



CITY PLANNING COMMISSION

September 5, 2007, Calendar No. 15

N 070498 ZRM

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York, relating to Article IX, Chapter 8 (Special West Chelsea District), Community District 4, Borough of Manhattan.

The application for the zoning text amendment (N 070498 ZRM) was filed by the Department of City Planning on May 31, 2007. It would modify the means by which a public plaza and public stairway and elevator access to the High Line, proposed for the western frontage of Tenth Avenue between West 17th And West 18th Streets, would be constructed.

BACKGROUND

On June 23, 2005, the City Council approved the Department of City Planning's proposals for zoning text (C 050161 A ZRM) and map amendments (C 050162 A ZMM) affecting the West Chelsea area in Community District 4, Manhattan. The area is bounded generally by Tenth and Eleventh Avenues from West 30th Street south to West 16th Street. The proposal created the Special West Chelsea District to provide opportunities for new residential and commercial development, facilitate the reuse of the High Line elevated rail line as a unique linear open space, and enhance the neighborhood's art gallery district.

During the public review process and after adoption of those actions, the need for additional text changes was identified to clarify the text, eliminate inaccurate references

in the text and add new provisions. The Special West Chelsea District follow-up text amendment application was (C 060199 ZRM) approved by the City Council on March 22, 2006.

The rezoning and text amendment created several subareas within the larger Special West Chelsea District. Subarea H, consisting of a full-block lot bounded by West 17th Street, West 18th Street, Tenth Avenue and Eleventh Avenue, was identified as a location that could obtain the High Line Improvement Bonus if the following conditions were met:

- (1) contribution is made to the High Line Improvement fund;
- (2) construction, by the property owner, of an at-grade public plaza fronting on Tenth Avenue and containing public stairway and elevator access to the High Line;
- (3) execution of a restrictive declaration and maintenance and operating agreement related to the plaza and High Line access areas

This application is for a text amendment to the Special West Chelsea District, Zoning Resolution Sections 98-25 (High Line Improvement Bonus) and 98-423 (Street wall location, minimum and maximum base heights and maximum building heights); Appendix C, Diagram 3 (Subarea H Requirements); and Appendix D (Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus in Subarea H),

to modify the means by which the required public plaza and stairway and elevator access would be constructed.

The proposed text amendments would maintain the existing process for plaza construction and would add an alternative process whereby the City would reach an agreement with the single owner of the lot in Subarea H, to construct the at-grade plaza and public stair and elevator access to the High Line. Allowing the City to construct the plaza and public stair and elevator access would permit the construction schedule and public opening of the plaza to occur close to the scheduled opening of the High Line Park.

The proposed zoning text amendments are:

1. *High Line Improvement Bonus (Section 98-25)*

The proposed text change would add language related to the issuance of permanent and temporary certificates of occupancy in the event that the City, instead of the Owner, provides for the construction of some or all of the at-grade plaza, stairway and elevator access work. The provision is intended to maintain the existing process for plaza construction and would add an alternative process whereby the City would construct the at-grade plaza, stairs and elevator access work.

2. Street Wall Location, Minimum and Maximum Base Heights and Maximum Building Heights (Section 98-423 (e))

The proposed text change would specify that the City, in addition to the Owner, could locate any building or structure associated with the City's construction of the at-grade plaza, stairs and elevator access work in the portion of Subarea H located east of the High Line.

3. Diagram 3 of Appendix C – Subarea H Requirements)

The text in Diagram 3 has been amended to include a reference to the modified text in ZR Section 98-423 (e). With the text change, Diagram 3 now indicates the location (east of the High Line) where the City is permitted to locate a building or structure associated with the construction of the at-grade plaza, stairs and elevator access work.

4. Appendix D (Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus in Subarea H)

The proposed text changes would add language related to the issuance of building permits in the event that the City, instead of the Owner, provides for the construction of some or all of the at-grade plaza, stairway and elevator access work. In addition, the text change would include language concerning the funding mechanism whereby the Owner contributes \$2,300,000.00 to a sub-account of the City's High Line Improvement Fund in lieu of constructing the at-grade plaza, stairs and elevator access work.

ENVIRONMENTAL REVIEW

This application (N 070498 ZRM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 03DCP069M. The City Planning Commission is the lead agency.

On May 13, 2005 the City Planning Commission (CPC), acting as lead agency, issued a Notice of Completion for the Final Environmental Impact Statement (FEIS) for the Special West Chelsea District Rezoning and High Line Open Space. On June 22, 2005, the City Council (Council) approved the application (ULURP numbers C 050162(A) ZMM and N 050161(A) ZRM), which together refer to the establishment of the Special West Chelsea District. The approved actions consist of Alternative F, which was analyzed in Chapter 23, "Alternatives," of the FEIS, together with modifications to Alternative F made by the CPC and Council and assessed in Technical Memoranda dated May 25, 2005 and June 22, 2005, respectively.

