13,110 square feet. Access to the interactive center would be from the campus and demapped East 68<sup>th</sup> Street. The space would be located adjacent to the president's house which is currently used for conferences and special events.

The total proposed floor area over the FDR Drive would be approximately 144,884 square feet, and the platform's total span over the FDR Drive would be 927 feet long, effectively connecting to existing platforms over the FDR Drive constructed by NYPH and HSS to the north and Rockefeller University to the south. The base of the structure would be located 25 feet above the datum line of the FDR Drive as required by the 1973 Agreement. The new structure over the FDR Drive, including the laboratory building and the conference center, is referred to as the "River Building."

In addition to the River Building, the University is proposing an approximately 14,874 square feet recreation facility at the corner of York Avenue and East 68<sup>th</sup> Street, replacing an accessory parking lot for approximately 45 cars and a roof top tennis court. The recreation facility would be approximately 13 feet tall and would be setback nearly 24 feet from York Avenue. The recreation facility would include a gymnasium, an indoor swimming pool, and an open tennis court on the roof with ten at-grade parking spaces behind the recreation facility. Access to the parking spaces would be from the existing driveway located along demapped East 68<sup>th</sup> Street. The 35 displaced parking spaces would be accommodated in an existing parking facility within the campus at East 63<sup>rd</sup> Street.

In total, the proposed River Building and fitness center would add approximately 159,760 square feet of floor area to the University campus and increase the total floor area within the LSCFD to approximately 2,012,811 square feet, 33 percent of the total permitted floor area.

The River Building would require a total of thirty support columns to be located on the east and west side of the FDR Drive, thereby requiring the elimination, discontinuance and closure of volumes, including above-grade and below-grade areas, to be facilitated by the proposed city map amendment (C140068 (A) MMM). A total of 20 columns are proposed to be placed on the west side of the FDR Drive within a narrow portion of a sidewalk abutting the Drive, totaling 567 square feet in above-grade area. On the east side of the FDR Drive within the East River Esplanade a total of eight 'Y'-shaped columns and two oval-shaped columns are proposed. The total height of the 'Y' column would be approximately 46 feet-3 inches, a large portion of which is located within the building envelope. The 'Y' shaped columns would be approximately 5 feet-11 inches wide at their base and widen to 9 feet-4 inches at their vertical height of approximately 19 feet-9 inches, where the 'Y' would flange out to a maximum width of 52 feet at the top (located within the building

envelope). The two, straight oval columns would be approximately 10 feet wide and reach a height of approximately 19 feet-9 inches. The ‘Y’ columns would be located approximately 96 feet apart and abut the crash wall with noise barrier that separates the FDR roadway from the Esplanade. The two oval columns on the north side supporting the conference center would be located approximately 80 feet apart.

The construction of the deck and support columns for the River Building would be conducted from the East River via barges and would therefore, require temporary closures of the Esplanade, as approved by the Department of Parks and Recreation, and partial FDR Drive lane closures, as approved by the Department of Transportation (DOT). During this time, and subject to approval by the Department of Buildings, the University will maintain a clear path within the Esplanade with a minimum width of eight feet for pedestrian passage. This pathway will be closed to the public when materials are lifted over the Esplanade from barges in the East River. The majority of this lifting is anticipated to occur overnight when use of the FDR Drive and Esplanade is generally the lightest, as coordinated with and approved by DOT, and any additional lifts over the Esplanade that may occur during the day will require flaggers to stop pedestrians for brief periods.

### **Requested Actions**

Rockefeller University is requesting following actions to facilitate the proposed development described above:

#### Special Permit (C 140157 ZSM)

The applicant is requesting a special permit pursuant to Section 74-682 of the Zoning Resolution (Development over streets) in order to develop the River Building over the FDR Drive and to modify the bulk regulations. A portion of the building at the northern end encroaches into the required rear yard and would require modification. The Esplanade is approximately 25 feet wide in this location and the building is within 30 feet of the rear yard- the bulkhead line. As noted above, the building would consist of approximately 160,604 square feet of floor area and would rise to a total height of approximately 90 feet.



### City Map Amendment (C 140068 (A) MMM)

The original application (C 140068 MMM) proposed to amend the city map in order to eliminate, discontinue and close certain portions of the FDR Drive and related volumes (located in the East River Esplanade and adjacent to the southbound travelway of the FDR Drive) for the placement of structural columns for the River Building. On December 24, 2013, the applicant filed a modified mapping application C 140068 (A) MMM that reduced the area of the above-grade volumes and increased the area of the below-grade volumes in order to better match the structural 'Y' and oval columns. On March 24, 2014, the applicant withdrew the original city map amendment application that was certified, C 140068 MMM.

The applicant is proposing to amend the city map in order to eliminate, discontinue and close portions of the FDR Drive and related volumes (located on the East River Esplanade and southbound lane of the FDR Drive) for the placement of structural columns for the River Building. Specifically, the city map amendment would demap a total area of approximately 567 square feet of the FDR Drive at grade for the placement of 10 structural columns in the East River Esplanade. Additionally, approximately 626 square feet of the area (at grade) west of FDR Drive southbound roadway would similarly be demapped for the placement of 20 columns with a grade beam. For both areas, a subsurface area would need to be demapped for the construction of a grade beam and footings which serve as the foundation for the columns. Similar city map amendments were approved for previous buildings constructed over the FDR Drive pursuant to the 1973 Agreement.

### Modification of a previously approved authorization of a LSCFD (M 821257(D) ZAM)

The proposed expansion over the FDR Drive would require a modification to the existing LSCFD. The proposed modification would result in a total increase in floor area from approximately 1,853,053 square feet to approximately 2,012,811 square feet of floor area. While the proposed development would increase the lot coverage to approximately 346,711 square feet, or 42 percent of the total lot area, it would be within the permitted lot coverage of approximately 536,270 square feet, or 65 percent of the total lot area.

Certification by the City Planning Commission for the construction of building support columns in the FDR Drive and East River Esplanade (N 140158 CMM)

In addition, for the proposed River Building, City Planning Commission approval is also required pursuant to Article 12A of the 1973 Agreement, as amended by paragraph 13 of the third amendment (1993), which allows for the demapping of air space over and within the East River Esplanade for the purposes of placing structural support columns provided that the columns and connecting girders do not substantially interfere with pedestrian use and enjoyment of the East River. The segment of the Esplanade along the project site between East 64<sup>th</sup> and 68<sup>th</sup> street is approximately 29,050 square feet (0.66 Acres) with varying widths. With the placement of 10 columns on the east side of the FDR Drive, within the East River Esplanade, a total of approximately 1,085 square feet above grade volume would be eliminated from the Esplanade.

Certification by the Director of City Planning to demonstrate conformance to the standards and provisions of the 1973 Agreement. (N 140159 CMM)

Pursuant to Article 12B of the agreement, the applicant is required, prior to the commencement of construction, to provide plans to the Director that demonstrate conformance with the provisions of the Agreement. This requirement includes plans for the East River Esplanade, an environmental impact plan, a ventilation plan, a noise quality plan, and a plan for closing portions of the Esplanade, the FDR Drive, and the ramps during construction. These plans or related analyses have been prepared as part of the environmental review of potential air quality, noise, and construction impacts and are, thus, embodied in the FEIS.

## **ENVIRONMENTAL REVIEW**

This application (C 140157 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead agency is the Office of the Deputy Mayor for Economic Development. The designated CEQR number is 14DCP019M.

It was determined that the Rockefeller University land use actions described above may have a significant effect on the environment. A Positive Declaration was issued on August 22, 2012 and distributed, published and filed. A public scoping meeting was held on September 26, 2013. A Final Scope of Work, reflecting comments made during the scoping meeting, was issued on November 1, 2013.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on November 1, 2013. On February 19, 2014, a public hearing was held on the DEIS pursuant to SEQRA and other relevant statutes. A Final Environmental Impact Statement (FEIS) reflecting the comments made during the public hearing on the DEIS was completed and a Notice of Completion for the FEIS was issued on March 21, 2014.

As described below, the FEIS identified an (E) designation to avoid significant adverse impacts related to air quality and hazardous materials. Hazardous material requirements affecting areas disturbed along the East River Esplanade, would be ensured through the proposed Mapping Agreement required in connection with the proposed City Map Amendment.

### **(E) Designation**

Significant adverse impacts related to hazardous materials and air quality would be avoided through the assignment of an (E) designation (E-342) to the affected area.

### **Mapping Agreement**

Implementation of any hazardous materials requirements with respect to the areas that would be disturbed by construction of the column footings along the FDR Drive and East River Esplanade would be ensured through the Mapping Agreement that is required in connection with the proposed City Map amendment.

In addition, significant adverse impacts in the areas of shadows, historic and cultural resources (architectural resources), and construction-open space were identified. Measures to minimize or eliminate the anticipated impacts to the fullest extent practicable are discussed as follows.

### **Restrictive Declaration**

In connection with the proposed project, and as described below in this report, a Restrictive Declaration would be recorded to authorize the proposed project’s development with certain requirements. The Restrictive Declaration would provide for the implementation of “Project Components Related to the Environment” (i.e., certain project components which were material to the analysis of the environmental impacts in the EIS) and mitigation measures, substantially consistent with the EIS and as described below.

## **Shadows**

The shadow analysis concluded that the proposed laboratory building and North Terrace would cast between approximately three and five and a half hours of new shadows on portions of the East River Esplanade adjacent to the project site in the afternoons in the spring, summer, and fall, and 33 minutes on the winter analysis day. These new shadows would eliminate the remaining areas of direct sunlight on the esplanade adjacent to the project site for between 50 minutes in the early spring and fall and up to two hours and 40 minutes on the summer solstice. Therefore, the proposed project would cause significant adverse shadow impacts in those seasons to users of the open space seeking direct sun.

As partial mitigation for the shadow impact to the East River Esplanade, Rockefeller University—in consultation with the New York City Department of City Planning (DCP) and the New York City Department of Parks and Recreation (DPR)—will undertake a substantial upgrade to the portion of the esplanade adjacent to the project site. In addition, an approximately 150-foot-long area of the esplanade south of the project site would also be substantially upgraded as partial mitigation for the shadow impact.<sup>1</sup>

Esplanade improvements are expected to include a reconfigured shared-use pathway, new planting beds with shade-tolerant plantings, new flood-resistant trees, seating, drinking fountains, and irrigation improvements. The final design of the improved Esplanade must be approved by DPR and the Public Design Commission, which will be ensured through the project’s Restrictive Declaration. At the time of this report, the Esplanade improvements include, specifically:

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<sup>1</sup> Substantial esplanade upgrades would include the portion of the esplanade adjacent to the project site, between the area north of the Rockefeller Research Building north of East 64th Street and demapped East 68th Street, and would include the segment of the esplanade extending an additional approximately 150 feet south of the project site.

- Overall redesign and reconstruction of this portion of the esplanade, with improved spatial organization of the walkway/bikeway and seating areas, new planting beds, and new shade tolerant plantings;
- Creation of a designated shared-use path widened to the desired width of 17 feet, as per consultation with the DPR;
- Planting of approximately 29 four-inch caliper (major) trees that will be resistant to flood waters (currently there are 15);
- Planting of approximately 56 two-inch caliper (minor) trees that will be resistant to flood waters (currently there are nine);
- Installation of new benches to increase seating capacity from the existing 152 to approximately 207 people;
- Installation of approximately seven new in-ground irrigation hydrants;
- Installation of one drinking fountain (currently there are none); and
- Relocation and replacement of damaged lighting fixtures.

The final design of the esplanade improvements is subject to approval by DPR and the Public Design Commission (PDC). Any new plantings would be shade tolerant.

In addition to the substantial esplanade upgrades, Rockefeller University will also undertake the repair and rebuilding of the portion of the East River bulkhead adjacent to the project site and the area extending approximately 222 feet south of the project site where deficiencies have been identified in studies undertaken by DPR. The bulkhead repair and rebuilding will serve as additional partial mitigation for the significant adverse shadows impacts to the portion of the East River Esplanade adjacent to the project site. This commitment will be ensured through the Restrictive Declaration.

In addition to the measures identified above, partial mitigation will also include a minimum 12-year commitment by the applicant to maintain plantings on the portion of the esplanade that would be improved with the proposed project. Maintenance will include weeding, watering, pruning, mulching, applying fertilizer, treating plant disease and insect problems, removing debris and dead

plant material, and replacing dead, damaged, or irreversibly declining plants. This commitment will be ensured through the Restrictive Declaration and the Mapping Agreement required in connection with the amendment to the City Map. As provided in the project Restrictive Declaration, the University will enter into a Maintenance and Operations agreement with DPR that will govern the maintenance requirements.

While the above mitigation measures would not reduce or eliminate the extent or duration of shadows cast on the esplanade, they would improve and enhance the user experience of this open space and therefore are considered partial mitigation of the shadows impact. No further mitigation measures for the significant adverse shadows impact have been identified beyond those measures described above.

### **Historic and Cultural Resources**

As discussed in the EIS, the existing concrete canopy structure and parking area on the proposed Fitness Center Site are contributing elements to the Rockefeller University Historic District which has been determined eligible for listing on the State and National Registers of Historic Places (S/NR-eligible) and for designation as a New York City Landmark (NYCL-eligible). Therefore, the removal of the canopy structure and parking area that would occur with the construction of the proposed Fitness Center would result in an adverse impact to the historic district. Partial mitigation measures for the removal of the canopy structure and parking area include the preparation and implementation of a restoration plan for the Philosopher's Garden, which is located immediately south of the Fitness Center Site. This plan would be developed in consultation with the New York City Landmarks Preservation Commission (LPC) and would be prepared and implemented prior to construction of the fitness center.

In addition, the proposed laboratory stacks that would be located adjacent to two existing historic properties, Flexner Hall Extension and the Hospital Building, would result in a significant impact to historic and cultural resources. LPC is in receipt of revised stack drawings indicating that the stacks have been redesigned in terms of their materials and surface articulation to better harmonize with the historic properties. LPC finds these design drawings to be acceptable and partial mitigation for the significant impact. Measures to minimize or partially mitigate these adverse impacts to the

Rockefeller University Historic District would be implemented in consultation with LPC and are included in the Restrictive Declaration.

Prior to construction of the proposed project, and in consultation with LPC, Rockefeller University would develop and implement a Construction Protection Plan (CPP) for the University campus' contributing elements to the historic district. The CPP would be prepared in coordination with a licensed professional engineer and would follow the guidelines set forth in Section 523 of the *CEQR Technical Manual*, including conforming to LPC's *New York City Landmarks Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings*. An unanticipated discoveries plan for archaeological resources would be incorporated into the CPP. The CPP would also comply with the procedures set forth in the New York City Department of Buildings (DOB)'s *Technical Policy and Procedure Notice* (TPPN) #10/88.<sup>2</sup> The CPP would be included in the Restrictive Declaration.

### **Construction – Open Space**

A temporary significant construction period impact to open space (i.e., the portion of the East River Esplanade adjacent to the project site) would result from construction activities associated with the proposed project.

As identified in the EIS, full mitigation of the construction—open space impact is not feasible due to the close proximity of the project site to the esplanade and the temporary construction-related activities affecting the esplanade.

As partial mitigation for the temporary significant construction period impact to open space, the applicant would provide a minimum eight-foot-wide pathway through the portion of the esplanade adjacent to the project site. As discussed in the EIS, this pathway would always be maintained to allow for pedestrian and bike movement through the East River Esplanade except for the limited closures during specific construction activities requiring the lifting of construction materials over the walkway/bikeway from barges located in the East River to the project site. While the construction of the proposed project would have a temporary significant open space impact on the

East River Esplanade during a portion of the construction period, it would be partially mitigated by the measures described above. No further measures to partially or fully mitigate the significant construction period open space impact were identified between the Draft and the Final EIS. The construction open space mitigation measures described above would be included in the Restrictive Declaration.

### **Alternatives**

The FEIS analyzed five alternatives to the proposed project: a “No Action Alternative,” which assumes that the proposed project is not developed; two alternatives that consider alternate configurations of the proposed project, the “York Avenue Alternative” and “North-South Alternative;” a “Lesser Density Alternative,” which assumes a smaller, approximately 74,000 gsf laboratory building, and would result in similar significant adverse impacts compared to the proposed project; and a “No Unmitigated Impact Alternative,” which considers an alternate proposal that would avoid significant adverse impacts. It is the applicant’s position that these alternatives would not fully meet the goals and objectives of the proposed project.

On April 2, 2014, a Technical Memorandum was issued for this application. The Technical Memorandum addresses revisions to the methodologies and guidelines presented in the 2014 CEQR Technical Manual, which was issued shortly before the completion of the FEIS. Additionally, the Technical Memorandum addresses text edits to the FEIS. Pursuant to the City’s Environmental Quality Review process and NYCRR 617, under the methodologies and guidelines presented in the 2014 CEQR Technical Manual, the proposed actions will not have a significant effect on the quality of the environment that was not already identified in the FEIS.

