



## CITY PLANNING COMMISSION

October 27, 2010 / Calendar No. 16

C 100296(A) ZSM  
M 920358(D) ZSM

**IN THE MATTER OF** an application submitted by CRP/Extell Parcel L, LP and CRP/Extell Parcel N, LP pursuant to Sections 197-c and 201 of the New York City Charter, in accordance with Section 2-06 (c) (1) of the Uniform Land Use Review Procedure Rules, for the grant of a special permit\* pursuant to Section 74-743 of the Zoning Resolution to allow:

1. the location of buildings without regard for the applicable court, distance between buildings, height and setback regulations;
2. the modification of the definition of outer courts and the provisions of Section 23-84 (Outer Court Regulations) to include any open area that is bounded on all sides but one by building walls and is not otherwise a yard or an inner court; and
3. for purposes of applying the Inclusionary Housing Program:
  - a. the modification of the base and maximum floor area ratios, not to exceed the maximum floor area ratio permitted, based on a proportionality between affordable floor area and residential floor area in buildings containing multiple uses; and
  - b. the modification of the requirements regarding distribution of affordable housing units specified in Section 23-96(b);

in connection with a proposed mixed use development, on property bounded by West 61<sup>st</sup> Street, West End Avenue, West 59<sup>th</sup> Street and Riverside Boulevard (Block 1171, Lots 155 & 165), in a C4-7 District, within a general large-scale development generally bounded by West 72<sup>nd</sup> Street, Freedom Place, West End Avenue, West 59<sup>th</sup> Street and Riverside Boulevard, Borough of Manhattan, Community District 7.

Approval of application M 920358(D) ZSM, submitted by CRP/Extell Parcel L, LP and CRP/Extell Parcel N, LP, to modify the original Riverside South general large-scale special permit and restrictive declaration is required concurrent with any approval of this special permit.

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\* 197-d(b)(2) eligible

An application for a special permit (C 100296 ZSM) was filed by CRP/Extell Parcel L, LP and CRP/Extell Parcel N, LP, limited partnerships between Extell Development Company and Carlyle Realty Partners (a subsidiary of The Carlyle Group), on April 7, 2010, to facilitate the construction of a mixed-use development of approximately three million square feet of residential, commercial, and community facility floor area on a site bounded by West 61<sup>st</sup> Street,

West End Avenue, West 59<sup>th</sup> Street, and the future alignment of Riverside Boulevard in Manhattan Community District 7. The applicant also filed an application (M 920358D ZSM) on April 7, 2010 to modify the original Riverside South general large-scale development special permit and restrictive declaration to reflect the proposed project facilitated by the special permit that is the subject of this report (C 100296A ZSM). Pursuant to its terms, the Riverside South restrictive declaration may only be modified as described herein by approval of the City Planning Commission and the City Council.

On August 20, 2010, pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure (ULURP) rules, the applicant filed a modified special permit application (C 100296A ZSM) and zoning text amendment application (N 100294A ZRM) for public hearing and consideration by the City Planning Commission. On October 27, 2010, the applicant withdrew related applications C 100296 ZSM and N 100294 ZRM and submitted a revision to the modified special permit application C 100296(A) ZSM with respect to the proposed site plan and public open space. That application is considered herein.

## **RELATED ACTIONS**

In addition to the application for a special permit (C 100296A ZSM) which, in conjunction with an application to modify the prior approvals with respect to the Riverside South general large-scale development to reflect the same (M 920358D ZSM), is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

**N 100294(A) ZRM** Zoning text amendment to Section 23-144 (In Designated Areas Where the Inclusionary Housing Program Is Applicable), Section 23-954 (Additional Requirements for Compensated Developments), Section 74-743 (Special Provisions for Bulk Modification), and Appendix F (Inclusionary Housing Designated Areas) to:

- allow the City Planning Commission to modify, by special permit, the definition of “outer court” to include any open area that is bounded on all sides but one by building walls and is not a yard or an inner court;

- create a new Inclusionary Housing designated area consisting of the project site;
- clarify which bulk regulations are applicable to the project site; and
- allow the Commission to modify, by special permit, the base and maximum floor area ratios in Section 23-952 and the unit distribution requirements of Section 23-96(b).