During the ULURP process and after adoption of the Special West Chelsea District Rezoning, additional text changes were identified to clarify the text, eliminate inaccurate references in the text and add new provisions. The Special West Chelsea District follow-up text amendment application (C 060199 ZRM) was approved by the City Council on

March 22, 2006, and was assessed in a Technical Memoranda dated October 27, 2005. The technical memoranda concluded that the follow-up text amendment application would not alter the conclusions of the FEIS.

On May 30, 2007, additional text changes were proposed, as set forth in ULURP Application N 070498 ZRM, and their potential for creating significant adverse environmental impacts not already identified in the FEIS were been assessed by the Department of City Planning, acting on behalf of the City Planning Commission.

The Department of City Planning concluded that the proposed text changes would not change the conclusions of the FEIS and a Notice of Minor Modification was issued on May 31, 2007, which found that the Notice of Completion issued for the Final Environmental Impact Statement on May 13, 2005, remains valid and in effect.

PUBLIC REVIEW

This application (N 070498 ZRM) was duly referred on June 4, 2007 to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on July 25, 2007, and on that date, by a vote of 33 to 0 with 0 abstentions and 1 present but not eligible, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on July 20, 2007, approving the application.

City Planning Commission Public Hearing

On August 8, 2007 (Calendar No. 10), the City Planning Commission scheduled August 22, 2007, for a public hearing on this application (N 070498 ZRM). The hearing was duly held on August 22, 2007 (Calendar No. 32). There was one speaker in favor of the application and no speakers in opposition.

A representative of the Manhattan Borough President's Office reiterated the Borough President's recommendation of approval.

There were no other speakers and the hearing was closed.

Waterfront Revitalization Program Consistency Review

The applications related to the establishment of the Special West Chelsea District (N 050161(A) ZRM and C 050162(A) ZMM) were previously reviewed by the Department of City Planning 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 04-096.

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

CONSIDERATION

The Commission believes that this application for an amendment to the Zoning Resolution (N 070498 ZRM) is appropriate.

The Commission recognizes the need for an alternative process whereby the City would reach an agreement with the Owner of the lot in Subarea H, to construct the at-grade plaza and public stair and elevator access to the High Line. The Commission understands that allowing the City to construct the plaza and public stair and elevator

access would permit the construction schedule and public opening of the plaza to more closely follow that of the High Line Park.

The Commission believes that this proposed text amendment (N 070498 ZRM) is consistent with the goals and objectives of the original West Chelsea/High Line proposal adopted in June of 2005.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and 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 Section 200 of the New York City Charter, and based on the environmental determination set forth in the modified Notice of Minor Modification dated May 31, 2007, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;
Matter in ~~strikeout~~ is old, to be deleted;
Matter within # # is defined in Section 12-10 (DEFINITIONS)
* * * indicates where unchanged text appears in the Resolution

* * *

6/23/05

98-25
High Line Improvement Bonus

For #zoning lots# located between West 16th and West 19th Streets over which the #High Line# passes, the applicable basic maximum #floor area ratio# of the #zoning lot# may be increased up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), provided that:

(a) Prior to issuing a building permit for any #development# or #enlargement# on such #zoning lot# that anticipates using #floor area# that would increase the applicable basic maximum #floor area ratio# by up to an amount specified in Section 98-22, the Department of Buildings shall be furnished with a certification by the Chairperson of the City Planning Commission that:

(1) a contribution has been deposited into an escrow account or similar fund established by the City (the High Line Improvement Fund), or such contribution is secured by letter of credit or other cash equivalent instrument in a form acceptable to the City. Such contribution shall be used at the direction of the Chairperson solely for improvements to the #High Line# within the #High Line# improvement area applicable to such #zoning lot#, with such contribution being first used for improvements within that portion of the #High Line# improvement area on such #zoning lot#. Such contribution shall be made in accordance with the provisions of Appendix D or E, as applicable;

(2) a declaration of restrictions executed by all “parties in interest” to the #zoning lot#, as defined in paragraph (f)(4) of the definition of #zoning lot# in Section 12-10 (DEFINITIONS), including and incorporating such other instruments as are necessary to assure that the City’s interest in the restoration and reuse of the #High Line# as an accessible public open space is protected, as determined by the Department of City Planning in consultation with the Office of the Corporation Counsel, is filed and recorded in the Office of the Register of the City of New York; and

(3) all additional requirements of Appendix D or E, as applicable with respect to issuance of a building permit, have been met.