### **UNIFORM LAND USE REVIEW**

This application (C 140157 ZSM), in conjunction with the application for related action (C 140068 MMM) was certified as complete by the Department of City Planning on November 4, 2013, and was duly referred to Manhattan Community Board 8 and the Manhattan Borough President, along with the related non-ULURP actions, which were referred for information and review in accordance with the procedure for non-ULURP matters.



## **Community Board Public Hearing**

Community Board 8 held a public hearing on this and the related applications (C 140068 MMM, M 821257(D) ZAM) along with the related non-ULURP actions (N 140158 CMM, N 140159 CMM) on January 9, 2014 and, on that date, by a vote of 25 in favor, 3 opposed, 8 abstentions and 1 not voting for cause, adopted a resolution recommending approval of the application with the following conditions:

1. The height of the sound barrier wall along the esplanade will be increased from 5 to 8 feet.
2. The representatives from the Community Board will be included during the on-going design process of the esplanade.
3. The developer will increase the maintenance contract for the esplanade landscaping from two to four years.
4. The developer will donate a sum of money to an authorized group for further maintenance on the esplanade.
5. The developer will expand programming and specials events at Rockefeller University.
6. The developer will try to make a portion of the campus open to the residents of the community for their enjoyment.
7. The developer will study the water pressure and availability to help facilitate the use of water outside of the project limits.
8. The developer will commit to a minimum 8-foot wide walk way along the esplanade during construction.
9. The university will transport structural elements over the Drive at night.

## **Borough President Recommendation**

This application (C 140157 ZSM), in conjunction with the related actions (C 140068 MMM, C 140068 (A) MMM,) along with the related non-ULURP actions (N 140158 CMM, N 140159 CMM) was considered by the Manhattan Borough President, who issued a recommendation February 12, 2014 approving the application with the following conditions:

1. The applicant will secure the commitments made to Community Board 8, such as increasing the height of the FDR Drive sound barrier, directly maintaining the Esplanade for four years, and increasing the number of public campus event.
2. The applicant will undertake a community design process for esplanade improvements prior to City Council approval of the application.
3. The applicant will work with the Department of City Planning and the Department of Parks and Recreation to establish an amount and mechanism for continued financial support of the improved esplanade after the four-year direct maintenance period.
4. The applicant will create and advertise a program to open the campus to the general public from 12pm to 3pm on Fridays during spring, summer and fall, and find a time other than Friday for a similar program.
5. The applicant will develop a plan to create publicly accessible open spaces by moving the perimeter fence along York Avenue and East 68<sup>th</sup> Street, or by other methods.

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

On February 5, 2014 (Calendar No.1), the City Planning Commission scheduled February 19, 2014 for a public hearing on this application (C 140157 ZSM) and the related applications.. The hearing was duly held on February 19, 2014 (Calendar No. 20). There were eight speakers in favor and one speaker in opposition of the application.

Speakers in favor of the proposal included the Rockefeller University's President, Vice President of Planning and Construction and Vice President for University Strategies and Research Operations, the applicant's attorney, project architect, project landscape architect, environmental consultant and a representative of the Manhattan Borough President.

The University's president noted the institution's record of scientific accomplishments which are partially attributable to a culture of interdisciplinary collaboration among its scientists and that its proposal for large floor-plate, state-of-the-art laboratory space would elevate opportunities for greater collaboration. The president further noted that the University provides a range of public programming (lectures, concerts and trainings) in a controlled portion of the campus and that additional public venue space would be created on its proposed rooftop amphitheater. The project

architect described the architectural concept of the proposed project. The project landscape architect described the proposed Esplanade improvements, including the use of shade tolerant plant material and bulkhead repair. The applicant's attorney described the proposed project and requested actions, including the amended mapping application which reduced the ground-level column volumes. The applicant's attorney also noted that the esplanade plantings would be guaranteed for four years and was exploring additional funding for maintenance beyond the four-year term. The applicant's environmental consultant noted that the proposed crash barrier/sound barrier along the Esplanade would be raised from 5 to 8 feet in height in response to the community board's request. The representative of the Manhattan Borough President, speaking on her behalf, expressed support for locating bulk away from York Avenue, encouraged the applicant to secure a financial commitment for esplanade maintenance and also encouraged the University to explore areas for publicly accessible open space on its campus.

The speaker in opposition to the application represented Green Park Gardeners, a group of volunteer gardeners for with Andrew Haswell Green Park (located at the East River Esplanade, north of the Queensboro Bridge). The speaker noted the lack of public open space in the Upper East Side, that the proposal would wall off sections of the Esplanade that currently receive sun and that the development would result in a third-of-a-mile tunnel adjacent to the esplanade. The speaker encouraged modification of the project to provide publicly accessible area on the roof of the River Building.

There were no other speakers and the hearing was closed.

#### **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This application (C 140157 ZSM) in conjunction with the related applications (C 140068 MMM, C 140068 (A) MMM, M 821257(D) ZAM) along with the related non-ULURP actions (N 140158 CMM, N 140159 CMM) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 et seq.) The designated WRP number is 13-012.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

## **CONSIDERATION**

The Commission believes that the special permit application (C 140157 ZSM) and City map amendment as modified (C 140068 (A) MMM), in conjunction with the related non-ULURP actions (M 821257(D) ZAM, N 140158 CMM, and N 140159 CMM) are appropriate.

New York State legislation in 1971 authorized New York City to close and discontinue air space over the FDR Drive between East 62<sup>nd</sup> Street and the midblock line between East 71<sup>st</sup> and East 72<sup>nd</sup> streets, and air space over East 63<sup>rd</sup>, East 70<sup>th</sup> and East 71<sup>st</sup> streets between York Avenue and the western edge of the FDR Drive, in order to convey such air space to the abutting property owners, Rockefeller University, New York Presbyterian Hospital, and HSS.

To implement the New York State legislation, the City Planning Commission and the Board of Estimate approved the demapping of the air-space and the 1973 Agreement between the three institutions and New York City. The Agreement outlined the conditions and procedures by which the institutions could develop the air space above the FDR Drive and over the streets, as well as demap additional volumes for the placement of columns to support such development. At the time, the Commission acknowledged the long-term need for the institutions to expand and ultimately modernize their facilities and noted that expansion over the FDR Drive would help to minimize disruption within the neighboring residential communities located to the west of the academic and hospital campuses. The Commission continues to acknowledge the appropriateness of such a policy and notes that Rockefeller University's proposed River Building, consisting of a two-story research building with two one-story roof top additions, and a one-story interactive conference center would be in accordance with the intent and specific requirements of the 1973 demapping action and Agreement, as amended. The Commission also notes that the proposed development meets such policy objective by siting bulk away from York Avenue and the adjacent residential community.

Special Permit (C 140157 ZSM)

With respect to the new River Building over the FDR Drive, the Commission believes that it will result in an effective distribution of new bulk and a good site plan with respect to existing buildings on site and in the area.

The Commission notes that the new development will allow Rockefeller University to create a modern, continuous and horizontal bio-medical research facility with two pavilions, spanning 690 to 750 feet in width and 71 feet in height (89 feet to the top of the pavilions). The Commission acknowledges that the program and layout of the new development will internally connect to existing buildings on the campus, maximize laboratory space and enable side-by-side interdisciplinary collaboration. The Commission notes that the new development will be well-integrated with the historic character of the existing buildings and landscaping. The Commission further notes that the interactive conference center, spanning 178 feet in width and 15 feet in height, will allow the University to hold meetings and colloquiums on-site. The Commission acknowledges the location, placement and heights of the new buildings along the campus's eastern edge which creatively hide the new bulk below the campus's topography thereby making the development visually and functionally unnoticeable from York Avenue.

The Commission believes that the proposed modification to the rear yard requirement is appropriate. The Commission recognizes that the upper 23 feet of the River Building encroaches upon the required rear yard, which, in this case, is located along the Esplanade. The Commission notes that compliance with the rear yard requirement would diminish the size and configuration of the laboratory space and result in programmatic challenges. The Commission further notes that the east façade of the River Building fronts upon the Esplanade and the East River – meeting the intent of the rear yard requirement -- to provide adequate light and air to the new development.

City Map Amendment (C 140068 (A) MMM)

The 1973 Agreement authorizes additional demapping of air space to facilitate the placement of support columns in the Esplanade. In that regard, the Commission believes the design of the

River Building's structural support columns and platform minimizes the building's impact on the East River Esplanade and pedestrian access ramp at East 63<sup>rd</sup> Street.

The Commission notes that eight Y-shaped columns (spaced 96 feet apart) supporting the research building and two oval-shaped columns (spaced 80 feet apart) supporting the conference center will be constructed on the east side of the FDR Drive, to the east of the barrier separating the roadway from the Esplanade. The Commission acknowledges that the Y-shaped, tapered configuration reduces the number of columns needed and therefore reduces their effects at the Esplanade level. The Y-column reduces from 52 feet wide at its top, located within the building envelope, to 9 feet-4 inches wide at the height of the platform (19 feet-9 inches) and 5 feet-11 inches wide (24 square feet in area) at its base at the ground level. The oval column maintains a continuous width of 10 feet (44 square feet in area). The Commission recognizes that the City Map change would also facilitate 20 support columns to be placed on the west side of the FDR Drive in a narrow portion of the sidewalk, which unlike the Esplanade, is not used by pedestrians.

The Commission recognizes that construction of the River Building platform and installation of the columns will require that varying portions of the Esplanade be closed to the public for a period of approximately 43 weeks. To partially mitigate this significant impact to open space during construction, the Commission notes that the University has committed to maintain a pathway with a minimum width of eight feet to allow the continuous passage of pedestrians and bicyclists on the Esplanade. While this pathway will need to be closed during times when materials are hoisted over the Esplanade, the Commission appreciates that the University is limiting the majority of these activities to overnight times when there is limited use of the Esplanade. Should additional lifts be necessary during the day for smaller materials, requiring the stoppage of pedestrian traffic along the Esplanade, the Commission notes that the University has stated that these stoppages will be brief and will be handled by on-site flaggers.

#### Modification of a previously approved authorization of a LSCFD (M 821257(D) ZAM)

The Commission believes that a modification to the existing LSCFD to reflect the new development, including the River Building and fitness center, is appropriate. The proposed modification will result in a modest increase in floor area and lot coverage that are within the

maximum permitted allowances. The Commission notes that the new recreation facility will require the relocation of 35 parking spaces to elsewhere on the University campus. The Commission believes that the distribution and location of new bulk within the LSCFD permits better site planning and will not adversely affect any nearby zoning lots, as described above.

Certification by the City Planning Commission pursuant to Article 12A of the 1973 Agreement as amended (N 140158 CMM)

In considering the findings required pursuant to Article 12A of the 1973 Agreement (as amended by paragraph 13 of the 1993 amendment to the Agreement), relating to the demapping of additional air space for the placement of support columns in the East River Esplanade, the Commission believes the proposed development would not adversely interfere with pedestrian use and enjoyment of the esplanade, reduce light and air to the FDR Drive walkway, detract from the visual quality of the waterfront area, nor impede vehicular use of the FDR Drive.

The Commission believes that the proposed development would not adversely interfere with pedestrian use and enjoyment of the Esplanade through the use of Y-shaped columns, which serve to substitute for the amount of sheer columns that would otherwise be needed to support the weight of the River Building and which reduce the column footprint at the ground level. The columns would be located directly east of the crash barrier separating the Esplanade from the FDR Drive roadway, thus they would not impede vehicular use of the FDR Drive, while minimizing physical encroachment into the useable part of the Esplanade. Further, the Commission believes that the proposed Y-shaped columns are an attractive design and an enhancement of the appearance of the waterfront in this location and would not detract from the visual quality of the waterfront area.

The Commission also notes that, as part of the proposed development, the University will be installing a sound barrier on top of the existing crash barrier, which, in response to public comments, will rise to a total height of eight feet, subject to the approval of the New York City Department of Transportation. This wall will help to attenuate the noise from the FDR Drive

roadway, enhancing pedestrians' experience on the Esplanade, and will largely be hidden from view along the Esplanade by the proposed plantings.

The Commission acknowledges that the proposed River Building will result in a significant adverse shadows impact on the Esplanade, as disclosed in the FEIS. To partially mitigate this impact, the Commission recognizes that the University will be undertaking repairs to the bulkhead along the Esplanade adjacent to the site and approximately 222 feet south thereof, as well as substantial upgrades to the Esplanade adjacent to the project site and southward to the ramp at East 63<sup>rd</sup> Street. As provided in the FEIS, the Commission is pleased to note that these improvements will include new shade-tolerant and flood resistant plantings, new seating and lighting, and drinking fountain(s) and irrigation hydrants, which will be ensured through the attached Restrictive Declaration. The Commission appreciates that the applicant, at the request of community members during the public review process, held two public sessions to solicit feedback on the proposed design of the improved Esplanade.

The Commission notes that the final design of the Esplanade is subject to the approval of the New York City Parks Department (DPR) and Public Design Commission; however, the latest design is included in the FEIS and reflects the community's input with regard to widened bike/pedestrian access, increased seating, planting and trees which, in total, will increase the utility and quality of the Esplanade.

The Commission acknowledges that during the public review process, further partial mitigation measures were explored in consultation with DPR, and the University has committed to enhanced maintenance of the Esplanade improvements for a minimum of 12 years. Such maintenance work will be undertaken by a landscape contractor acceptable to DPR and will include replacing dead, damaged or irreversibly declining plants, removing debris, weeding, watering, pruning, mulching, applying fertilizer, and treating plant disease and insect problems, all of which will be subject to DPR oversight, as more specifically set forth in a maintenance and operations agreement that the University will enter into with DPR. This will be ensured through the project's Restrictive Declaration and the mapping agreement in connection with the City Map amendment.



The Commission acknowledges the recommendation of community members and the Manhattan Borough President that the University provide publicly accessible open space within its campus. The Commission received written testimony from the University, dated February 28, 2014, which describes the University's unique operational requirements as a secured biomedical facility that provides scientists with unencumbered access to all campus buildings. The Commission acknowledges that changes to the University's current operational patterns would require expanded security and diminish operational flow. The Commission recognizes that the significant design improvements to the Esplanade would greatly enhance the quality and utility of the existing open space amenity. The Commission further notes that the University has committed to hiring a Communications and Public Affairs officer to increase the number of public on-campus events for community residents within a controlled portion of its campus, which would include use of the rooftop amphitheater by the public.

Based on the foregoing, the Commission has determined that the findings in Article 12A of the Agreement, as amended, have been met with respect to construction of the new River Building over the FDR Drive and the placement of the support columns in the East River Esplanade.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-682 (Development over streets) of the Zoning Resolution;

1. For developments or enlargements in such demapped air space and for modification of bulk regulations, that the location and distribution of new bulk shall result in a good site plan in relation to the existing buildings on site and in the area;

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on March 21, 2014, with respect to this application (C 140157 ZSM), and the Technical Memorandum, dated April 2, 2014, 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 considerations:

1. From among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable;
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, pursuant to the Restrictive Declaration attached to this report as Exhibit A, those project components related to the environment and mitigation measures that were identified as practicable.

The report of the City Planning Commission, together with this FEIS and subsequent Technical Memorandum, 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 it be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-682 of the Zoning Resolution to allow the development of a building within the demapped air space above the Franklin D. Roosevelt Drive, and in conjunction therewith, modify the rear yard requirements of Section 24-36 (Minimum required Rear Yards), in connection with the proposed expansion of an existing university, within a Large-Scale Community Facility development bounded by York Avenue, the easterly centerline prolongation of East 68<sup>th</sup> Street, the U.S. Pierhead and Bulkhead line and East 62<sup>nd</sup> Street and its easterly prolongation (Block 1480, Lot 10 & 9010; and Block 1475, Lots 5 & 9005), within R9 and R10 districts, Borough of Manhattan, Community District 8, is subject to the following conditions:

1. The property that is the subject of this application (C 140157 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 Rafael Vinoly Architects filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A- 007	Zoning Computations	24-OCT-2013
A – 008	Rear Yard Diagram	24-OCT-2013
A – 009	Site Plan	24-OCT-2013
A – 410	Section A	24-OCT-2013
A – 411	Section B	24-OCT-2013
A – 412	Section C	24-OCT-2013
A – 413	Section D	24-OCT-2013
A – 416	Section F	24-OCT-2013
A – 417	Section H	24-OCT-2013
A – 420	Section K	24-OCT-2013

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. Development pursuant to this resolution shall be allowed only after the Restrictive Declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, New York County. The Restrictive Declaration shall be deemed incorporated herein as a condition of this resolution.
5. The development shall include those project components related to the environment and those mitigation measures listed in the Final Impact Statement (CEQR No. 14DCP019M) issued on March 21, 2014 (and identified as practicable) and in accordance with the Restrictive Declaration attached hereto as Exhibit A.
6. 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 and the related restrictive declaration 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 or of the related restrictive declaration.
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

8. 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 resolution and the restrictive declaration described below and any subsequent modifications to such documents 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.

The above resolution (C 140157 ZSM), duly adopted by the City Planning Commission on April 2, 2014 (Calendar No. 5), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197- d of the New York City Charter.

**CARL WEISBROD**, Chair

**KENNETH J. KNUCKLES**, *Esq.*, *Vice-Chairman*

**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**

**ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE R. DE LA UZ,**

**MARIA M. DEL TORO, JOSEPH I. DOUEK, RICHARD W. EADDY,**

**ANNA HAYES LEVIN, ORLANDO MARIN**, Commissioners

Nicholas Viest  
Chair

Latha Thompson  
District Manager



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### The City of New York Manhattan Community Board 8

January 9, 2014

Hon. Amanda M. Burden  
Chair  
The Department of City Planning  
22 Reade Street  
New York, New York 10007

**Re: Rockefeller University ULURP Application No. C140068 MMM; C140157 ZSM; CEQR No. 14DCP019M**

Dear Chair Burden:

At its Land Use meeting on Wednesday, January 8, 2014 Community Board 8M **approved** the following resolution by a vote of 25 in favor, 3 opposed 8 abstention and 1 not voting for cause.

**WHEREAS** Rockefeller University is planning a \$240 million project to build a low two-story research building and a one-story conference center in air space over the FDR Drive that will have a negative impact on the East River esplanade, and

**WHEREAS** the University proposes to spend \$8 million+ for improvements and repairs to:

- The granite block bulkhead gravity wall under the esplanade adjacent to their campus and 150 feet to the south of the project, and
- The East River Esplanade with appropriate materials; drought resistant plants and a design so that the Esplanade will survive flooding, such as "Sandy", and

**WHEREAS** the Community Board has requested the University enter into a Project Labor Agreement for this plan, as they have done on other projects, and

**BE IT RESOLVED** the University has agreed to revise their proposal in response to Community Board 8M concerns on the following:

1. The height of the sound barrier wall will be increased from 5 feet to 8 feet, which will still allow for natural ventilation and cut down noise on the Esplanade.
2. Representatives from the Community Board, selected by the board's chair, will be included during the on-going design process of the esplanade.
3. The University has agreed to increase the maintenance contract for the Esplanade landscaping from two to for four years.
4. The University has agreed to donate a sum of money to an authorized group for further maintenance on the esplanade.

Post #	Attention	Date	1/13/14	# of pages	2
To	Calendar Office	From	Latha Thompson		
Co./Dept.		Co.	CB8M		
Phone #		Phone #	212-758-4340		
Fax #	212-720-3350	Fax #			

**BE IT FURTHER RESOLVED** that Community Board 8M supports the application by Rockefeller University provided that:

1. The University expands the programs for special events and various activities for the residents of the Community to attend.
2. The University tries to make a portion of the campus open to the residents of the Community for their enjoyment.
3. The University will study the water pressure and availability and help facilitate the use of water on parts of the esplanade that is not part of this project.
4. The University will commit to having available at least an 8 foot walk-way on the esplanade during construction.
5. The University will commit to having many of the structural elements hoisted over the FDR Drive, which will occur at night.

Please advise this office of any decision made by City Planning concerning this matter.

Sincerely,

  
Nicholas Viest  
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York  
Honorable Gail Brewer, Manhattan Borough President  
Honorable Carolyn Maloney, 14<sup>th</sup> Congressional District Representative  
Honorable Liz Krueger, NYS Senator, 26<sup>th</sup> Senatorial District  
Honorable Micah Kellner, NYS Assembly Member, 65<sup>th</sup> Assembly District  
Honorable Dan Quart, NYS Assembly Member, Assembly District  
Honorable Ben Kallos, NYC Council Member, 5<sup>th</sup> Council District  
Honorable Daniel Garodnick, NYC Council Member, 4<sup>th</sup> Council District  
Robert Cook, Esq., Anderson Kill & Olick, P.C.  
George Candler, AIA, Rockefeller University



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**GALE A. BREWER**  
BOROUGH PRESIDENT

February 12, 2014

**Recommendation on**  
**ULURP Application Nos. C 140157 ZSM, M 821257D ZAM,**  
**N 140158 ZMM, N 140159 ZMM, and C 140068(A) MMM**  
**by Rockefeller University**

**PROPOSED ACTION**

Rockefeller University seeks a special permit and related actions to facilitate the development of a two-story laboratory building and conference center within a Large Scale Community Facility Development over the Franklin D. Roosevelt East River Drive (“FDR Drive”) in Manhattan Community District 8. The proposed project sits in airspace that was demapped and given to the University pursuant to a 1973 Agreement between the City of New York and Rockefeller University as well as two other Upper East Side medical facilities, the Hospital for Special Surgery and New York-Presbyterian Hospital.<sup>1</sup>

*Special Permit*

The applicant seeks a **special permit pursuant to Section 74-682** of the New York City Zoning Resolution (“ZR”) for development in airspace over a street. ZR § 74-682 allows for such a development in R9 and R10 districts in airspace that is closed and demapped and has been conveyed to a non-profit institution. The special permit allows for development or enlargement of buildings which are an expansion of an existing hospital, university or functionally related facility. The special permit stipulates

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<sup>1</sup> New York-Presbyterian Hospital was formed from the merger of Presbyterian Hospital and New York Hospital, which was party to the 1973 Agreement. The Hospital for Special Surgery was previously named the New York Society for the Relief of the Ruptured and Crippled, and is referred to as such in the 1973 Agreement.



that any development in demapped airspace utilize only unused floor area from the adjacent zoning lot. In order to grant the special permit, the City Planning Commission (“CPC”) must find that the location and distribution of new bulk shall result in a good site plan and any modifications to off-street parking requirements do not result in a shortage of parking. Additionally, the special permit allows CPC to impose additional conditions and safeguards, consistent with the 1973 Agreement, to improve the quality of the development and minimize adverse effects on the surrounding area.

The special permit allows for modification of bulk requirements, provided that all provisions of the 1973 Agreement are met. In this case, the applicant seeks a waiver of rear yard requirements pursuant to ZR § 24-36, which requires a 30-foot rear yard.

#### *Amendment to the Large Scale Community Facility Development Plan*

The change in total floor area and lot coverage from the proposed development on the University’s campus requires an **amendment to the Large Scale Community Facility Development Plan** (“LSCFDP”) pursuant to ZR § 79-21. The LSCFDP allows for, on community facilities that occupy more than one zoning lot, floor area to be used notwithstanding the boundaries of zoning lots and zoning districts, based on a CPC-approved large-scale plan. The applicant seeks to modify the existing LSCFDP to increase the total floor area to 2,012,811 square feet and the total lot coverage to 42.02 percent.

#### *CPC Chair Certifications*

The Applicant seeks two certifications pursuant to the 1973 Agreement. The University first seeks a **certification pursuant to Article 12A**, as amended by Article 13 of the Third Amendment to the 1973 Agreement. Article 12A states that the University may not complete any construction over the FDR Drive that would lie within the vertical plane defined by the eastern edge of the FDR Drive. It does, however, allow that the CPC may approve the placement of necessary support columns, connecting girders, and structural bracing, provided that they do not: (i) substantially interfere with pedestrian use and enjoyment of the FDR Drive Esplanade; (ii) restrict light and air to the Esplanade; (iii) detract from the visual quality of the waterfront area; nor (iv) impede vehicular traffic. The University seeks this certification for the placement of the supporting columns of the proposed building.

The Applicant further seeks a **certification pursuant to Articles 12B and 12C of the 1973 Agreement**, as amended, which require that plans be submitted to the CPC detailing the proposed impacts of the development on the FDR Drive and the Esplanade (12B). If the proposed development will in any way damage the bulkhead along the East River or the FDR Drive, the Applicant will repair that damage (12C).

#### *City Map Change*

The Applicant is also seeking an amendment to the City Map. The laboratory building and conference center will be located on a platform over the FDR Drive in airspace that was previously conveyed to the University, but no airspace between this platform and the surface of the FDR Drive belongs to the University. The Applicant thus seeks a change to the City Map to eliminate volumes from the FDR Drive and the Esplanade to accommodate columns and associated below-grade supporting structures. Ownership of these volumes will be conveyed to the University.

## PROJECT DESCRIPTION

Rockefeller University seeks land use approvals to build a new science research building, an interactive conference center, and a fitness center on its Upper East Side campus. The laboratory building and conference center will be built on a platform over the FDR Drive, in airspace that was granted to the University in 1973. The 1973 Agreement granting the airspace to the University gave development rights from East 63<sup>rd</sup> to 71<sup>st</sup> Streets to the University and the two hospitals to its north, and this is the final parcel along this stretch to be developed.

Rockefeller University was founded in 1901 for the purpose of fostering scientific and medical research. The University is comprised of 73 laboratories organized without a departmental structure. Compared to other research institutions, Rockefeller University is rather small—all told there are less than 2,000 personnel including laboratory heads, research scientists, PhD students, postdoctoral students, and other support staff.

### **Background**

In 1973, the University and the two hospitals to its north entered into an agreement with the City allowing them to develop buildings in the airspace over the FDR Drive adjacent to their campuses, subject to approval by the City based on the terms of the agreement. This 1973 Agreement was enabled by state legislation in 1971 which allowed the City to convey the airspace to the three institutions. This 1973 Agreement has subsequently been amended three times, once at adoption by the Board of Estimate in 1973, and then in 1983 and 1993.

The 1973 Agreement and the First Amendment gave the institutions the right to build, but included numerous obligations for the institutions to develop and maintain public space along the river and access points to that public space. Notably, the 1973 Agreement required that the institutions build an elevated pedestrian walkway along the easterly portion of the new buildings to replace the previous at-grade East River Esplanade<sup>2</sup> between East 63<sup>rd</sup> and 72<sup>nd</sup> Streets. This provision was part of a larger plan to replace the at-grade Esplanade between East 63<sup>rd</sup> Street and Gracie Park at East 82<sup>nd</sup> Street, where the Esplanade was already elevated, with an elevated pedestrian walkway.

At the time that the first building was being planned, the University's Scholars Residence, the City had abandoned the idea of elevating the Esplanade and instead amended the Agreement to include "substituted performance" for this obligation. Rather than building an elevated walkway, the institutions would be required to build various improvements to the Esplanade as well as improved pedestrian access points—improvements of a similar cost to the institutions as the elevated walkway. These substituted performance requirements are laid out in the 1983 and 1993 Amendments. The University has fulfilled this substituted performance obligation by building a bridge over the FDR Drive to provide pedestrian access to the Esplanade at East 63<sup>rd</sup> Street and by contributing funds to maintain the park established on top of the former waste transfer station on the East River between East 60<sup>th</sup> and 61<sup>st</sup> Streets.

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<sup>2</sup> This portion of the East River Esplanade is referred to in the 1973 Agreement and subsequent Amendments as the FDR Drive Existing Walkway.

### **Rockefeller University Campus**

The University's campus encompasses Block 1480, Lots 10 and 9010, which is located on the east side of York Avenue between East 63<sup>rd</sup> Street and the center line of the demapped East 68<sup>th</sup> Street, and Block 1475, Lots 5 and 9005, which is located directly to the south of Block 1480, from East 62<sup>nd</sup> to 63<sup>rd</sup> Streets. Lots 9005 and 9010 are air rights lots running over the FDR Drive at a height of 25 feet, with the easterly border of the pierhead/bulkhead line. Block 1480, Lot 10 has an area of 563,901 square feet and Block 1475, Lot 5 has an area of 41,208 square feet. Neither of the air rights lots can be used in calculation of permitted floor area.

The campus is zoned R10 to a depth of 125 feet from York Avenue and R9 over the remainder of the property. The University is a Use Group 3 community facility, which is permitted in these districts. The campus is subject to a Large Scale Community Facility Development Plan whose boundary is coterminous with the University's property, including the air space over the FDR. The LSCFD designation essentially makes the campus's two blocks a superblock, giving the University greater flexibility in utilizing its development rights, as long as the total Floor Area Ratio ("FAR") of the campus does not exceed 10.0. The maximum permitted floor area in the LSCFD is 6,051,090 square feet. The LSCFDP also stipulates where buildings can be placed on the lot and the maximum lot coverage for the campus.

The University was founded in 1901 at this location and consists of research laboratories, administrative and support facilities and two dormitories, as well as the president's residence. The majority of the buildings on the site are clustered towards the FDR Drive, with only three buildings adjacent to York Avenue. The campus is gated and accessed by an entrance at East 66<sup>th</sup> Street. The two buildings on Block 1475, the Scholar's Residence and the Faculty House, are connected to the campus by a pedestrian bridge over East 63<sup>rd</sup> Street that was built in 1998.

The University has previously constructed two buildings in the airspace over the FDR: the Scholar's Residence and the Rockefeller Research Building. The Scholar's Residence, approved by the CPC in 1983 (N 821259 CMM), is a 36-story residential building with 247 units of faculty housing. The Rockefeller Research Building is the newest building on the Rockefeller campus and was built subject to 1989 CPC approval (C 880671 ZSM). The 15-story building contains predominantly laboratory space.

### **Neighborhood Context**

The Rockefeller University campus is located on the Upper East Side of Manhattan in an area that contains a number of medical institutions. Directly north of the campus is the New York-Presbyterian/Weill Cornell Medical Center and beyond that the Hospital for Special Surgery, both of which have built in airspace above the FDR Drive up to East 71<sup>st</sup> Street. To the west of York Avenue, from East 66<sup>th</sup> to 69<sup>th</sup> Streets is the Memorial Sloane Kettering Cancer Center ("MSKCC"). Directly to the south of the campus is the Animal Medical Center, a 20-story animal hospital.

In addition to these existing medical uses, recent land use actions have facilitated proposed new medical developments in the area. In 2013, New York-Presbyterian was granted a bulk variance to permit the construction of a maternity hospital on the west side of York Avenue between East 69<sup>th</sup> and 70<sup>th</sup> Streets. MSKCC was granted a variance in 2012 to build an outpatient surgical center on the west side of York Avenue between East 61<sup>st</sup> and 62<sup>nd</sup> Streets. In addition, MSKCC and the City University of New York

plan to construct a 750,000 square foot cancer center and a 336,000 science and health care professionals building on a formerly City-owned lot on East 73<sup>rd</sup> Street at the FDR Drive.

### *Residential Uses*

There is also a significant residential population in the area surrounding the Rockefeller University campus, on the west side of York Avenue south of East 66<sup>th</sup> Street. This area consists primarily of apartment buildings ranging from 6 to 18 stories. All of the apartment houses on the block bounded by York and First Avenues between East 64<sup>th</sup> and 65<sup>th</sup> Streets are designated as New York City Landmarks. These buildings, the City and Suburban Homes Company First Avenue Estate, are a middle-class tenement development from the late 1800s.

### *Open Space*

The easterly portion of the FDR Drive adjacent to the University's campus contains a landscaped Esplanade for pedestrians and cyclists. The Esplanade runs from East 60<sup>th</sup> Street to 125<sup>th</sup> Street. The Esplanade is accessed by a pedestrian bridge at East 63<sup>rd</sup> Street, adjacent to the Rockefeller campus, and a bridge at East 71<sup>st</sup> Street. At its southern end, the segment of the Esplanade adjacent to the proposed project is approximately 35 feet wide, but it narrows to approximately 20 feet wide as it approaches the New York Presbyterian Hospital platform. A 13- to 17-foot-wide walkway/bikeway, paved with gray hexagonal asphalt pavers is the predominant element of the Esplanade. To the west of this pathway is a narrow area containing small bushes, grass, 23 trees, lighting, and benches.

The Esplanade widens at East 60<sup>th</sup> Street, and a new park is planned in this area—Andrew Haswell Green Park. The planned park will incorporate the roof of the former Sanitation garage, atop which an existing pavilion sits that was constructed in the 1990s, with some funding from the University. Across the FDR Drive from this new park sits Twenty-Four Sycamores Park, a one-block park in the shadow of the Queensboro Bridge which contains playgrounds, basketball courts, and handball courts. Also near the campus is St. Catherine's Park, on the west side of First Avenue, between East 67<sup>th</sup> and 68<sup>th</sup> Streets. St. Catherine's park includes a soccer field, playgrounds, a basketball court, and a running track.

### **Proposed Project**

The University seeks to build a two-story laboratory building on the eastern edge of its campus in airspace over the FDR Drive. In addition, the proposed actions will facilitate the construction of a conference center on the northeast corner of the campus and a fitness center on the northwest corner of campus, adjacent to York Avenue. The new buildings will add a total of 159,758 square feet of new floor area to the campus. Both the laboratory building and the fitness center will have accessible roofs, so the development will also add 5,537 square feet of landscaped open space to the campus.

### *Project Purpose*

The University is in the midst of an ongoing modernization program. The University recently completed the Rockefeller Research Building, and in 2012 completed the renovation of two existing laboratory buildings that were built in 1917 and 1930. These two buildings were then joined by a structure containing common spaces designed to encourage interaction among researchers. With the addition of this new and newly renovated laboratory space, the University remains competitive with its peers, but all

of these are multistory buildings with small floor plates, which, according to the University, are not conducive to accommodating the wide range of laboratory types needed at a contemporary institution. The University, with the proposed project, seeks to create space that is flexible, that maximizes horizontal connectivity to increase interaction between programs, that has improved climate control and vibration standards to allow for sensitive instrumentation, and that includes informal spaces like lounges and cafes that can encourage the free flow of ideas amongst faculty.