(b) Prior to issuing a certificate of occupancy for any portion of a #development# or #enlargement# on a #zoning lot# located between West 17th and West 18th Streets over which the #High Line# passes that would increase the applicable basic maximum #floor area ratio# by up to an amount specified in Section 98-22, the Department of Buildings

shall be furnished a certification by the Chairperson of the City Planning Commission that:

- (1) if required pursuant to agreement with the City under Appendix D, #High Line# improvements within the #High Line# improvement area for such #zoning lot# have been performed in accordance with such agreement;
- (2) if elected by the owner, structural and remediation work has been performed on the #High Line# within the #High Line# improvement area for such #zoning lot#, in accordance with Appendix D;
- (3) At-Grade Plaza Work has been performed on such #zoning lot# in the area shown in Diagram 3 of Appendix C, except as otherwise provided in agreements and other instruments that provide for City construction of some or all of the At-Grade Plaza Work, in accordance with Appendix D;
- (4) ~~stairway Stairway and elevator Elevator access Access work-Work~~ has been performed on such #zoning lot# in the At-Grade Plaza area shown in Diagram 3 of Appendix C, or that an additional contribution to the #High Line# Improvement Fund to fund performance of such work has been made, except as otherwise provided in agreements and other instruments that provide for City construction of some or all of the Stairway and Elevator Access Work in the At-Grade Plaza, in accordance with Appendix D ; and
- (5) all other applicable requirements of Appendix D have been met.

For temporary certificates of occupancy, certification with respect to performance of work required of owner shall be of substantial completion of the work as determined by the Chairperson. For permanent certificates of occupancy, certification with respect to performance of work required of owner shall be of final completion of the work, as determined by the Chairperson. In the event of a failure to perform work timely or to otherwise satisfy the requirements of this paragraph, (b), no temporary or permanent certificate of occupancy shall be issued for #floor area# above the applicable basic maximum #floor area# for the #zoning lot# specified in Section 98-22, and the City may perform all such work in accordance with the provisions of Appendix D. In the event that owner has executed agreements and other instruments that provide for City construction of some or all of the At-Grade Plaza Work and for some or all of the Stairway and Elevator Access Work, in accordance with Appendix D, certificates of occupancy shall be issued if owner has substantially or finally completed any aspects of the work required of owner pursuant to such agreements and other instruments, as the case may be, and is otherwise in full compliance with such agreements and instruments, including with respect to payment of all funds required pursuant to the terms thereof and Appendix D.

- (c) Prior to issuing a certificate of occupancy for any portion of a #development# or #enlargement# on a #zoning lot# located between West 16th and 17th Streets or between West 18th and 19th Streets over which the #High Line# passes that incorporates #floor area# that would increase the applicable basic maximum #floor area ratio# by up to an amount specified in Section 98-22, the Department of Buildings shall be furnished a certification by the Chairperson, that:

- (1) if required pursuant to agreement with the City under Appendix E, #High Line# improvements within the #High Line# improvement area for such #zoning lot# have been performed in accordance with such agreement;
- (2) if elected by the owner, structural and remediation work has been performed on the #High Line# within the #High Line# improvement area for such #zoning lot#, in accordance with Appendix E;
- (3) stairway and elevator access work has been performed on such #zoning lot#, in accordance with Appendix E;
- (4) for #zoning lots# located between West 16th and 17th Streets over which the #High Line# passes, #High Line# Service Facility Work has been performed, in accordance with Appendix E; and
- (5) all other applicable requirements of Appendix E have been met.

For temporary certificates of occupancy, certification with respect to performance of work shall be of substantial completion of the work as determined by the Chairperson. For permanent certificates of occupancy, certification with respect to performance of work shall be of final completion of the work, as determined by the Chairperson. In the event of a failure to perform work timely or to otherwise satisfy the requirements of this paragraph, (c), no temporary or permanent certificate of occupancy shall be issued for #floor area# above the applicable basic maximum #floor area# for the #zoning lot# specified in Section 98-22, and the City may perform all such work in accordance with the provisions of Appendix E.

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6/23/05

**98-40
SPECIAL YARD, HEIGHT AND SETBACK, AND MINIMUM DISTANCE BETWEEN
BUILDINGS REGULATIONS**

3/22/06

**98-423
Street wall location, minimum and maximum base heights and maximum building heights**

* * *

- (e) Subarea H

No #building or other structure# shall be located east of the #High Line#, unless otherwise specified in agreements and other instruments that provide for City

construction of some or all of the At-Grade Plaza Work and some or all of the Stairway and Elevator Work , executed in accordance with Appendix D.

No portion of a #building or other structure# shall exceed a height of 85 feet except for two #buildings#, or portions of #buildings#, hereinafter referred to as “Tower East” and “Tower West.” At or above the base height, both such towers shall be set back at least 10 feet from any #street wall# facing a #wide street# and at least 15 feet from any #street wall# facing a #narrow street#. Such setbacks shall be provided at a height not lower than 60 feet, except that such setbacks may be provided at a height not lower than 40 feet, provided at least 65 percent of the #aggregate width of street walls# facing #narrow streets# and at least 60 percent of the #aggregate width of street walls# facing #wide streets# have a minimum base height of 60 feet.