### *Proposed Development*

The University seeks to build a long, low structure along its eastern boundary that would consist of two floors of laboratories, on top of which would be two separate one-story pavilions. The pavilions would contain a dining hall in the southern building and office space in the north. Between and around these two pavilions would be landscaped space that, only slightly higher than the rest of adjacent parts of campus, would be perceived as an extension of the existing landscaping on campus. An amphitheater would be constructed in the middle of the rooftop landscaping, between the two pavilions.

The laboratory building would be built on a platform over the FDR Drive that would extend the entire distance from the north end of the University's existing platform at East 63rd Street to the University's LSCFDP boundary at the midpoint of demapped East 68<sup>th</sup> Street. The laboratory building will extend 750 feet along this platform from East 63<sup>rd</sup> Street. Support columns would be located on both sides of the FDR Drive, with the eastern columns' side one inch outside of the FDR Drive crash barrier, within the Esplanade. The platform would be supported by eight Y-shaped columns and two oval columns under the North Terrace, described below. The second level of the new building would extend easterly to the edge of the Y-shaped columns, while the lower level would be set back three feet. The first level of the building will extend approximately 50 feet further south than the second level, creating a landscaped terrace at the second level (South Terrace). The side of the platform to the west of the FDR Drive would be supported by twenty columns. This side of the platform would abut an existing retaining wall along the west side of the FDR Drive and the wall would be modified in certain sections so that the new laboratory building could connect to existing campus buildings.

The new building's laboratories would have large, open floor plates that would be adaptable to meet future configuration needs. Laboratories, offices, and shared spaces would occupy the eastern portions of the building, providing access to natural light. The interior spaces of the building would be occupied by support and technical services. The building would connect internally with existing research facilities to the west. As mentioned above, the roof of the laboratory building would be landscaped and could connect with other landscaped campus areas to the west. The roofs of the two one-story pavilions would be separated by an amphitheater.

The laboratory building will include a complex venting system that will direct to two exhaust stacks that would rise adjacent to existing buildings. The proposed exhaust stacks would rise along the Hospital building and the Flexner Hall Extension. Both of these buildings are eligible for the National Register of Historic Places, so the proposed stacks would be clad in brick and designed to fit in with the style of these existing buildings.

At the northern end of the platform over the FDR would be a landscaped terrace (North Terrace), at the level of the platform, which would separate the laboratory building from the one-story conference center built on the platform at the northern edge of the campus. The conference center would rise 15 feet and

contain 3,353 square feet that would be used for conferences, retreats, lectures, and fundraising events. The North Terrace would be 178 feet long and would connect the conference center to the existing president's residence, which contains some public rooms that would be used as part of conferences.

In addition to these two buildings on the platform over the FDR Drive, the applicant seeks to build a one-story fitness center on what is now a surface parking lot on the northwest corner of the campus. The 14,874 square foot fitness center at the corner of York Avenue and East 68<sup>th</sup> Street would contain a swimming pool and fitness equipment with a tennis court on the roof. The fitness center would displace all but 10 of the existing parking spaces, though all existing spaces would be redistributed to other lots on the campus. Because of the change in grade across the campus, the roof of the fitness center containing the tennis court would be at-grade with much of the rest of the landscaped campus.

### *Construction Timing*

Construction of the proposed project is anticipated to begin in 2015 and be completed by 2019. The first phase of construction to begin in 2015 would be lane shift work on the FDR Drive. Construction of the proposed platform over the FDR would occur between August 2015 and October 2017. Building elements for this phase of construction would be hoisted over the FDR Drive from barges in the East River and would only involve the closure of the FDR Drive on Sunday nights after midnight. The Esplanade would remain open for the entirety of construction, and portions of the East River Esplanade that would be damaged by construction-related activities would be replaced in-kind.

### *Proposed Improvements to the East River Esplanade*

As construction activities will significantly damage the existing Esplanade, and as partial mitigation for shadow impacts discussed in greater detail below, the applicant is proposing to rebuild the bulkhead and park adjacent to the project site. The bulkhead repair and rebuilding would extend the entire length of the area adjacent to the site and would also extend an additional approximately 150 feet south of the project site. This expanded repair area of 1,150 linear feet reflects the portions of the seawall that have been determined by the Parks Department to be deteriorating and in urgent need of repair. The bulkhead repair and rebuilding would begin prior to the start of construction of the laboratory building platform.

Following construction of the laboratory building, the applicant also plans to significantly renovate the portions of the Esplanade adjacent to the site. The University plans to improve an area of 26,803 square feet of the Esplanade. The proposed improvements will introduce 14 major and 64 minor trees, increase the amount of seating from 240 to 744 linear feet, and introduce a five foot tall sound barrier to reduce road noise.<sup>3</sup> Additionally, the redesign will add new planters and greenery and bring a connection to potable water to the Esplanade which will allow irrigation as well as drinking water for park users. Finally, the Applicant will reconfigure the existing bikeway to create a continuous eight foot wide bikeway and four foot wide walkway throughout the improved sections that would connect to bike and pedestrian areas to the north and south.

### **Proposed Actions**

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<sup>3</sup> In discussions with Manhattan Community Board 8, the applicant has agreed to increase the height of this sound barrier to eight feet, which will further reduce road noise and improve air quality to pedestrians.

In order to facilitate the proposed development program, the Applicant seeks first a special permit for development in airspace over a street pursuant to ZR § 74-682. This special permit was specifically designed to give the CPC some amount of oversight over the development of buildings pursuant to the 1973 Agreement. Additionally, the special permit allows the CPC to modify bulk and other controls in order to facilitate appropriate developments that would not be permitted as of right. In this case, the R10 zoning on the site requires a 30-foot rear yard pursuant to ZR § 24-36. As described above, the lot line for this development is the pierhead/bulkhead line. At two locations the proposed building edges closer than 30 feet to this line, thus necessitating a rear yard waiver. The Applicant argues that a rear yard at this location is unnecessary as beyond the lot line is the East River, where no development can occur, thus ensuring light and air to the building regardless of space between the building and the lot line.

In addition to the special permit, the change in total floor area and lot coverage on the campus requires an amendment to the University's LSCFDP, as that plan stipulates the placement of buildings and the distribution of floor area. The 1973 Agreement provides that the platform over the FDR drive may not be counted as lot area for the purpose of computing permitted floor area, but it is counted when computing lot coverage. The proposed new structures would increase the campus's total floor area to 2,012,811 square feet and the lot coverage to 42.02 percent. This is well below the permitted floor area on the site of 6,051,090 square feet and permitted lot coverage of 65 percent, as defined by the R9 and R10 zoning.

Additionally, approvals are needed pursuant to the 1973 Agreement, as amended. The 1973 Agreement did not demap any space for the placement of columns, so the CPC must approve, through certification, the placement of columns and building area outside of the air space already granted to the University. According to the certification, the Chair must find that the placement of the columns is designed in order to minimize impacts to the Esplanade. According to the Applicant, the proposed eight Y-shaped columns would reduce the number of necessary columns and occupy a smaller amount of space at the ground level than 16 single columns. Each of the Y-shaped columns will occupy 24 square feet at the ground level and would be spaced 96 feet apart. The two oval North Terrace columns would occupy 44 square feet at the ground level. The proposed columns would not impede vehicular traffic.

The second Chair certification requires that plans for the proposed development be submitted so that the Chair may evaluate their conformity with the 1973 Agreement with regards to: landscaping; environmental impacts; venting of the covered portion of the FDR Drive; and noise impacts on the Esplanade. As mentioned above, the Applicant proposed significant improvements to the entire area of effected Esplanade, as well as an area stretching 150 feet to the south of the development. According to a study commissioned by the Applicant, mechanical venting will not be necessary on the FDR Drive, as there will be sufficient open space through which fresh air can access the road. Additionally, the Applicant's study claims that the proposed sound barrier between the FDR Drive and the Esplanade will sufficiently reduce noise on the Esplanade.

### **Anticipated Impacts Under A Reasonable Worst Case Development Scenario**

A Draft Environmental Impact Statement ("DEIS") was conducted which found that there will be significant adverse impacts, some of which can be mitigated, from the proposed project.

Shadows: The DEIS found that the proposed laboratory building would cast between approximately

three and five and a half hours of new shadows on portions of the East River Esplanade in the afternoons in the spring, summer, and fall, and 33 minutes on the winter analysis day. These new shadows would eliminate the remaining areas of direct sunlight on the Esplanade adjacent to the project site for between 50 minutes in the early spring and fall and up to two hours and 40 minutes on the summer solstice. As partial mitigation for the shadow impact to the East River Esplanade, Rockefeller University will undertake a substantial upgrade to the portion of the Esplanade adjacent to the project site, as described above. The University plans to spend approximately eight million dollars on this partial mitigation effort.

Historic and Cultural Resources: The DEIS found that the proposed design, as mentioned above, would include two exhaust stacks that would abut landmark-eligible buildings. Through consultation with the Landmarks Preservation Commission (“LPC”), the stacks have been redesigned in terms of their materials and surface articulation to better harmonize with the historic properties. LPC has determined these design changes to be acceptable and serve as partial mitigation for the significant impact. Additionally, the construction of the fitness center would require the removal of the canopy structure and parking area, designed by landscape architect Dan Riley, that are considered contributing elements of the campus’s landscape. As partial mitigation for the removal of these landscape elements, a restoration plan for the Philosopher’s Garden located immediately south of the Fitness Center Site, would be prepared and implemented prior to construction of the fitness center. The restoration plan would be included in a Restrictive Declaration.

Construction Noise: The DEIS found that there would be a significant adverse impact from construction noise. Rockefeller University plans to implement a noise reduction plan that will use low-noise equipment and various noise barriers, which will be included in the Restrictive Declaration. Even with these measures, however, elevated noise levels are predicted to occur for an extended duration at two sensitive receptor locations immediately adjacent to the project site: the East River Esplanade and New York Presbyterian Hospital.

Other Construction Impacts: The proposed project would also create significant adverse open space impacts during construction to the East River Esplanade. The Applicant would provide a minimum eight-foot-wide pathway through the affected portion of the Esplanade to serve as partial mitigation for this impact.

## **COMMUNITY BOARD RECOMMENDATION**

On January 9, 2014, Community Board 8 (CB8) adopted a resolution recommending **conditional approval** of the application by Rockefeller University by a vote of 25 in favor, 3 opposed, 8 abstentions, and 1 not voting for cause.

The Community Board’s approval was based on several commitments made by the Applicant at the Board meeting:

1. Rockefeller University agreed to increase the height of the sound barrier wall between the FDR Drive and the Esplanade from five feet to eight feet, which would still allow for natural ventilation but would further decrease noise on the Esplanade.
2. The University agreed to include representatives of CB8 in an ongoing design process for the Esplanade improvements.



3. The University further agreed to increase its maintenance obligation for the improved landscaping on the Esplanade from two years to four years.
4. Finally, the University agreed to contribute financially for further maintenance of the Esplanade after the expiration of the four-year period.

With these commitments in mind, the Board recommended approval of the application if the Applicant: (1) expands its programs for special events and activities for community residents; (2) tries to open up portions of its campus to community residents for their enjoyment; (3) studies the water pressure and availability to help facilitate the use of water on parts of the Esplanade not a part of the project; (4) commits to making at least an eight foot walkway available on the Esplanade during construction; and (5) commits to hoisting many of the structural elements for construction over the FDR Drive at night.

### **BOROUGH PRESIDENT'S COMMENTS**

Rockefeller University has been an important research institution in the city for over a century, bringing medical breakthroughs to the global community and jobs and research funding to our local community. The proposed new laboratory building will add a state-of-the-art research center to the Rockefeller campus without increasing the user population of the University or encroaching on nearby residential uses. The University has a unique educational philosophy that a small institution based around collaboration allows scientists to take on innovative projects. This ethos also serves to make the University a good neighbor. Rather than put forward a plan to develop as much floor area as possible on their site, the University has left open much of its campus, and has concentrated its bulk away from neighbors across York Avenue.

The proposed new buildings come out of the needs identified in the "Rockefeller Strategic Plan 2012-2020," which looked at how the University can remain competitive in the short- and long-term. The University seeks to attract the best possible scientists and produce the highest quality research, and it has determined that its existing buildings cannot be fully retrofitted for these purposes. According to the University, the historic research buildings on its campus have ceiling heights that are too low to accommodate needed mechanical equipment and have floor-plates that are too small to be adapted to contemporary laboratory needs. Because the University plans to maintain its small size and collaborative nature, the vertically-oriented existing buildings are unsuitable to the free-flowing interaction the University seeks to encourage. Additionally, the University competes with other top research institutions for the best scientists, and must therefore provide additional amenities like the proposed fitness center and conference center, which have become standard parts of research institutions.

### **Special Permit for Development over a Street**

The proposed platform and two buildings over the FDR Drive meet the required findings that the proposed developments result in a good site plan in relation to existing buildings and the surrounding area. The proposed laboratory, because of its long, low design, will connect with many of the campus' existing buildings and will appear from the west to be a part of the existing campus landscaping. Because they would be located along the eastern edge of the University's campus, facing the East River, the buildings will have very little visual impact on other properties neighboring the campus. Furthermore, because the new buildings will not increase the number of users of the campus nor reduce the amount of parking, they will not have any effect on services or transportation on the surrounding community. For pedestrians on the Esplanade below, the building will block sun and reduce the existing

feel of openness. The proposed building design, however, is far less harmful than a taller building would be and care has been taken in the choice of building materials and shape of the columns to ensure the smallest possible impact on the enjoyment of the riverfront open space. Therefore, though the building does have an adverse impact on the Esplanade, to be discussed in greater detail below, the care taken to minimize that impact makes it in compliance with the findings of the special permit.

### **Modification of LSCFDP and Certification for Column Placement**

The proposed modification to the previously-approved LSCFDP and the first Chair certification, for the placement of supporting columns, are similarly appropriate. After these new developments the University will remain well below the allowed amount of floor area and lot coverage on the site. Since the University is not asking to utilize floor area from a different block or zoning district on this site, this amendment is largely pro forma. The first proposed certification will allow the University to place the columns for the new laboratory and conference buildings in what is currently public land. The proposed columns meet the findings that they do not interfere with pedestrian enjoyment of the Esplanade, restrict light and air, detract from the visual quality of the surrounding area, nor impede traffic. The proposed Y-shaped columns reduce the total number of necessary columns compared with traditional single columns and will taper as they approach the ground, giving them a reduced profile in the visual plane occupied by pedestrians.

### **Certification Pursuant to Article 12B and 12C of the 1973 Agreement**

The second certification requires that the proposed development meet the requirements of Articles 12B and 12C of the 1973 Agreement. Article 12C requires that any damage to the East River bulkhead that occurs during construction be repaired. The University plans to meet this requirement by fully rebuilding the bulkhead prior to construction. Article 12B requires the University to submit plans for landscaping and lighting, environmental impact mitigation, ventilation of the FDR Drive, noise reduction, and phased construction.

#### *Environmental Impact Mitigation*

The DEIS identifies a number of significant adverse impacts from the proposed development. The most notable adverse impact is a shadow impact on open space. The area around Rockefeller University's campus is particularly starved for open space. The nearest large park, Central Park, is almost a mile away. The neighborhood has Twenty-Four Sycamores Park and St. Catherine's Park, but both are small and fully programmed with playgrounds and sports fields. For passive recreation, the East River Esplanade is essentially the only available space, and the proposed building will cast shadows for as much as five and a half hours a day in some months.

The University has proposed significant improvements to the Esplanade as well as a repair of the deteriorating sea wall in the area as partial mitigation. Working with the Community Board the Applicant has committed to involving the community in the design of the improved Esplanade and increasing the period of time it will maintain this space from two to four years. Additionally, the University agreed to donate a sum of money to an authorized group for further maintenance of the Esplanade beyond this four year period. These commitments are commendable and go a long way towards remedying the adverse shadow impact. They should be further fleshed out, however, before final approval is given on this application.

The University is negatively impacting one of the only signature open spaces in the area, while significantly improving their own, private open space. The University's campus has beautifully manicured open spaces that are separated from the community by a large fence. Because of the University's academic philosophy of openness and collaboration, all of the buildings on campus are unlocked. This requires the campus to secure its perimeter in order to prevent sensitive materials and equipment from being tampered with. With the need for the University to maintain its fence in mind, however, it should work with the community to find ways to be a good neighbor and allow limited access to the green spaces on the site. The new laboratory building in particular will have a large open area with wide open views of the East River, and the University should find ways to share this space with the surrounding community.