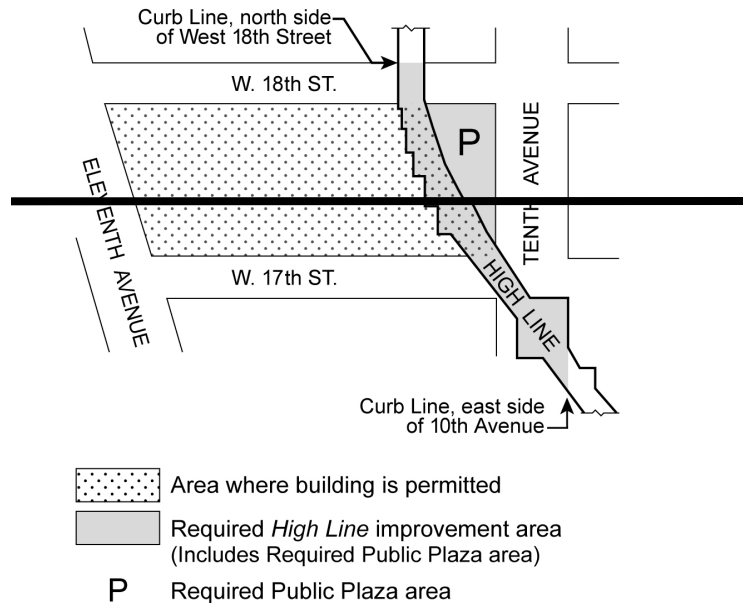
Tower East shall be located in its entirety within 240 feet of the Tenth Avenue #street line#, and Tower West shall be located in its entirety within 200 feet of the Eleventh Avenue #street line#. Tower East shall not exceed a height of 290 feet and Tower West shall not exceed a height of 390 feet. No portion of Tower East shall be located closer than 25 feet to any portion of Tower West.

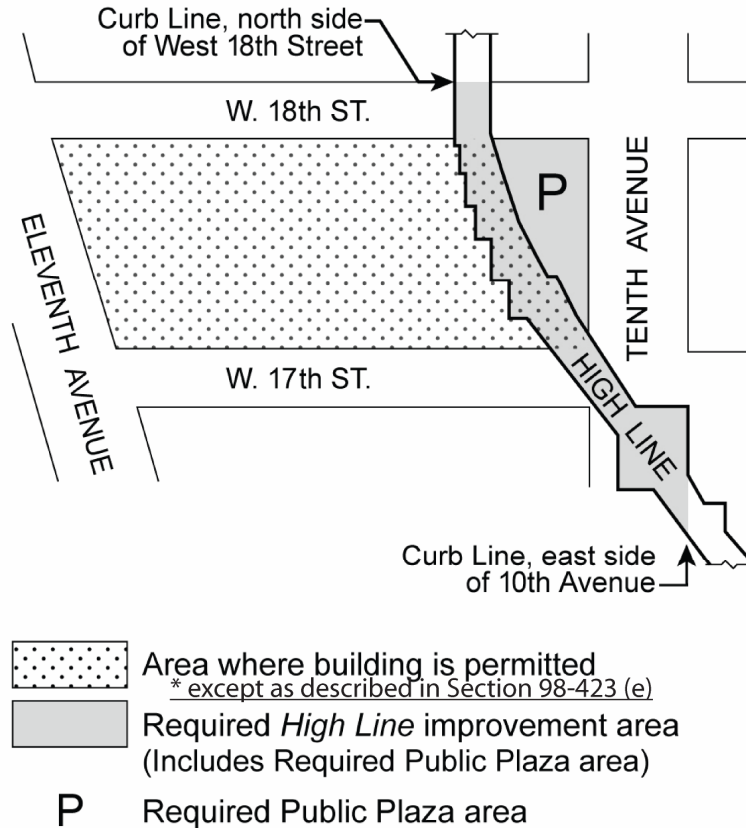
A maximum of 50 percent of the #street wall# of Tower West may rise without setback from #narrow street line #. Such portion of the #street wall# shall be located a minimum of 15 feet and a maximum of 20 feet from the #narrow street line#.

* * *

6/23/05

Diagram 3 – Subarea H Requirements





6/23/05

Appendix D Special Regulations for Zoning Lots utilizing the High Line Improvement bonus in Subarea H

This Appendix sets forth additional requirements governing #zoning lots# located within Subarea H between West 17th and 18th Streets over which the #High Line# passes with respect to a #development# or #enlargement# which involves an increase in the applicable basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 98-22 (Maximum Floor Area Ratio in Subareas), with respect to: (1) the issuance of a building permit for such #development# or #enlargement# pursuant to paragraph (a) of Section 98-25 (High Line Improvement Bonus); and (2) the performance or funding of improvements as a condition of issuance of temporary or permanent certificates of occupancy pursuant to paragraph (b) of Section 98-25 for #floor area# in such #development# or #enlargement# which exceeds the basic maximum #floor area ratio# of the #zoning lot#. The term “parties in interest” as used herein shall mean “parties-in-interest,” as defined in paragraph (f)(4) of the definition of #zoning lot# under Section 12-10.

- (a) Requirements for Issuance of Building Permit under paragraph (a) of Section 98-25
 - (1) As a condition of issuance of a building permit under paragraph (a) of Section 98-25:

- (i) Owner shall, subject to reduction pursuant to the other provisions of this Appendix, D, deposit into the #High Line# Improvement Fund, or secure by letter of credit or other cash equivalent instrument in a form acceptable to the City, a contribution of \$50.00 per square foot of #floor area# which exceeds the basic maximum #floor area ratio# of the #zoning lot#, up to the amount specified in Section 98-22; provided, that in the event Owner has previously entered into agreements for construction of At Grade Plaza Work and Stairway and Elevator Access Work by the City pursuant to paragraph (a)(2) below and has made a contribution pursuant thereto, the amount of contribution to the #High Line# Improvement Fund under this subparagraph for purposes of Section 98-25, paragraph (a) shall be reduced by such amount at the time it is made;
- (ii) all parties-in-interest shall execute a restrictive declaration including easements to the City providing for: the location of and public access to and use of the At-Grade Plaza and the stairway and elevator that will provide access to the #High Line#, as shown in Diagram 3 of Appendix C, such easement area for the At-Grade Plaza to include the entire area of the #zoning lot# east of the #High Line# and such easement area as it relates to such stairway and elevator to be at least 2,500 square feet and in a location and configuration acceptable to the City; access for the potential performance by the City of work under the provisions set forth below; and maintenance and repair of the stairway and elevator. Such declaration shall incorporate by reference the maintenance and operating agreement referred to in paragraph (a)(1)(iii) below ; provided, that in the event Owner enters into agreements for construction of some or all of the At Grade Plaza Work and Stairway and Elevator Access Work by the City pursuant to paragraph (a)(2) below, the provisions of such restrictive declaration shall be modified as deemed necessary by the City to effectuate such agreements ; and
- (iii) Owner shall execute a maintenance and operating agreement for the At-Grade Plaza.

The easements and agreements described herein shall remain in force and effect irrespective of whether certificates of occupancy are issued pursuant to Section 98-25, paragraph (b).

- (2) Upon the request of Owner or the City, the City in its sole discretion , may enter into agreements with Owner, in a form acceptable to the City, providing for construction by the City of some or all of the At Grade Plaza Work described in paragraph (b)(2)(ii)(b) of this Appendix and some or all of the Stairway and Elevator Access Work described in paragraph (b)(3)(ii) by the City, including provisions with regard to the viability of retail space fronting the At-Grade Plaza. Pursuant to such agreements, Owner shall make a contribution of \$2,300,000 to a sub-account of the High Line Improvement Fund to fund such construction, which amount may be reduced in accordance with provisions of such agreements by an amount reflecting _____ expenditures that owner has reasonably incurred or shall reasonably incur with respect to remediation work for the At Grade Plaza and any other work which is the responsibility of Owner pursuant thereto. All

parties in interest shall execute a Restrictive Declaration pursuant to paragraph (a)(1)(ii) of this Appendix D with such modifications as deemed necessary by the City to effectuate such agreements.

(23) Upon the request of Owner, the City in its sole discretion, may elect to have Owner perform all #High Line# improvements (i.e., non-structural and non-remediation work) at its own expense within the #High Line# improvement area on such #zoning lot# and over #streets# contiguous to such #zoning lot#. In that event, certification under Section 98-25, paragraph (a), shall also be made upon execution of an agreement by Owner, approved by the Chairperson of the City Planning Commission, to perform such improvements, the cost of which shall be refunded or credited from the contribution to the #High Line# improvement. Such agreement may require Owner to reimburse the City for the costs of a full-time resident engineer to supervise such work.

(34) The location of #floor area# which would exceed the basic maximum #floor area ratio# and be subject to the provisions of Section 98-25 shall be considered to be the topmost portion of the #development# or #enlargement# unless, at the time of certification pursuant to Section 98-25, paragraph (a), Owner designates, subject to the concurrence of the Chairperson of the City Planning Commission, an alternate location.