In discussions with the Community Board, the University committed to explore increasing the number of special events hosted on campus that are open to the public. Currently the University does host a number of events that are open to the public for entertainment and educational purposes. For example, the University hosts approximately 40 lunchtime concerts every year that are free and open to the public. The University hosts public lectures and discussion series and has a large youth outreach program that brings high school students to the University to engage in science research. Any expansion of these programs will be a boon to the local community and to the city at large. The University does not, however, allow guests to simply access the calm open spaces on campus. In discussions with the Borough President's office, the University has agreed to open up the campus on Fridays in the spring through the fall so that the public may enjoy lunch in the gardens. The Applicant should continue to explore programs like this so that the general public can enjoy the amenities of the Rockefeller campus. Not all area residents are available on Friday afternoons, so finding another time in addition to this would be a worthy effort.

In addition to opening up the campus during Friday lunchtimes, the University should look at other opportunities to increase the amount of open space available to the public. Along York Avenue and 68<sup>th</sup> Street there are a number of green spaces with mature trees that are not particularly needed as open space on campus. These spaces are separated from the rest of campus by buildings and parking lots, and are therefore likely unused by staff and scientists. The University should explore moving the perimeter fence in these locations to create places along York Avenue that the community could access as passive open space. The University need not invest in creating signature public spaces here; rather it should look to create any small space that the community can use. In the process of doing this, the University can take whatever steps are necessary to retain the spaces as usable by the University in the future, much like any privately-owned public space in the city.

Finally, the University needs to more fully flesh out its financial commitment to Esplanade maintenance after the four year direct maintenance obligation, and this financial commitment needs to be included in the Restrictive Declaration. There are significant challenges to determining what the scope of this commitment should be, as it will not be necessary for nearly a decade and it is difficult to predict conditions on that type of time frame. The commitment should equal the amount needed to maintain this portion of the Esplanade at a high level of quality, including seasonal plantings. The University and the Department of City Planning can work with the Parks Department to figure out what a reasonable sum would be. The City Planning Commission should also determine what an appropriate number of years' worth of maintenance is appropriate.

The timing of this payment needs to be resolved as well. If the payment is made at a later date, the

amount paid should be adjusted based on the Consumer Price Index. A payment made today would be simpler and easier to track, but such funds have, in the past, been difficult to access after sitting idle for many years. Another issue to be addressed is to whom this payment will be made. Any group that is approved to receive these funds must be well enough established to ensure its existence more than a decade from now and needs to be authorized by the Parks Department to do work on the Esplanade. At this time, no such group has been identified. As such, the Parks Department itself would be a reasonable beneficiary of this financial commitment, as long as the University is given reasonable assurance that the money will be used in this location. If these issues cannot be resolved it would also be appropriate for the University to directly maintain the Esplanade for an additional number of years.

In addition to the shadow impacts on open space, the DEIS identified significant adverse impacts on historic resources and significant construction noise impacts on sensitive receptors. The University has put together careful plans for partial mitigation of these impacts, plans which fit within the requirements of Article 12B.

#### *Noise Reduction Plans*

Article 12B additionally requires that the University submit a noise quality plan to ensure that the noise levels on the Esplanade will not be detrimental to the enjoyment of that space. The University had initially proposed a five-foot sound barrier, but in discussions with the Community Board it has agreed to increase the height of this wall to eight feet. This increased height will vastly improve the experience of pedestrians on the Esplanade not just by reducing noise, but by improving air quality at the pedestrian level. Any additional height of this wall would further improve conditions on the Esplanade, but would have the side effect of reducing air quality on the FDR Drive.

The University's current plan for air quality on the FDR Drive is based around natural, rather than mechanical, venting of the space. This makes the proposed development more environmentally friendly by eliminating the need for mechanical ventilation, which requires electricity. To determine the ideal height of the noise barrier between the FDR Drive and the Esplanade, the University commissioned a study by Hughes Associates, which found that at eight feet, the proposed wall would significantly reduce noise along the Esplanade without increasing levels of carbon monoxide on the roadway.

#### **Final Considerations**

If the University more fully addresses the environmental impacts of the proposed project the development will meet all of the findings of the proposed actions. The University has put forward a carefully crafted plan for the future of its campus that will, overall, be of benefit to the city. The community around the project is exceptionally lacking in high quality open space, however, and this problem is only exacerbated by the proposed development. This proposed development underscores a citywide issue surrounding the relationship between universities and the local community. While universities are important to the economic and civic life of our city, every effort must be made to integrate the local community into university development plans, rather than foster plans that isolate neighbors. In this case, the Applicant has already put forward many praiseworthy efforts to mitigate the particular adverse impacts of this development. Despite these efforts, the plan needs to be further developed before approval. In addition to creating concrete financial commitments to Esplanade maintenance, the University should carefully examine how it can increase the amount of open space available to the general public.

## **BOROUGH PRESIDENT'S RECOMMENDATION**

Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application Nos. C 140157 ZSM, M 821257D ZAM, N 140158 ZMM, N 140159 ZMM, and C 140068(A) MMM provided that the Applicant:

1. follow through on all commitments made to Community Board 8 with regard to increasing the height of the FDR Drive sound barrier, directly maintaining the Esplanade for four years, and increasing the number of public campus events;
2. undertake a community design process for Esplanade improvements prior to City Council approval of this application;
3. work with the Department of City Planning and the Department of Parks and Recreation to establish an amount and mechanism for continued financial support of the improved Esplanade after the four year direct maintenance period;
4. create and thoroughly advertise a program to open campus to the general public from noon to 3:00 PM on Fridays during the spring, summer and fall, and find a time other than Friday for a similar program; and
5. develop a plan to create publicly accessible open spaces by moving the perimeter fence along York Avenue and East 68<sup>th</sup> Street or by other methods.



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Gale A. Brewer  
Manhattan Borough President

## EXHIBIT A

### DECLARATION

THIS DECLARATION (“Declaration”), made as of this \_\_\_ day of \_\_\_\_\_, 2014, by THE ROCKEFELLER UNIVERSITY, a corporation organized under the Education Law of the State of New York, having an address at 1230 York Avenue, New York, New York 10065 (hereinafter, the “Declarant”).

#### WHEREAS

A. Declarant is the fee owner of certain real property located in the Borough of Manhattan, County, City and State of New York, designated for real property tax purposes as Block 1475, Lots 5 and 9005 (the “South Parcel”) and Block 1480, Lots 10 and 9010 (the “North Parcel”) (the South Parcel and the North Parcel shall hereinafter collectively be referred to as the “Subject Property”) on the tax map of the City of New York (the “Tax Map”), which real property is more particularly described in Exhibit A annexed hereto and made a part hereof.

B. The Subject Property has previously been designated a “Large Scale Community Facility Development” (“LSCFD”) pursuant to land use application no. N821257 ZAM meeting the requirements of Section 12-10 of the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”).

C. Pursuant to an agreement made in 1973 among Declarant, The Society of the New York Hospital and the New York Society for the Relief of the Ruptured and Crippled, on the one hand, and the City of New York (the “City”), on the other hand (the “1973 Agreement”), Declarant has previously acquired from the City airspace over the Franklin D. Roosevelt Drive (the “FDR Drive”) in areas adjacent to the Subject Property in which it has developed two buildings and in which airspace Declarant now proposes to construct a new structure adjacent to

the North Parcel, including a two story laboratory building, two pavilions atop the laboratory building, and an open terrace containing a conference center (collectively, the “River Building”).

D. The River Building includes twenty support columns that penetrate the westerly portion of the FDR Drive and ten (10) support columns that penetrate the easterly portion of the FDR Drive (the “Support Columns”), which easterly portion comprises the East River Esplanade (the “Esplanade”).

E. Declarant also proposes to construct a new fitness center (the “fitness center”, collectively with the River Building, the “Project”) on the North Parcel. Declarant has filed applications with the New York City Department of City Planning (the “DCP”) for approval by the New York City Planning Commission (the “CPC”) of (1) a modification to the LSCFD authorization pursuant to ZR Section 79-21 to reflect the construction of the River Building and the fitness center (application number M821257(D) ZAM); (2) a special permit pursuant to ZR Section 74-682 (Developments over Streets), including a request for a modification of rear yard requirement (application number C140157 ZSM); and (3) a change in the city map (the “City Map Change”) to demap in the FDR Drive volumes above and below grade for the placement of the Support Columns and to convey such and volumes to Declarant (application number C140068(A) MMM) (all of the foregoing, collectively, “Zoning and Land Use Applications”).

F. Declarant has also filed applications with the DCP pursuant to the 1973 Agreement for (1) a certification, with findings, by the CPC pursuant to Article 12A of the 1973 Agreement, as amended by Article 13 of the Third Amendment of the 1973 Agreement regarding the placement of support columns in the FDR Drive and (2) a certification by the Director of the DCP pursuant to Article 12B of the 1973 Agreement, as amended, that construction plans conform to the standards and provisions of this agreement (application number N 140159 CMM)

(the “1973 Agreement Applications,” together with the Zoning and Land Use Applications, the “Applications”).

G. To ensure that the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement (“FEIS”) issued for City Environmental Quality Review Application No 14DCP019M pursuant to Executive Order No.91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY Sections 5-01 et seq. (“CEQR”) and the State Environmental Quality Review Act, New York Environmental Conservation Law Secs. 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“SEQRA”) and incorporates certain (i) requirements for mitigation of significant adverse environmental (“Mitigation Measures”), and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS (“PRCEs”), Declarant has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration. E-Designation (E-342) has been assigned to the Subject Property to address requirements with respect to hazardous materials testing and remediation, and the mapping agreement for the City Map Change may also include provisions governing hazardous materials testing and remediation with respect to the Support Columns in the FDR Drive and Esplanade.

H. Declarant prepared a Technical Memorandum to the FEIS dated April 2, 2014 that assessed the Project under the 2014 updates to the *CEQR Technical Manual* and determined that there were no changes to the conclusions of the FEIS.

I. \_\_\_\_\_ Title Insurance Company has certified in a certification annexed hereto as Exhibit B and made a part hereof, that as of \_\_\_\_\_, 2014



Declarant and \_\_\_\_\_ are the only parties in interest , as that term is defined in subdivision \_\_ in the definition of “zoning lot” in Section 12-10 ZR to the Subject Property.

J. Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated now and in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half mile radius of the Subject Property.

NOW THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following restrictions, obligations and agreements, which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns.

#### AGREEMENT

##### 1. DEFINITIONS.

For the purposes of this Declaration, the following terms shall have the meanings hereinafter ascribed thereto:

1.1. “Applications” shall have the meaning set for in the Recitals to this Declaration.

1.2. “Approvals” shall mean all approvals or consents required of any Governmental Authority with respect to the Subject Property or the Esplanade.

1.3. “Buildings Department” or “DOB” shall mean the New York City Department of Buildings or any successor to the jurisdiction thereof.

1.4. “Building Permit” shall mean an Excavation/Foundation Permit or a New Building Permit.

1.5. “Bulkhead” shall mean the seawall on the easterly edge of the Esplanade.

1.6. “Bulkhead Repairs” shall have the meaning set forth in Section 4(b) of this Declaration.

1.7. “Chairperson” shall mean the Chairperson of the Commission from time to time or any successor to the jurisdiction thereof.

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

1.9. “City Council” shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

1.10. “City Planning” or “DCP” shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.11. “Commission” or “CPC” shall mean the New York City Planning Commission or any successor to this jurisdiction thereof.

1.12. “Completion Letter of Credit” shall have the meaning set forth in Section 5 of this Declaration.

1.13. “CO Notice” shall have the meaning set forth in Section 4.4(c) of this Declaration.

1.14. “Construction Commencement” shall mean either, whichever occurs first, (1) the issuance of the first Building Permit by the DOB to Declarant for the commencement of construction of the River Building, or (2) the issuance of the first permit by DOB, DPR, DOT, or SBS to Declarant for the commencement of construction activities in the FDR Drive.

1.15. “Corporation Counsel” shall mean the Corporation Counsel of the City of New York or any successor to the jurisdiction thereof.

1.16. “CPP” shall have the meaning set forth in Section 3.1(e)(i) of this Declaration.

1.17. “Declarant” shall have the meaning given in the Preamble to this Declaration and shall include heirs, successor and assigns of the named Declarant.

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

1.19. “Delay Notice” shall have the meaning set forth in Section 5 of this Declaration.

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

1.21. “Development” shall mean the construction of the River Building or the Fitness Center, as the case may be.

1.22. “Development Plans” shall mean the plans and drawings listed in Section 2 of this Declaration and annexed hereto as Exhibit C.

1.23. “DOT” shall mean the New York City Department of Transportation, or any successor to the jurisdiction thereof.

1.24. “Draft Restoration Scope of Work” shall have the meaning set forth in Section 4(c) of this Declaration.

1.25. “Effective Date” shall have the meaning set forth in Section 9 of this Declaration.

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

1.27. “Esplanade Improvements” shall have the meaning set forth in Section 4(d) of this Declaration.

1.28. “Excavation/Foundation Permit” shall mean any permit issued by the Buildings Department authorizing excavations, including those made for the purposes of testing or removing earth, sand, gravel, or other material from the Subject Property and from the FDR Drive adjacent to the Subject Property, including the Esplanade, and foundation work therein.

1.29. “FDR Drive” shall have the meaning set forth in the Recitals to this Declaration. References herein to FDR Drive shall include the Esplanade, unless otherwise provided.

1.30. “FEIS” shall mean the Final Environmental Impact Statement for the Subject Property dated March 21, 2014.

1.31. “FEIS Obligation” shall mean any Obligation that is set forth in the FEIS that is (a) specifically required by the provisions of the FEIS to be incorporated into this Declaration, (b) a Mitigation Measure identified in the FEIS, or (c) a PCRE.

1.32. “Final Approval” shall mean approval of (a) any one or more of the Applications by the Commission pursuant to New York City Charter Section 197-c with or without modifications, which shall be effective on the date that the City Council’s period of review has expired without action by the City Council, provided that if (i) pursuant to New York City Charter Section 197-d(b) , the City Council reviews the decisions of the Commission approving any one or more the Applications and takes final action pursuant to New York City Charter Section 197-d approving any one or more of the Applications, with or without modifications, “Final Approval” shall mean such approval of such Application(s) by the City Council or (ii) the City Council disapproves any one or more of the decisions of the Commission and the Mayor files a written disapproval of the City Council’s action pursuant to the New York City Charter Section 197-d(e), and the City Council does not override the Mayor’s disapproval, “Final Approval” shall mean the date of the Mayor’s written disapproval of such Council action with respect to such Application(s) pursuant to such New York City Charter Section 197-d(e) , or (b) approvals by the CPC or the Chairperson, as the case may be, pursuant to the 1973 Agreement.

1.33. “Final Completion” or “Finally Complete” shall mean, with respect to the Bulkhead Repairs and the Esplanade Improvements, the completion of all relevant items of

work, including so-called “punch list” items that remain to be completed upon Substantial Completion.

1.34. “Final Restoration Scope of Work” shall have the meaning set forth in Section 4(c) of this Declaration.

1.35. “Floor Area” shall have the meaning given in Section 12-10 of the Zoning Resolution.

1.36. “Force Majeure Event” shall mean an occurrence beyond the reasonable control of Declarant which causes the delay of the performance of Declaration’s Obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) unreasonable restrictions, regulations, orders, controls or judgments of any Governmental Authority, including, with respect to design and construction of the Esplanade Improvements and Noise Barrier, such as have the effect of preventing Declarant from designing or constructing same in an efficient and expeditious manner; (v) undue material delay in performance of any work or process and/or issuance of approvals of any applications or agreements or other actions required in order to permit Declarant to carry out its obligations pursuant to this Declaration by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and

could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xii) order of any court of competent jurisdiction which prohibits, or the pendency of any litigation which has the effect of prohibiting Declarant from performing its obligations hereunder. The time to perform any Obligation under this Declaration may be extended as a result of a Force Majeure Event only pursuant to the procedures set forth in Section 5 of this Declaration and provided the Chairperson or the DPR Commissioner, as the case may be, certifies that the Force Majeure Event exists in accordance with such Section 5.

1.37. “Governmental Authority” shall mean any governmental authority (including any Federal, State or City governmental authority or quasi-government authority, or any political subdivision or any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

1.38. “Large Scale Community Facility Development” or “LSCFD” shall have the meaning set forth in the Recitals to this Declaration.

1.39. “Legal Requirements” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, or any Governmental Authority having jurisdiction over the Subject Property.

1.40. “LPC” shall mean the Landmarks Preservation Commission of the City of New York or any successor to the jurisdiction thereof.

1.41. “Maintenance and Protection of Traffic Plan” or “MPT” shall have the meaning set forth in Section 3.1(b)(i) of this Declaration.

1.42. “Mitigation Measures” shall have the meaning given in the Recitals to this Declaration and as more particularly set forth in Section 4 of this Declaration.

1.43. “New Building” shall mean any new building or structure, or portion thereof, constructed pursuant to the Development Plans on any portion of the Subject Property and within the demapped volumes of the FDR Drive that will be conveyed to Declarant pursuant to the City Map Change.

1.44. “New Building Permit” shall mean a work permit issued by the Buildings Department under a new building application authorizing construction of the River Building.