(b) Requirements for Issuance of Certificates of Occupancy under paragraph (b) of Section 98-25:

(1) Structural Remediation Work under paragraph (b)(2) of Section 98-25

(i) Owner may, at its option, elect to perform Structural Remediation Work on the portion of the #High Line# within the #High Line# improvement area on such #zoning lot# and over #streets# contiguous thereto in accordance with the provisions of this paragraph, (b). Owner may exercise such option following receipt of the City's specifications for the Structural Remediation Work or upon the City's failure to provide such specifications, as set forth in paragraphs (iv) and (v) below (unless such dates are extended by mutual agreement of the City and Owner, but in no event may exercise such option later than 90 days following receipt of a notice by the City of its intent to commence improvements to the #High Line# within the #High Line# improvement area applicable to the #zoning lot# within the next twenty-four months. In that event, the amount of contribution to the #High Line# Improvement Fund shall be reduced by \$21.00 per square foot of #floor area# which exceeds the basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 98-22 and the City shall refund or credit the Owner, as applicable, for any excess from or against the #High Line# Improvement Fund. In the event of exercise of such option, certification pursuant to Section 98-25, paragraph (b)(2), with respect to the Structural Remediation Work shall be of substantial completion with respect to issuance of any temporary certificate of occupancy, and of final completion with respect to issuance of any final certificate of occupancy.

- (ii) Such Structural Remediation Work shall include work on or under the #High Line# and above, at, and below grade, which shall be of the same quality and performance standards (i.e., with respect to use, useful life and maintenance requirements) as required for the remainder of the #High Line# (recognizing that there may be different standards for portions of the #High Line# that will be exposed to public view versus those that will not be so exposed) and shall include, but not be limited to, the following:
- (a) Removal and disposal of all lead-based products in accordance with specifications provided by the City, and disposal of all waste, all in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities;
 - (b) Repair of all damaged portions of the entire steel structure, including but not limited to railings, columns and footings, in accordance with the specifications provided by the City and all applicable rules, including those pertaining to historic preservation;
 - (c) Recoating of the entire steel structure with the types of products and numbers of coats specified by the City;
 - (d) Repairs to damaged concrete; removal, disposal, and replacement of any concrete that is found to contain hazardous materials; and recoating of the entire concrete portion of the #High Line# as specified by the City, all in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities;
 - (e) Removal of any or all portions of the ballast material on the #High Line#, including but limited to gravel, railroad ties and steel rails, trash, plant material, and any other objectionable materials (including, but not limited to, asbestos and pigeon guano) that are found on or under the #High Line#, as specified by the City, and disposal of all such material in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities. In the event that the City directs that any or all ballast material is to remain on the #High Line#, it shall be capped, as necessary, in accordance with the specifications provided by the City and the rules and regulations of all appropriate agencies. Any ballast material that is to remain, but also remain uncapped, shall be cleared and grubbed in accordance with specifications of the City; and
 - (f) Any work required to be performed below-grade for the anticipated improvements of the #High Line# for reuse as open space.
- (iii) Subject to the Not-To-Exceed Limit set forth in paragraph (c) of this Appendix, D, if Owner exercises the option to perform the Structural

Remediation Work, it shall reimburse the City for the reasonable cost of hiring or procuring the services of a full-time resident engineer to supervise the Structural Remediation Work, with associated costs (e.g., trailer, computer, telephone).

- (iv) The City shall consult with Owner regarding the drafting of the specifications for the Structural Remediation Work, and then provide Owner with such specifications by January 31, 2006, subject to delays outside the reasonable control of the City (including, without limitation, litigation, but such delays shall not extend more than 180 days), unless such date is extended by mutual agreement between the City and Owner.
 - (v) In the event Owner exercises the option to perform the Structural Remediation Work, Owner shall have 12 months to complete such work following June 23, 2005, or of the date of exercise of such option, whichever is later, unless such date is extended by mutual agreement between the City and Owner, and subject to reasonable extension for any delays beyond Owner's reasonable control and, in addition, for any time during which Owner is unable to gain access in order to perform the Structural Remediation Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon December 20, 2004.
 - (vi) In the event that the City does not provide the specifications for the Structural Remediation Work, within the timeframe set forth in paragraph (iv) of this Section, Owner may exercise the option to perform such work, and shall complete it within 12 months of the exercise of such option, unless such date is extended by mutual agreement between the City and Owner, and subject to reasonable extension for any delays as described in paragraph (b)(1)(v), but may use its own specifications, consistent with the description of the Structural Remediation Work set forth above and sound, high quality engineering, construction and workmanship standards and practices.
- (2) At-Grade Plaza Work under paragraph (b)(3) of Section 98-25:

The following shall apply – except to the extent that agreements and other instruments in a form acceptable to the City have been executed pursuant to paragraph (a)(2) of this Appendix D that provide for construction of some or all of the At-Grade Plaza Work set forth in subparagraph (ii) (b) below by the City:

- (i) Owner shall perform At-Grade Plaza Work within the area on the #zoning lot# shown in Diagram 3 of Appendix C. For any temporary certificate of occupancy, certification pursuant to Section 98-25, paragraph (b)(3), shall be of substantial completion of the At-Grade Plaza Work (i.e., the At-Grade Plaza shall be open and accessible to the public). For any permanent certificate of occupancy, certification pursuant to Section 98-25, paragraph (b)(3), shall be of final completion of the At-Grade Plaza Work. Substantial completion of the At-Grade Plaza Work shall also require execution by all parties-in-interest of the declarations, easements and maintenance and operating agreement described in paragraph (a) of Section (1) of this Appendix,

if not previously provided in connection with issuance of a building permit.