1.45. “New York City Charter” shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

1.46. “Noise Barrier” shall have the meaning set forth in Section 3.2 of this Declaration.

1.47. “Noise Reduction Plan” shall have the meaning set forth in Section 3.1(a)(i)(B) of this Declaration.

1.48. “Notice” shall have the meaning set forth in Section 10 of this Declaration.

1.49. “Notice of Final Completion” shall have the meaning set forth in Section 4(d)(iii) of this Declaration.

1.50. “Notice of Substantial Completion” shall have the meaning set forth in Section 4(c)(iii) of this Declaration.

1.51. “NYSDEC” shall mean the New York State Department of Environmental Conservation, or any successor to the jurisdiction thereof.

1.52. “Obligation” shall mean any requirement imposed on Declarant by this Declaration, including, without limitation, any FEIS Obligation whether or not specifically incorporated herein.

1.53. “OER” shall mean the New York City Office of Environmental Remediation, or any successor to the jurisdiction thereof.

1.54. “Parks Department” or “DPR” shall mean the New York City Department of Parks and Recreation, or any successor to the jurisdiction thereof.

1.55. “Party in Interest” shall have the meaning set forth in subdivision (b) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution.

1.56. “PCO” shall mean a Permanent Certificate of Occupancy issued by the Buildings Department.

1.57. PCRE(s) shall have the meaning given in Section 3 of this Declaration.

1.58. “Permit Notice” shall have the meaning set forth in Section 4.4(a) of this Declaration.

1.59. “Punch List for Substantial Completion” shall have the meaning set forth in Section 4(c)(iii) of this Declaration.

1.60. “Punch List for Final Completion” shall have the meaning set forth in Section 4(d)(iii) of this Declaration.

1.61. “Recording Date” shall have the meaning set forth in Section 8(a) of this Agreement.

1.62. “Register’s Office shall have the meaning set forth in Section 8(a) of this Declaration.

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

1.64. “SBS” shall mean the New York City Department of Small Business Services.



1.65. “Substantial Completion” or “Substantially Complete” shall mean (i) with respect to the Esplanade Improvements, that such improvements have been constructed substantially in accordance with the Approved Esplanade Plans as defined hereinafter and have been determined by DPR to be completed as provided for hereinafter to such an extent that all portions of the improvements are available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction or decoration remain to be performed, or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally; (ii) with respect to the Bulkhead Repairs and Temporary Esplanade Restoration, that the repairs and restoration work have been completed substantially in accordance with, with respect to the Bulkhead Repairs, the plans included in Declarant’s bid package dated June 21, 2013, and, with respect to the Temporary Esplanade Restoration, the Final Restoration Scope of Work, as determined by DPR, and have been completed to such an extent that the affected portions of the Esplanade, including the Bulkhead, are available for public use.

1.66. “Successor Declarant” shall have the meaning set forth in Section 7 of this Declaration.

1.67. “Support Columns” shall have the meaning set forth in the Recitals to this Declaration.

1.68. “TCO” shall mean a Temporary Certificate of Occupancy issued by the Buildings Department.

1.69. “Temporary Esplanade Restoration” shall mean the work performed on the Esplanade to restore any portion of the Esplanade disturbed by the Bulkhead Repairs so that it is usable by the public after the Bulkhead Repairs or portions thereof have been determined to be

Substantially Complete as provided in Section 4(c) herein and prior to construction of the Esplanade Improvements.

1.70. “Zoning Lot” shall have the meaning given in Section 12-10 of the Zoning Resolution.

1.71. “Zoning Resolution” or “ZR” shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended to date and as same may hereafter be amended.

## 2. DEVELOPMENT OF MODIFIED LARGE SCALE COMMUNITY FACILITY DEVELOPMENT

The Declarant covenants and agrees that the Subject Property, and demapped volumes of the FDR Drive conveyed pursuant to the City Map Change for the Support Columns, shall be developed in substantial compliance with the following plans prepared by Rafael Vinoly Architects P.C. approved in connection with the Applications (the “Development Plans”), annexed hereto as Exhibit C and made a part hereof and in compliance with this Declaration:

C 140157 ZSM:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-007	Zoning Computations	October 24, 2013
A-008	Rear Yard Diagram	October 24, 2013
A-009	Site Plan	October 24, 2013
A-410	Section A	October 24, 2013
A-411	Section B	October 24, 2013
A-412	Section C	October 24, 2013
A-413	Section D	October 24, 2013
A-416	Section F	October 24, 2013
A-417	Section H	October 24, 2013
A-420	Section K	October 24, 2013

M 821257(D) ZAM:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-007	Zoning Computations	October 24, 2013
A-009	Site Plan	October 24, 2013

3. PROJECT COMPONENTS RELATED TO THE ENVIRONMENT.

Declarant shall undertake the PCRE's set forth in this Section 3 for any development of the Subject Property, as such may be modified pursuant to Section 4.3.

3.1. Project Components Related to the Environment Related to Construction.

Declarant shall implement and incorporate into its construction means and methods prior to Construction Commencement and shall incorporate during the course of construction the following PCRE's related to construction, except as specifically provided herein.

(a) Construction Noise Reduction Measures.

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Subject Property:

(A) All construction activities shall comply with Chapter 2 of Title 24 of the New York City Administrative Code (the "City Noise Control Code"), and with the rules in Citywide Construction Noise Mitigation, as set forth in Chapter 28 of Title 15 of the Rules of the City of New York.

(B) Declarant shall develop and implement a plan for minimization of construction noise (the "Noise Reduction Plan"), which Noise Reduction Plan shall contain the following measures:

(1) The noise emission levels of construction equipment shall not exceed the levels set forth in Table 12-9 of the FEIS.

(2) As early in the construction period as practicable, electrical-powered equipment shall be used for noisy equipment.

(3) Equipment shall be properly installed and maintained and, where practicable, quality mufflers must be installed and maintained.

(4) Path noise control measures (i.e., portable noise barriers, panels, enclosures and acoustical tests, where feasible) shall be used for certain dominant noise equipment.

(5) Where feasible and practicable, construction procedures and equipment shall produce noise levels below the requirements of the New York City Noise Control Code and below typical construction equipment.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(a) with respect to applicable work at the Subject Property.

(b) Maintenance and Protection of Traffic

(i) Prior to Construction Commencement, Declarant and its contractor shall prepare a plan that provides diagrams of proposed temporary curb lane and sidewalk closures at demapped East 68<sup>th</sup> Street as well as lane closures of the FDR Drive, the duration for which such closures will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of the River Building (the “Maintenance and Protection of Traffic Plan” or “MPT”). Declarant

shall submit the MPT to DOT for review and approval; provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work which does not impact upon curb lanes and sidewalks surrounding the Subject Property, unless DOT advises Declarant that a MPT is required.

(ii) Declarant may apply for but shall not accept a permit from the DOB, SBS and/or DPR for any construction activities in the FDR Drive associated with the River Building until such time as the DOT has approved the MPT.

(iii) Declarant shall include provisions in the contracts of all relevant contractors requiring adherence with the provisions of the MPT and shall ensure that the MPT shall be adhered to during construction.

(c) Construction Air Emission Reduction Measures.

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, the following measures for all construction activities (including but not limited to demolition and excavation) during the development of the Subject Property and within the FDR Drive:

(A) Minimize the use of diesel engines to the extent practicable through the use of electric engines.

(B) Use ultra-low-sulfur fuel to the maximum extent practicable.

(C) Non-road diesel engines with a power rating of 50 hp or higher shall use best available tailpipe technology for reducing DPM emissions either installed by the original equipment manufacturer or retrofitted. Retrofits must be vetted by EPA or the

California Air Resources Board. Other technology proven produce an equivalent emissions reduction may also be used.

(D) Non-road construction equipment with a rating of 50 hp or more must meet the EPA's Tier 3 emissions standard. Non-road construction equipment with a rating of less than 50 hp must meet at least the EPA Tier 2 emissions standard.

(E) On-site vehicle idle time shall be limited to three minutes for all equipment and vehicles not using engines to operate a loading, unloading or processing device.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(c).

(d) Fugitive Dust Control Plan.

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for the implementation of and (y) thereafter implement, a plan for addressing the emission of dust from construction-related activities during development of the Subject Property and within the FDR Drive, which Fugitive Dust Plan shall contain the following measures:

(A) Water spraying shall be used to prevent or reduce fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils.

(B) All trucks hauling loose soil, rock, sediment, or similar material shall be equipped with tight fitting tailgates and their loads covered prior to leaving construction areas.

(C) Stabilized areas shall be established for washing dust off the wheels of all trucks that exit construction areas. All vehicle wheels shall be cleaned as necessary prior to leaving construction site in order control tracking.

(D) Streets adjacent to construction areas shall be cleaned by Declarant on a regular basis (as needed to supplement cleaning by the City), using appropriate legal methods, to minimize fugitive dust emissions.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(d).

(e) Protection of Architectural Resources During Construction.

(i) Prior to Construction Commencement, Declarant shall develop and implement a Construction Protection Plan (“CPP”) to protect known architectural resources identified in the FEIS with a lateral distance of 90 feet from the proposed construction activities.

(ii) The CPP shall be developed in coordination with and approved by LPC and shall comply with the procedures set forth in DOB’s Technical Policy and Procedure Notice (TPPN) #10/88, “Procedures for the Avoidance of Damage to Historic Structures Resulting from Adjacent Construction”, and with the “New York City Landmark Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark” and “Protection Programs for Landmark Buildings”.

(iii) The CPP shall be implemented and monitored by structural and foundation engineers experienced in working with historic structures.

(iv) Elements of the CPP may include:

(A) Installation of monitoring equipment during construction using tell-tales, seismographic equipment, and horizontal and lateral scales;

(B) Borings and soil reports of the water table establishing composition, stability, and condition;

(C) Existing foundation and structural condition information and documentation for the historic property;

(D) Formulation of maximum vibration tolerances based on impact and duration, and considerations using accepted engineering standards for old buildings;

(E) Dewatering procedures, including systematic monitoring and recharging systems; and

(F) Protection from falling objects and party wall exposure.

(v) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(e).

(f) Construction Dewatering Plan.

(i) Prior to Construction Commencement, in the FDR Drive only Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, upon receipt of necessary permits required from DEP and/or New York State Department of Environmental Conservation (“NYSDEC”) a plan setting forth procedures for handling sea water encountered during construction activities (including excavation), which dewatering plan shall:

(A) Provide a description of the methods used to collect, store and dispose of water collected during dewatering activities.



(B) Identify the necessary permits required from DEP and/or NYSDEC to discharge dewatering water into the City's sewers.

(C) Where necessary to comply with DEP or NYSDEC regulations, (1) require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to discharge into the City's sewer system or surface waters, (2) periodically test water in such sedimentation tanks for pH, turbidity and contaminants, and (3) if needed, treat the water prior to discharge off site.

(D) Suitable drainage means shall be provided for removal of (1) surface runoff from the Subject Property and FDR Drive, and (2) sludge which drains from construction activities on the Subject Property and FDR Drive.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(f) with respect to applicable work at the Subject Property and on the FDR Drive.

(g) Construction Rodent Control Plan.

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, an integrated plan to control rodents (the "Construction Rodent Control Plan"), which Construction Rodent Control Plan shall contain the following requirements:

(A) Prior to the commencement of construction and as necessary during the construction period, the Declarant shall cause its contractors to bait appropriate areas of the site, using only USEPA and NYSDEC-registered rodenticide.

(B) Declarant shall post signage to identify the locations where rodenticide has been applied.

(C) Declarant shall take all precautionary measures to avoid hazards to the public, domestic animals, and non-target wildlife.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.1(g) with respect to applicable work at the Subject Property and on the FDR Drive.

### 3.2. Noise Barrier.

Subject to the approval by DOT of height, design and materials, Declarant agrees to construct a noise barrier, which shall be a vertical extension of the crash barrier separating the FDR Drive roadway from the Esplanade, resulting in a wall (the “Noise Barrier”) with a combined height of approximately eight (8) feet above the FDR Drive roadway. In the event that DOT determines that the height of the Noise Barrier must be lower than eight (8) feet, then the height of the Noise Barrier may be lowered to the maximum height acceptable to DOT, but not lower than five (5) feet, which is the height needed to avoid a significant adverse noise impact, as provided in the FEIS. Declarant shall not accept a TCO for the River Building until Declarant has provided notification to DCP in writing that DOT has determined that the Noise Barrier has been installed to its satisfaction.

## 4. ENVIRONMENTAL MITIGATION MEASURES.

Declarant shall, in accordance with the FEIS, undertake the mitigation measures set forth therein (the “Mitigation Measures”), as follows:

(a) Shadows. The FEIS shadows analysis concludes that the River Building will cast shadows on the Esplanade that will result in a significant shadows impact in certain seasons. As partial mitigation Declarant shall undertake repairs to the Bulkhead and improvements to the Esplanade, as set forth below.

(b) Prior to Construction Commencement, Declarant shall submit plans and applications to the DPR, SBS, the NYSDEC, the Army Corps of Engineers, and the U.S. Coast Guard, for permits to repair the Bulkhead between the centerline of demapped 68<sup>th</sup> Street and a point 222 feet south of the southerly edge of the River Building, in accordance with the survey of bulkhead conditions in Declarant's bid package dated June 21, 2013 (the "Bulkhead Repairs").

(c) At the time Declarant submits plans and an application for permits to undertake the Bulkhead Repairs, it shall submit a draft scope of work to the DPR, with a copy to the DCP, for Temporary Esplanade Restoration (the "Draft Restoration Scope of Work"). The DPR shall within thirty (30) days of receipt of the Draft Restoration Scope of Work either approve such scope of work or provide Declarant with comments and Declarant will submit a revised Draft Restoration Scope of Work to DPR which will respond within twenty (20) days, repeating the foregoing process until the Draft Restoration Scope of Work is approved (the "Final Restoration Scope of Work").

(i) Declarant shall not accept an Excavation/Foundation Permit unless and until Declarant has commenced the Bulkhead Repairs, and Declarant shall not accept a New Building Permit unless and until the following conditions have been met with respect to the Bulkhead Repairs and Temporary Esplanade Restoration:

(A) The Bulkhead Repairs and Temporary Esplanade Restoration are Substantially Complete;

(B) DPR has issued a Notice of Substantial Completion, pursuant to the process set forth in Section 4(c)(iii) below, for the Bulkhead Repairs and Temporary Esplanade Restoration, which may be provided in separate Notices.

(ii) Substantial Completion of Bulkhead Repairs and Temporary Esplanade Restoration. Within ten (10) days after satisfaction of the conditions set forth in Section 4(c)(i), the Chairperson shall certify in writing to the Buildings Department that Declarant has fulfilled the conditions set forth herein, requiring Substantial Completion of the Bulkhead Repairs and Temporary Esplanade Restoration, prior to accepting a New Building Permit. Nothing in Sections 4(a) through 4(c) shall prevent the Declarant from commencing excavation and foundation work on the River Building prior to substantial completion of the Bulkhead Repairs and Temporary Esplanade Restoration.

(iii) Declarant shall notify the DPR when it believes that the Bulkhead Repairs and Temporary Esplanade Restoration, as applicable, are Substantially Complete and shall request that DPR issue a certification (a “Notice of Substantial Completion”), to Declarant certifying Substantial Completion of the Bulkhead Repairs and/or Temporary Esplanade Restoration. No later than twenty (20) days after receipt of such a request, DPR shall either (i) issue the Notice of Substantial Completion, or (ii) if DPR notifies Declarant that the Bulkhead Repairs and/or and Temporary Esplanade Restoration have not been Substantially Completed, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a list of items remaining to be completed or unsatisfactorily performed (the “Punch List for Substantial Completion”). Declarant shall promptly perform the work specified on the Punch

List for Substantial Completion, after which it shall notify DPR of such completion. No later than ten (10) days after receipt of such notice DPR shall either (A) issue a Notice of Substantial Completion, or (B) notify Declarant that it has not completed the Punch List for Substantial Completion (which notice shall specify which items of the Punch List for Substantial Completion remain incomplete). This process shall continue until DPR has issued a Notice of Substantial Completion.

(iv) If within six months after Substantial Completion of the Temporary Esplanade Restoration, Declarant has not commenced construction of the River Building, including placement of the Support Columns, Declarant shall notify DPR to discuss the timing of construction of the River Building and whether Declarant should undertake complete restoration of the Esplanade in the area of the Temporary Esplanade Restoration (the “Permanent Esplanade Restoration”). The Permanent Esplanade Restoration shall entail full restoration of the Esplanade to its former condition. If DPR and the Declarant agree that the Permanent Esplanade Restoration is warranted, Declarant shall complete the Permanent Esplanade Restoration in a timely fashion and in accordance with DPR guidelines and standards. If, after completion of the Permanent Esplanade Restoration, Declarant seeks to commence construction of the River Building, then Declarant shall be obligated to construct the Esplanade Improvements in accordance with the terms of this Declaration.

(d) Prior to construction of the River Building, including the placement of the Support Columns, Declarant shall provide written notice to DCP, DPR, and DOT of the planned reconstruction of the Esplanade between the centerline of demapped 68<sup>th</sup> Street and a point 150 feet south of the southerly edge of the River Building and shall submit plans and specifications therefor for review and approval by DPR and DOT (the “Esplanade Plans”). In accordance with

the FEIS, the Esplanade Plans will include improved spatial organization of the walkway/bikeway and seating areas, new planting beds, new shade-tolerant plantings, drinking fountains, water couplers to provide irrigation for the new plantings, and relocation and replacement of damaged lighting fixtures (collectively the “Esplanade Improvements”).

Within thirty (30) days of the receipt of the Esplanade Plans, DPR and DOT shall provide initial comments, if any, on the Esplanade Plans to Declarant, and Declarant shall make such changes, or if the changes are unacceptable, suggest alternatives, and when agreement is reached between DPR, DOT and Declarant, Declarant shall submit the amended Esplanade Plans to DPR. DPR shall promptly commence review of such amended Esplanade Plans in accordance with its practices and procedures governing capital projects, including Chapter 37 of the New York City Charter and Title 57 of the Rules of the City of New York, which process will result in approved Esplanade Plans (the “Approved Esplanade Plans”). Declarant shall not commence work on the Esplanade Improvements unless and until the SBS and DPR have issued construction permits therefor, in accordance with the Approved Esplanade Plans.

Declarant shall not be obligated to commence construction of the Esplanade Improvements until such time as the easterly façade of the River Building is enclosed and no further work on the exterior of that façade is required.

(i) Substantial Completion of Esplanade Improvements and Final Completion of Bulkhead Repairs prior to TCO. Declarant shall not apply for or accept a TCO for the River Building unless and until the following conditions have been met with respect to the Esplanade Improvements and the Bulkhead Repairs:

(A) The Esplanade Improvements are Substantially Complete, and the Bulkhead Repairs are Finally Complete; and

(B) DPR has issued a Notice of Final Completion for the Bulkhead Repairs and a Notice of Substantial Completion for the Esplanade Improvements, pursuant to the processes set forth in Sections 4(d)(iii) and (iv), respectively, below.

(ii) Within ten (10) days after satisfaction of the conditions set forth in Section 4(d)(i), the Chairperson shall certify in writing to the Buildings Department that Declarant has fulfilled the conditions set forth herein, requiring Final Completion of the Bulkhead Repairs and Substantial Completion of the Esplanade Improvements, prior to issuance of a TCO for the River Building.

(iii) Final Completion of Bulkhead Repairs. Declarant shall notify the DPR when it believes that the Bulkhead Repairs are Finally Complete and shall request that DPR issue a certification (a “Notice of Final Completion”), to Declarant certifying Final Completion of the Bulkhead Repairs. No later than twenty (20) days after receipt of such request, DPR shall either (x) issue the Notice of Final Completion, or (y) if DPR notifies Declarant that the Bulkhead Repairs have not been Finally Completed, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List for Final Completion of items remaining to be completed or unsatisfactorily performed. Declarant shall promptly perform the work specified on the Punch List for Final Completion, after which it shall notify DPR of such completion. No later than ten (10) days after receipt of such notice, DPR shall either (x) issue a Notice of Final Completion or (y) notify Declarant that it has not completed the Punch List for Final Completion (which notice shall specify which items of the Punch List for Final Completion remain incomplete). This process shall continue until DPR has issued a Notice of Final Completion.

(iv) Substantial Completion of Esplanade Improvements. Declarant shall notify the DPR when it believes that the Esplanade Improvements are Substantially Complete and shall request that DPR issue a Notice of Substantial Completion to Declarant certifying Substantial Completion of the Esplanade Improvements. No later than twenty (20) days after receipt of such a request, DPR shall either (i) issue the Notice of Substantial Completion, or (ii) if DPR notifies Declarant that the Esplanade Improvements have not been Substantially Completed, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a list of items remaining to be completed or unsatisfactorily performed (the “Punch List for Substantial Completion”). Declarant shall promptly perform the work specified on the Punch List for Substantial Completion, after which it shall notify DPR of such completion. No later than ten (10) days after receipt of such notice DPR shall either (A) issue a Notice of Substantial Completion, or (B) notify Declarant that it has not completed the Punch List for Substantial Completion (which notice shall specify which items of the Punch List for Substantial Completion remain incomplete). This process shall continue until DPR has issued a Notice of Substantial Completion.

(v) Final Completion of Esplanade Improvements Prior to PCO.

Declarant shall not apply for or accept a PCO for the River Building unless and until the following conditions have been met with respect to the Esplanade Improvements:

(A) The Esplanade Improvements are Finally Complete; and

(B) DPR has issued a Notice of Final Completion for the

Esplanade Improvements, pursuant to the processes set forth in Section 4(d)(vii), below.

(vi) Within ten (10) days after satisfaction of the conditions set forth in Section 4(d)(v), the Chairperson shall certify in writing to the Buildings Department that



Declarant has fulfilled the conditions set forth herein, requiring Final Completion of the Esplanade Improvements, prior to issuance of a PCO for the River Building.

(vii) Declarant shall notify the DPR when it believes that the Esplanade Improvements are Finally Complete and shall request that DPR issue a Notice of Final Completion to Declarant certifying Final Completion of the Esplanade Improvements. No later than twenty (20) days after receipt of such request, DPR shall either (x) issue the Notice of Final Completion, or (y) if DPR notifies Declarant that the Esplanade Improvements have not been Finally Completed, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List for Final Completion of items remaining to be completed or unsatisfactorily performed. Declarant shall promptly perform the work specified on the Punch List for Final Completion, after which it shall notify DPR of such completion. No later than ten (10) days after receipt of such notice, DPR shall either (x) issue a Notice of Final Completion or (y) notify Declarant that it has not completed the Punch List for Final Completion (which notice shall specify which items of the Punch List for Final Completion remain incomplete). This process shall continue until DPR has issued a Notice of Final Completion.

(viii) Maintenance of Esplanade Improvements. As additional partial mitigation for the shadows impact identified in the FEIS, Declarant shall hire a landscape contractor, acceptable to DPR, to perform enhanced maintenance of the Esplanade between the centerline of demapped 68<sup>th</sup> Street and a point 150 feet south of the southerly edge of the River Building (the “Site”) for a period of not less than twelve (12) years from the date of Substantial Completion of the Esplanade Improvements. Such maintenance shall be undertaken solely for the Site, and the City shall not reduce its level of support, in the form of services and

expenditures for the operation and maintenance of the Site, in effect prior to the date of Substantial Completion of the Esplanade Improvements.

(A) Maintenance shall include a total of twelve (12) visits to the Site per year. The scope of work for such maintenance shall include but not be limited to:

A. Mid/Late April – Spring Clean-up

1) Remove all landscape debris, including leaves, dead branches and trash, from Esplanade and planting beds.

2) Apply mulch and dormant horticultural oil spray to planting beds.

3) Prune and trim trees and shrubs with overextended, dead or otherwise unsightly branches to maintain natural form and promote optimum growth habit.

4) Cut down perennials, as needed.

5) Apply commercially available nitrogen rich fertilizer to trees, shrubs, plants and lawn areas, as appropriate.

6) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.

B. May to September – Two (2) Visits Per Month

1) Hand weed and remove trash and debris from planting beds.

2) Remove dead, heavily damaged, or irreversibly declining plants.

3) Prune and trim all trees and shrubs as needed.

4) Inspect trees and shrubs for disease and insect problems and advise DPR. If directed by DPR, treat as needed disease and insect problems using commercially available methods.

5) Hand water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition, with additional watering, as necessary, in drought conditions.

C. Late November/Early December – Final fall cleanup

1) Cut down all perennials and grasses and remove all debris from Site.

2) Prune and weed and remove trash from planting beds as needed.

3) Apply mulch, antidessicant and dormant horticultural oil sprays to planting beds.

4) Subject to seasonal planting requirements, as determined by DPR, remove/replace dead, heavily damaged or irreversibly declining plants with healthy specimens of substantially equal type and reasonable size.

(e) Maintenance and Operations Agreement. The final scope of work of such maintenance, posting of security to ensure the performance of such maintenance, and all standards and procedures with respect thereto shall be more particularly set forth in an agreement between the Declarant and DPR (the “Maintenance and Operations Agreement”). Declarant shall not accept a Building Permit for the River Building unless and until the Maintenance and

Operations Agreement with DPR has been executed, which agreement may be included in the mapping agreement that will be entered into by the City and the Declarant in connection with the City Map Change.

(f) Historic and Cultural Resources.

(i) Architectural.

(A) As provided in the FEIS, the portion of the Subject Property north of East 64<sup>th</sup> Street has been determined to be eligible for listing on the State and National Registers of Historic Places (S/NR) and for designation as a New York City historic district and includes the following architectural resources: Flexner Hall (“Flexner”), the Hospital (the “Hospital”), and the canopy structure on the site of the fitness center (the “Canopy”).

(B) Declarant covenants and agrees that no application for a New Building Permit with respect to the River Building shall be submitted to or accepted from the Buildings Department by the Declarant until LPC has issued to the Buildings Department a notice, with respect to the design and location of the River Building’s exhaust stacks, one of which is adjacent to Flexner Hall and the other adjacent to the Hospital (the “Stacks”).

(C) Upon completion of construction of the Stacks, Declarant shall provide written notice to the LPC, with a copy to the DCP, that the Stacks have been constructed, requesting that the LPC inspect the completed Stacks. Within twenty (20) days of the receipt of such notice, the LPC shall inspect the Stacks and within fifteen (15) days thereafter either notify the DCP and the DOB that the Stacks have been built in accordance with the approved design or that they have not, and, if so in what changes are required. Declarant shall not apply for or receive a TCO for the River Building until such time as the LPC has notified the

DCP and DOB, with a copy to Declarant, that the Stacks comply with the approved design and has provided written notice thereof to the DCP and DOB.

(D) Declarant covenants and agrees that prior to applying to the DOB for a permit to demolish the Canopy on the it shall submit to the LPC a plan for the restoration of the Philosophers' Garden (the "Restoration Plan"). The LPC shall, within twenty (20) days of the receipt thereof, either approve the Restoration Plan or disapprove it, giving the reasons for the disapproval. Until the LPC has approved the Restoration Plan, with a notice to the DOB and DCP and a copy to Declarant, the Declarant shall not apply for or accept a demolition permit from the DOB for the Canopy.

(E) Upon completion of the reconstruction of the Philosophers' Garden in accordance with the Restoration Plan, Declarant shall notify the LPC, which shall, within fifteen (15) days of the receipt thereof either approve the reconstruction or disapprove it giving the reasons therefor. Until the LPC has approved the reconstruction and the LPC has notified the DOB, with a copy to Declarant, that the reconstruction of the Philosopher's Garden has been completed, Declarant shall not apply for or accept a TCO for the fitness center.

(ii) Archaeological. The FEIS provides that Project is unlikely to impact significant archaeological resources; however, (A) in the event that the Project is altered such that construction activities would occur within archaeologically sensitive areas identified in the FEIS, Declarant shall conduct further archaeological investigation, as determined by LPC, prior to Construction Commencement; and (B) given the location of an historic burial ground on the Subject Property, the "Plan for the Unanticipated Discovery of Human Remains: Rockefeller University Campus Block 1480, Lots 10 and 9010, New York, New York," prepared by AKRF and dated April 2013 (the "Unanticipated Discoveries Plan"), shall be incorporated into any

construction plan. If any archaeological resources are encountered during construction, then subsequent construction work shall proceed under the review of LPC, as provided in the Unanticipated Discoveries Plan.

(g) Open Space

(i) The FEIS open space analysis identifies a construction impact to open space, specifically, the Esplanade.

Declarant covenants and agrees that, subject to DPR and DOB approval of plans for the closure of any portion of the Esplanade, it will maintain at all times during construction of the River Building and while undertaking the Bulkhead Repairs, Temporary Esplanade Restoration, and the Esplanade Improvements as set forth in this Declaration a pathway in the Esplanade for pedestrians and bicyclists with a minimum width of eight (8) feet (the “Construction Pathway”). Declarant shall keep the Construction Pathway open to the sky except during River Building steel erection activities when overhead protection would be provided, the current design of which is a cantilevered safety netting system which is subject to DOB approval and may be revised as determined by DOB. Declarant shall notify DPR at least five (5) days prior to any closure of the Esplanade not reflected in plans previously approved by DPR or any relocation of the Construction Pathway. Notwithstanding the foregoing, Declarant shall be permitted to close the Construction Pathway for temporary periods when construction materials are lifted over the FDR Drive or the Construction Pathway: lifts of large materials shall only occur on such times as are permitted by the DPR and DOT, and smaller materials may be lifted at any time for brief periods while pedestrian traffic on the Esplanade is stopped under the supervision of flaggers.

(ii) Declarant shall include enforceable contractual requirements with its contractor (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4(f).

4.1. Force Majeure Involving a FEIS Obligation. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE set forth in Section 3 or Mitigation Measure set forth in this Section 4 by reason of a Force Majeure Event, as determined by the Chairperson or DPR Commissioner, pursuant to the procedures set forth in Section 5, then Declarant shall not be excused from performing such PCRE or Mitigation Measure that is affected by a Force Majeure Event unless and until the Chairperson or DPR Commissioner has made a determination in his or her reasonable discretion that the failure to implement the PCRE or Mitigation Measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

4.2. Incorporation of FEIS Requirements in FEIS Obligation. If this Declaration inadvertently fails to incorporate a FEIS requirement set forth in the FEIS, such FEIS Requirement shall be deemed incorporated herein by reference as an FEIS Obligation. If there is any inconsistency between a FEIS Obligation as set forth in the FEIS or Technical Memoranda and as incorporated in this Declaration, the more environmentally protective provision shall be applicable.

4.3. Innovation; Alternatives; Modifications Based on Further Assessments.

(a) Innovation and Alternatives. In complying with any PCRE set forth in Section 3 or Mitigation Measure set forth in Section 4, Declarant may implement innovations, technologies or alternatives now or hereafter available, provided that Declarant demonstrates to

the satisfaction of City Planning that such alternative measures would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in Section 3 or Section 4, in each case subject to approval by City Planning.

(b) Modifications Based on Further Assessments. In the event that Declarant believes, in good faith based on changed conditions, that a FEIS Obligation required hereunder could be eliminated or modified without diminishment of the environmental standards that would be achieved by implementation of the FEIS Obligation, Declarant shall request that the City Planning grant a waiver or modification. Such request shall be submitted to City Planning and shall include an analysis that sets forth the basis of Declarant's belief.

(c) In the event that City Planning determines in a technical memorandum that innovations, technologies or alternatives, as set forth in Section 4.3(a) are acceptable, or that the relevant FEIS Obligation should not apply or could be modified, as set forth in Section 4.3(b), Declarant may eliminate or modify the FEIS Obligation consistent with the City Planning approval or determination, provided that Declarant records a notice of such change against the Subject Property in the Register's Office, but no amendment of this Declaration shall be required.

#### 4.4. City Planning Review.

(a) Not less than ninety (90) days prior to the date Declarant anticipates to be the date of Construction Commencement or FDR Drive Construction Commencement, as the case may be, Declarant shall send written notice to City Planning, advising of Declarant's intention to undertake Construction Commencement or obtain such Building permit, as the case may be (each such notice a "Permit Notice"). Any Permit Notice shall be accompanied by (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be



satisfied as a condition to or in conjunction with Construction Commencement or issuance of the relevant Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure City Planning that the elements will be achieved in the future.

(b) Following the delivery of a Permit Notice to City Planning in accordance with Paragraph(a) hereof, Declarant shall meet with City Planning to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by City Planning in writing in order to allow City Planning to determine, and city agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 4.4 until City Planning has certified to Declarant and the Buildings Department or, if applicable, SBS, that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that City Planning has failed to respond in writing to Declarant within thirty (30) days of receipt of the Permit Notice, or (y) has failed to respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to City Planning under this paragraph (b), City Planning shall be deemed to have accepted the permit notice and any subsequent materials related

thereto under clause (iii) of this Paragraph(b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to commence construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

(c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any New Building on the Subject Property, Declarant shall send written notice to City Planning advising of Declarant's intention to obtain such TCO or PCO (each notice a "CO Notice"). Within twenty (20) days of delivery of any CO Notice, City Planning shall have the right to inspect the Subject Property or Esplanade, as the case may be and review construction plans and drawings, as necessary to confirm that the FEIS Obligation required by this Declaration has been completed in accordance with the plans initially submitted as required herein. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if City Planning has provided written notice to Declarant, copied to the Buildings Department, within five (5) days following any such inspection advising that Declarant has failed to include a required FEIS Obligation within the New Building, or has failed to fully satisfy the FEIS Obligation, and specifying the nature of such omission or failure. In the event that City Planning provides such notice, Declarant and City Planning shall meet promptly to review the claimed omission or failure, develop any measure required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure, and upon the completion of such steps Declarant shall notify City Planning in writing requesting that City Planning inspect and determine that the necessary steps have been completed and City Planning shall within seven (7) days of the receipt of such notice conduct the inspection and, if the steps have been completed, provide written notice thereof to the DOB or SBS, as the case may be, shall be entitled to obtain the TCO or PCO as the case may be.