- (ii) At-Grade Plaza Work shall include, but not be limited to:
 - (a) remediation work; and
 - (b) (i)all paving, plantings, surface treatments, lighting, trees, seating, fountains and other site amenities; and
 - (c) (ii)infrastructure work, including conduits, drainage, water line, electrical connections, and other utility work serving the At-Grade Plaza
- (iii) The At-Grade Plaza Work shall be performed by Owner pursuant to construction documents provided by the City by ~~September 30, 2006~~January 31, 2008, subject to ~~delays outside the reasonable control of the City (including, without limitation, litigation, but such delays shall not exceed more than 180 days), and to such extension as the City and Owner may mutually agree.~~ The At-Grade Plaza Work shall be completed within one year following ~~the later of June 23, 2005, or the receipt of such documents,~~ January 31, 2008, subject to reasonable extension for any delays beyond Owner's reasonable control and to such extension as the City and Owner may mutually agree, and, in addition, for any time during which Owner is unable to gain access in order to perform the At-Grade Plaza Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon [date of text referral], or for any time needed to perform any necessary remediation work on the #zoning lot#.
- (iv) In no event shall Owner be required to complete the At-Grade Plaza Work until the #High Line# improvements within the portion of the #High Line# Improvement Area adjacent to the #zoning lot# (and, as applicable, over such Improvement Area, as shown on Diagram 3 of Appendix C), are substantially complete (i.e., open to the public but for the work needed to complete the At-Grade Plaza Work). Notwithstanding the foregoing, in no event shall Owner be entitled to certification pursuant to Section 98-25, paragraph (b)(3), until the Chairperson determines that the At-Grade Plaza Work is substantially complete.
- (v) The cost to Owner of the At-Grade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph, (b)(3) of this Section) shall not exceed \$2,300,000. The amount of contribution to the #High Line# Improvement Fund under subdivision (a) of section (1) of this Appendix made for purposes of Section 98-25, paragraph (a), shall be reduced by such amount at the time it is made. In addition to the costs of the At-Grade Plaza Work, subject to the Not-To-Exceed Limit set forth paragraph (c) of this Appendix, D. Owner shall be required to reimburse the City for:

- (a) the reasonable cost of developing the plans and construction documents for the At-Grade Plaza Work; and
 - (b) the reasonable cost of hiring or procuring the services of a full-time resident engineer to supervise the At-Grade Plaza Work, with associated costs (e.g., trailer, computers, telephone).
- (vi) In the event that construction documents for the At-Grade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph (b)(3) of this Section) are not delivered to Owner within the timeframe set forth in paragraph (3) of this subsection, Owner shall not be required to perform the At-Grade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph (b)(3) of this Section) consistent with such documents. Instead, Owner shall perform Alternate At-Grade Plaza Work which shall include all necessary remediation work, all necessary below-grade work (including related infrastructure work necessary to support the #High Line#), and at-grade improvements pursuant to the standards set forth in Section 37-04, paragraphs (g) through (n) of the Zoning Resolution, except that open-air cafes and kiosks shall not be permitted. Permitted obstructions, whether as described in the City's specifications for the At-Grade Plaza Work or as specified in Section 37-04, paragraph (g), for the Alternate At-Grade Plaza Work, shall not count towards #lot coverage#.
- (vii) The cost to the Owner of the Alternate At-Grade Plaza Work shall not exceed \$1,400,000. In addition, Owner shall, subject to the Not-To Exceed Limit of paragraph (c) of this Appendix, D, be required to reimburse the City for the reasonable cost of hiring or procuring the services of a full-time resident engineer to supervise the Alternate At-Grade Plaza Work, with associated costs (e.g., trailer, computers, telephone).
- (viii) Upon substantial completion of the At-Grade Plaza and in any event as a condition of certification of substantial completion pursuant to Section 98-25, paragraph (b)(4), Owner shall provide the City with the declarations, easements and maintenance and operating agreement described in subsection (a) of section (1) of this Appendix, if not already provided in connection with the issuance of a building permit; such At-Grade Plaza shall be open and accessible to the public during at least the same hours during which the #High Line# is open and accessible to the public, subject to the terms of the maintenance and operating agreement; and Owner shall maintain the At-Grade Plaza pursuant to the terms of the maintenance and operating agreement.
- (3) Stairway and Elevator Access Work under paragraph (b)(4) of Section 98-25:

The following shall apply except to the extent that agreements and other instruments in a form acceptable to the City have been executed pursuant to

paragraph (a)(2) of this Appendix D that provide for the construction of some or all of the Stairway and Elevator Access Work described in subparagraph (ii) below by the City:

- (i) Except as provided in paragraph (b)(3)(iii) of this Section, Owner shall perform Stairway and Elevator Access Work within the At-Grade Plaza area as shown in Diagram 3 of Appendix C in conjunction with performance of the At-Grade Plaza Work. For temporary certificates of occupancy, certification pursuant to Section 98-25, paragraph (b)(4), shall be of substantial completion of the Stairway and Elevator Access Work (i.e., the stairway and elevator could be made open and accessible to the public). For permanent certificates of occupancy, certification pursuant to such Section shall be of final completion of the work.
- (ii) The Stairway and Elevator Access Work shall consist of one stairway and one elevator, shall be included in the construction drawings for the At-Grade Plaza Work described above, and shall be performed by Owner within the time period for performance of the At-Grade Plaza Work described in paragraph (c) of this Section. The location for the stairway and elevator shall take into account the viability of any retail spaces fronting the At-Grade Plaza.
- (iii) Owner shall not be responsible for performance of the Stairway and Elevator Access Work where it performs the Alternate At-Grade Plaza Work in accordance with paragraph (b) of this Section. In that event, prior to commencing the Alternate At-Grade Plaza Work and in any event as a condition of certification of substantial completion pursuant to Section 98-25, paragraph (b)(4):
 - (a) Owner shall deposit into the #High Line# Improvement Fund, a contribution of \$900,000.00 (the Access Contribution), to be used at the direction of the Chairperson of the City Planning Commission for construction of stairway and elevator facilities on the #zoning lot#; and
 - (b) Owner shall provide the City with the declarations, easements, and maintenance and operating agreement described in paragraph (a)(1) of this Appendix, if not previously provided in connection with issuance of a building permit.
- (4) City Performance of Work In the Event of Failure to Perform:
 - (i) In the event Owner has not completed any of the #High Line# Improvement Work (where an agreement for performance of such work has been executed under paragraph (a) of this Appendix, D, Structural Remediation Work (where Owner has exercised the option under paragraph (b)(1) of this Appendix), the At-Grade Plaza Work or Alternate Plaza Work, as applicable, and the Stairway and Elevator Access Work (where required to do so under paragraphs (b)(2) and (b)(3) of this Appendix), by a time at which the City has completed portions of the #High Line# (i.e., such that such portions are open and accessible to

the public) immediately on either side of the #High Line# improvement area for the #zoning lot#, as shown on Diagram 3 of Appendix C, and a relevant deadline for performance of such work under paragraphs (b)(1), (b)(2) or (b)(3) has passed, subject to the provisions of such sections relating to extension by mutual agreement or delay, the City, at its sole option, may, upon written notice to Owner, notify Owner of its intent to proceed with performance and/or completion of the relevant work at its own expense.

(ii) The City may proceed with performance and/or completion of the work following such notice unless Owner:

(a) within 45 days following such notice, submits to the Department of City Planning a reasonable schedule (not to exceed 12 months in total), unless such date is extended by mutual agreement between the City and Owner, for completion of the relevant work, as applicable, which schedule shall be subject to review and reasonable approval by the City; and

(b) completes the relevant work in accordance with such schedule, subject to reasonable extension for any delays beyond Owner's reasonable control and, in addition, any time in which Owner is unable to gain access in order to perform the At-Grade Plaza Work or Alternate Plaza Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon December 20, 2004, or for any time during which remediation work is in progress on the #zoning lot#.

(iii) In the event Owner does not comply with the requirements of paragraph (b)(4)(ii):

(a) the City may proceed with performance and/or completion of relevant work, and may obtain access to perform such work pursuant to the easements described in paragraph (1) of Section (a) of this Appendix;

(b) the City shall return to Owner any contribution made to the #High Line# Improvement Fund; and

(c) no building permit may be issued pursuant to Section 98-25, paragraph (a), nor any temporary or permanent certificate of occupancy may be issued pursuant to Section 98-25, paragraph (b), for #floor area# in a #development# or #enlargement# which exceeds the maximum #floor area# of the #zoning lot#.

(c) Reimbursement Not-To-Exceed Limits

Reimbursement of the City by Owner of costs pursuant to this Appendix shall not exceed a total of \$450,000.00.

* * *

The above resolution (N 070498 ZRM), duly adopted by the City Planning Commission on September 5, 2007 (Calendar No. 15), 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.

AMANDA M. BURDEN, AICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chair
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, RICHARD W. EADDY,
NATHAN LEVENTHAL, JOHN MEROLO, KAREN A. PHILLIPS,
DOLLY WILLIAMS, Commissioners