(d) In the event of a continued disagreement between City Planning or other City agency and Declarant under Paragraph (c) as to whether any FEIS Obligation has been included or fully satisfied or will be included or fully satisfied by the measure proposed by Declarant, Declarant shall have the right to appeal such matter to the responsible Deputy Mayor to seek resolution within forty-five (45) days of Declarant's appeal thereto.

4.5. Appointment and Role of Independent Monitor

(a) Declarant shall, with the consent of City Planning, appoint an independent third party (the "Construction Monitor") reasonably acceptable to City Planning to oversee, on behalf of City Planning, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under Section 3 and Section 4 herein respectively, (the "Construction Monitoring Measures") or "CMMs"). The Construction Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the CMMs.

(b) The scope of services described in any agreement between Declarant and the Construction Monitor pursuant to which the Construction Monitor is retained (the "Monitor Agreement") shall be subject to prior review by and approval of City Planning, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall including provisions in a form acceptable to City Planning that, among others, shall: (i) ensure that the Construction Monitor is independent of Declarant in all respects relating to the Construction Monitor's responsibilities under this Declaration (provided that the Construction Monitor shall be responsible to Declarant with the regard to practices generally applicable to or expected of

consultants and independent contractors of Declarant) and has a duty of loyalty to City Planning;

(ii) provide for appropriate City Planning management and control of the performance of services by the Construction Monitor; (iii) authorize City Planning to direct the termination of services by the Construction Monitor for unsatisfactory performance of its responsibilities under the Monitoring Agreement; (iv) allow the Declarant to approve the retention by the Construction Monitor of sub-consultants with expertise appropriate to assisting the Construction Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; (v) allow the Construction Monitor to retain any such approved sub-consultants to assist the Construction Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (vi) allow the Declarant's termination of the Construction Monitor or any sub-consultant for cause, but only with the express written concurrence of City Planning, which concurrence shall not be unreasonably withheld or delayed. If City Planning shall fail to act upon a proposed Monitor Agreement within thirty (30) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by City Planning and may be executed by Declarant and the Construction Monitor.

The Monitor Agreement shall provide for the commencement of services by the Construction Monitor at a point prior to commencement of construction of the Bulkhead Repairs and shall continue in effect at all times that construction activities are occurring on the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade, including, with respect to the River Building and the fitness center, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of City Planning or at the direction of City Planning, shall have terminated a Monitor Agreement and substituted therefor another Construction Monitor under a

new Monitor Agreement, in accordance with all requirements of this Section 4.5. If the development activities identified in a Scope of Services under the Monitor Agreement are completed and all FEIS Obligations have been completed Declarant shall not have any obligation to retain the Construction Monitor.

(c) The Construction Monitor shall: (i) assist and advise City Planning with regard to review of plans and measures proposed by Declarant for purposes of satisfying FEIS Obligations in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a Building Permit, TCO or PCO as the case may be, pursuant to the process set forth in Section 4.4; (ii) provide periodic reports of Declarant's compliance with the FEIS Obligations during any period of construction on a schedule reasonably acceptable to City Planning, but not more frequently than once per month, a copy of which report shall be delivered simultaneously to Declarant; and (iii) provide City Planning on an expedited basis with notice of a determination that a particular FEIS Obligation has not been implemented, accompanied by supporting documentation establishing the basis for such determination, a copy of which notice and supporting documentation shall be delivered simultaneously to Declarant.

(d) The Construction Monitor shall: (i) have full access to the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade, subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the city safety protocol in effect for the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade; (ii) be provided with access to all books and records of Declarant either on or outside the Subject Property pertaining to the development of the Project which it reasonably deems necessary to

carry out its duties under the Monitor Agreement, including the preparation of periodic reports; and (iii) be entitled to conduct any tests on the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade, that the Construction Monitor reasonably deems necessary to verify Declarant's implementation and performance of the FEIS Obligations, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade, and provided further that any such additional testing shall be coordinated with Declarant's construction activities and use of the Subject Property and FDR Drive adjacent to the Subject Property, including the Esplanade, and shall be conducted in a manner that will minimize any interference with the Project.

(e) The Monitor Agreement shall provide that Declarant shall have the right to require the Construction Monitor to secure insurance covering the Construction Monitor's activities under this Section 4.5, including coverage for customary activities set forth in Section 4.5(d), and Declarant may hold the Construction Monitor liable for any damage or harm resulting from such testing activities.

(f) Declarant shall be responsible for payment of all the reasonable fees and expenses due to the Construction Monitor and any consultants retained by the Construction Monitor in accordance with the terms of the Monitor Agreement.

(g) If the Construction Monitor determines, either in a periodic report or expedited notice, as provided in Section 4.5(c) above, that Declarant has failed to implement or to cause its contractors to implement a FEIS Obligation, either in full or in part, and City Planning determines, based on consultation with the Construction Monitor and others, as appropriate, that there is a basis for concluding that such a violation has occurred, City Planning

may thereupon give Declarant written notice of such alleged violation (each, a “FEIS Default Notice”), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 10. Notwithstanding any provisions to the contrary contained in Section 10, following receipt of a FEIS Default Notice, Declarant shall: (i) commence and continuously pursue a cure of the alleged violation within ten (10) days, or if City Planning reasonably determines that the nature of the violation poses a potential threat to public health and safety, within such shorter period as City Planning’s notice shall direct (the “Cure Period”); (ii) seek to demonstrate to City Planning in writing within nine (9) days of receipt of the FEIS Default Notice (or if City Planning has determined that the nature of the violation poses a potential threat to public health and safety, within the Cure Period established therefor) why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to City Planning in writing within nine (9) days of receipt of the FEIS Default Notice that a cure period greater than ten (10) days would not result in any significant harm to the environment (such longer cure period, a “Proposed Cure Period”). If City Planning accepts within one (1) day of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, City Planning shall promptly withdraw the FEIS Default Notice and Declarant shall have no obligation to cure. If City Planning accepts a Proposed Cure Period in writing within one (1) day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the “New Cure Period”), provided that if City Planning does not act with respect to a Proposed Cure Period within one (1) day of after receipt of a writing from Declarant with respect thereto, the ten (10) day cure period for the alleged violation shall be deemed to continue unless and until City Planning so acts. If Declarant fails to: (i) effect a cure of the alleged violation Cure Period; (ii) cure the alleged violation with a New Cure Period, if one has

been established; or (iii) demonstrate to City Planning's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at City Planning's direction, and upon a time and date acceptable to City Planning, convene a meeting at the Site with the Construction Monitor and City Planning representatives. If Declarant is unable reasonably to satisfy the City Planning representatives that no violation exists or is continuing and the Declarant, the Construction Monitor and City Planning are unable to agree upon a method of curing the violation within a time period acceptable to City Planning, City Planning shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates that it has cured the violation.

5. DELAY BY REASON OF FORCE MAJEURE EVENT.

If Declarant is unable to perform any Obligation under this Declaration by reason of a Force Majeure Event, Declarant may, upon notice to the Chairperson or, with respect to the Bulkhead Repairs, Temporary Esplanade Restoration, Esplanade Improvements or Construction Pathway, the Commissioner of DPR, (a "Delay Notice"), request that the Chairperson or the Commissioner of DPR (the "DPR Commissioner"), as the case may be, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chairperson or DPR Commissioner, as applicable, shall thereafter determine whether Force Majeure Event exists, and upon notice to Declarant no later than twenty (20) days after its receipt of the Delay Notice, certify whether a Force Majeure Event exists. If the Chairperson or DPR Commissioner certifies that a Force Majeure Event does not exist, the



Chairperson or DPR Commissioner shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chairperson or DPR Commissioner certifies that a Force Majeure Event exists, the Chairperson or DPR Commissioner shall grant Declarant appropriate relief, including notifying the applicable agency, including notifying the Buildings Department that a Building Permit, TCO or PCO (as applicable) may be issued for the applicable Building, or, in the discretion of the Chairperson or DPR Commissioner, for portions thereof. Any delay arising by reason of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence performance of the affected Obligation. As a condition to granting relief as aforesaid, the Chairperson or DPR Commissioner may require that Declarant post a letter of credit (“Completion Letter of Credit”) or other security, in a form reasonably acceptable to the Chairperson or DPR Commissioner and naming the City as beneficiary, to secure Declarant’s Obligation to perform upon the cessation of the Force Majeure Event. Such security shall be in a sum no more than 175% of the estimated cost to perform the Obligation, which cost shall be determined by Declarant, who shall provide the relevant Agency with the basis for the estimate, and acceptable to the Chairperson or the DPR Commissioner, as applicable. Declarant shall recommence performance of the Obligation at the end of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chairperson or DPR Commissioner has reasonably determined the Force Majeure Event shall continue; provided, however, that if Declarant reasonably demonstrates to the satisfaction of the Chairperson or DPR Commissioner that the Force Majeure Event will continue for a longer duration than previously specified. If Declarant fails to resume performance of the applicable Obligation, the City may undertake to perform the Obligation and draw upon the aforesaid Completion Letter of Credit, to the extent

required to complete the Obligation. Upon performance of the Obligation, the City shall return the aforesaid security (or undrawn balance thereof) to Declarant.

6. REPRESENTATION.

Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration to develop the Subject Property as a Large Scale Community Facility as set forth herein and in accordance with this Declaration.

7. BINDING EFFECT.

The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes and interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such

successor holds all or any portion of any interest in the Subject Property. In no event shall any officer, director, trustee, member, partner, manager, employee, representative or agency of Declarant have any personal liability under this Declaration.

8. RECORDATION.

(a) Promptly, and not later than ten (10) days after Final Approval, as defined herein, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties in Interest or other such documents executed and delivered in connection with the Applications and required by this Declaration to be recorded in public records, in the Office of the City Register of the City of New York (the “Register’s Office”), indexing it against the entire Subject Property (such date, the “Recording Date”).

(b) Declarant shall not apply for any Building Permit for the Subject Property or permit for the Esplanade Improvements until this Declaration and any related waivers executed by Mortgagees or other Parties in Interest or other such documents shall have been recorded pursuant to Section 8(a) as set forth above. Declarant shall promptly deliver to the Commission within ten (10) days of any submission of a recording, a copy of this Declaration and any related waivers executed by Mortgagees or other Parties in Interest or other such documents as recorded, together with an affidavit of submission for recording, or, in the alternative, a copy of this Declaration and related waivers executed by Mortgagees or other Parties in Interest or other such documents as, as recorded in the New York Department of Finance’s Automated City Register Information System (ACRIS) database, whichever is first available. If Declarant fails to record this Declaration and any related waivers executed by Mortgagees or other Parties in Interest or other such documents, then the City may record duplicate originals of this Declaration and any related waivers executed by Mortgagees or other

Parties in Interest or other such documents, however, all fees paid or payable for the purpose of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(c) In the event that the Final Approval includes modifications to the Project requiring modifications to this Declaration, Declarant shall prepare a revised declaration incorporating such modifications, which shall be recorded in accordance with Section 8(a) above. If Declarant fails to prepare a revised declaration and/or fails to so record said modified declaration in accordance with Section 8(a), then the City may record duplicate originals of this Declaration and any related waivers executed by Mortgagees or other Parties in Interest or other such documents, however, all fees paid or payable for the purpose of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant.

9. EFFECTIVE DATE.

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

10. NOTICE.

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

(a) If to Declarant:

The Rockefeller University  
1230 York Avenue  
New York, NY 10065  
Attention: George B. Candler, Associate Vice President

with a copy to:

Anderson Kill P.C.  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Robert S. Cook, Jr., Esq.

(b) if to the Commission:

New York City Planning Commission  
22 Reade Street  
New York, NY 10007  
Attention: Chairperson

with a copy to:

The General Counsel of City Planning at the same address

(c) if to a Party in Interest other than Declarant:

at the address provided in writing to the Commission in accordance with

This Section 10

(d) if to a Mortgagee:

at the address provided in writing to the Commission in accordance with this

Section 10

(e) If to DPR:

at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, to  
the attention of the Commissioner and the General Counsel.

(f) if to an Agency other than the CPC or DPR:

at the primary address of and to the attention of the General Counsel of such  
Agency, unless otherwise specified herein.

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 10, 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: (i) 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 (5) days after actually being mailed; (ii) sent by overnight courier service, in which case the

Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (iii) delivered by hand, in which case the Notice will be deemed delivered on the date the Notice was actually received. All Notices from the Commission to Declarant shall also be sent to every Mortgagee of which the Commission has notice, and no Notice shall be deemed properly given to Declaration without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the Commission shall be provided to all Declarants of whom the Commission has notice.

(g) References in this Declaration to “day” means a calendar day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed. When a deadline falls on a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed it shall be extended to the next following day that is not a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

(h) Wherever in this Declaration an Agency is required to respond to a request for a review of plans submitted by Declarant or work performed by Declarant for which review there is a time limit set forth in this Declaration, if the review is not conducted and response not given within such time limit, or the time limit otherwise provided by law, then Declarant may ask DCP in writing (Attention: Anita Laremont, General Counsel) for assistance in obtaining a review and response, and DCP shall make reasonable and timely efforts to obtain such review and response.

## 11. DEFAULTS AND REMEDIES.

(a) Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right, subject to Sections 11.1 and 11.2 below, to enforce this Declaration against Declarant and exercise any administrative, legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal or equitable remedies otherwise available to it, and provided further, that the City's rights to enforcement shall be subject to the cure provisions and periods set forth in Section 11.1 below. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein, including, but not limited to, an injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Community Facility Development which does not comply with the terms of this Declaration; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

(b) Notwithstanding any provision of this Declaration, only Declarant and Declarant's successors and assigns, and the City, acting through the Commission, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein shall be construed or deemed to allow any other person or entity to

have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

11.1 Notice and Cure.

(a) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the city shall give Declarant and all Parties in Interest that the City has notice of, thirty (30) days' written notice of such alleged violation, during which Declarant and the Parties in Interest shall have the opportunity to commence and continuously pursue a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure, Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declaration and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant or the Parties in Interest commence such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant or the Parties in Interest commence effect such cure when such commencement is reasonably possible), and thereafter proceed diligently toward the effectuation of such cure, the aforesaid thirty (30)day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant or the Parties in Interest continue to proceed diligently with the effectuation of such cure.

(b) If after due notice and opportunity to cure as set forth in Section 11.1(a) Declarant or any Party in Interest fails to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section 11 and may disapprove any



amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

11.2 Additional Remedies. Declarant acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof with an interest herein may pursue other remedies not specifically set forth herein, including, without limitation, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

## 12. ENFORCEMENT.

### 12.1 Enforcement by City; No Enforcement by Third Parties.

(a) Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein.

(b) No Person other than the City and Declarant, shall have any enforceable interest in or right to enforce the provisions of this Declaration.

## 13. APPLICATIONS.

(a) Declarant shall include a copy of this Declaration with any application made to the Buildings Department as required for a Building Permit for any portion of the structures built pursuant to the Approvals.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successor or assigns from making any application of any kind to any governmental agency or department (each, an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any such application and provided that nothing in this Section 13(b) shall be construed as

superseding the requirements, restrictions or approvals that may be required under agreements with any other Agency or the City.

14. AMENDMENT, MODIFICATION AND CANCELLATION.

(a) This Declaration may be amended, canceled, or modified only upon approval of the Commission after application by Declarant, and no other approval shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the contrary contained in Section 14(a) above, any modification or amendment to this Declaration proposed by Declarants and submitted to the Chairperson which is deemed by the Chairperson, in his or her sole discretion, by express written consent, to be a minor amendment or modification of this Declaration, may be administratively approved, and such minor modification and amendment shall not require the approval of the Commission or from any other public body, private person, or legal entity of any kind and, without limitation, any present or future Party in Interest.

(c) Notwithstanding anything to the contrary contained in this Declaration, if all the Final Approvals, as approved or modified by the City Council, given in connection with the Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be canceled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chairperson of Declarant's intent to discharge this Declaration and request the Chairperson's approval, which shall be limited to insuring that such discharge and termination is in proper form and provides

the proper provisions which are not discharged and survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Commission so certified by the Register's Office. If some of the Approvals given in connection with the Applications are declared invalid, the Declarant may apply for modification, amendment or cancelation of this Declaration in accordance with Section 14(a) or Section 14(b) hereof.

15. SEVERABILITY.

In the event that any of the provisions 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 several and the remainder of this Declaration shall continue to be in full force and effect.

16. APPLICABLE LAW.

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

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

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THE ROCKEFELLER UNIVERSITY

By: \_\_\_\_\_  
(Name here)

Name:  
Title:

ACKNOWLEDGEMENT

State of New York     )  
                                  )  ss:  
Count of New York    )

On the \_\_\_ day of \_\_\_, 2014, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he execute the same in his capacity, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public