- N 100295 ZRM** Zoning text amendment to Section 74-744 (Modification of Use Regulations) to allow the Commission to allow, by special permit, automotive sales and service establishments not otherwise permitted by underlying district regulations.
- C 100287 ZSM** Special permit pursuant to Section 74-681 to allow development in a former rail yard and over a railroad or transit right-of-way and to establish the reference plane of the development.
- C 100288 ZSM** Special permit pursuant to Sections 13-562 and 74-52 to allow a public parking garage with a maximum of 1,800 spaces.
- C 100289 ZSM** Special permits pursuant to Sections 13-562 and 74-52 to allow separate public parking garages with a maximum, respectively, of 460 spaces; 230 spaces; 290 spaces; 370 spaces; and 450 spaces.
- C 100290 ZSM**
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- C 100293 ZSM**
- C 100297 ZSM** Special permit pursuant to Section 74-744(a)(2) to modify use regulations to allow an automotive sales and service establishment in a general large-scale development.
- N 100298 ZAM** Authorization pursuant to Section 13-553 to allow a curb cut on a wide street (West End Avenue).
- N 100286 ZCM** Certifications pursuant to Section 26-15 to allow additional curb cuts in excess of one per narrow street frontage on West 61<sup>st</sup> Street and West 59<sup>th</sup> Street.
- N 100299 ZCM**
- N 100300 ZCM** Certification pursuant to Section 26-17 to modify the streetscape regulations governing retail continuity, location of signs, and ground-floor transparency.

## **BACKGROUND**

The applicant, CRP/Extell Parcel L, LP and CRP/Extell Parcel N, LP (limited partnerships

between Extell Development Company and Carlyle Realty Partners, a subsidiary of The Carlyle Group), proposes a mixed-use development of approximately three million square feet of residential, commercial, and community facility floor area on an 8.2-acre site located on the Upper West Side of Manhattan in Community District 7 and bounded by West 61<sup>st</sup> Street to the north, West End Avenue to the east, West 59<sup>th</sup> Street to the south, and the future alignment of Riverside Boulevard (also known as Riverside Drive South) to the west. The project site is the southernmost development site in the existing Riverside South General Large-Scale Development and comprises Parcels L, M, and N in Riverside South.

The proposed project, known as “Riverside Center,” would include approximately three million square feet of floor area in five new buildings, as well as three below-grade levels extending across the entire site. The proposed development program consists of approximately 2.40 million square feet of residential use (approximately 2,000-2,500 housing units); 240,000 square feet of hotel use; 116,000 square feet of ground- and lower-floor retail and entertainment uses; 20,000 square feet of auto sales and showroom use; 101,000 square feet of office use; and up to 132,000 square feet of community facility use for a proposed public school. The below-grade program would consist of a 182,000-square feet auto service center on the cellar level, connected to an auto showroom above, and, in the application as certified, up to 1,800 public parking spaces located on the first and second subcellar levels. The proposed project would extend two existing City streets, West 60<sup>th</sup> Street and Freedom Place South, into the site as private streets subject to public access easements. The project would also contain approximately 2.8 acres of publicly accessible, privately owned open space located mostly west of Freedom Place South.

### **Area Description and History**

The project site is located on the Upper West Side of Manhattan adjacent to the Hudson River waterfront. It is the southernmost development site in Riverside South, a 56.2-acre, 7.9-million-square feet general large-scale development (GLSD) approved by the City Planning Commission and City Council in 1992 (C 920358 ZSM and related actions). In connection with the City’s approval of the GLSD, then-applicant Penn Yards Associates entered into a restrictive declaration, dated as of December 17, 1992 and recorded in the Office of the City Register, New

York County on January 6, 1993 in Reel 1934, Page 1.

The Riverside South GLSD stretches from West 72<sup>nd</sup> Street to West 59<sup>th</sup> Street and consists of 13 development sites (Parcels A through O) bounded on the west by existing portions and future alignments of Riverside Boulevard and on the east by zoning lot lines, Freedom Place, and West End Avenue, as well as streets and a waterfront park. Riverside South occupies the former site of the 60<sup>th</sup> Street Yards (also known as the Penn Yards), a freight rail yard owned by the New York Central Railroad and its successor companies. Freight rail activity in the yard was mostly discontinued by the 1970s following the bankruptcy of Penn Central and had ceased entirely by 1983. From the early 1960s on, a number of large-scale redevelopment projects were proposed for the site, including Litho City in 1962; the Educational Construction Fund plan in 1969; a Trump Organization proposal in 1975; Lincoln West in 1981; and Trump's Television City (1985) and Trump City (1987). Although none of these projects were built, the site was rezoned in connection with the Lincoln West proposal, allowing residential uses for the first time on the former rail yard. In 1991, the City and State of New York, the Trump Organization, and a coalition of civic groups reached an agreement on a conceptual plan for the site, which became known as Riverside South. This plan formed the basis for the GLSD and associated land use approvals the following year.

Although the freight rail yard was discontinued, the double-track, below-grade rail right-of-way that runs along the eastern edge of the GLSD is used by Amtrak for service to Albany and other stations on the Empire Corridor. A "transitway easement," required under the Riverside South restrictive declaration, runs along the west side of the right-of-way for its length in Riverside South and is reserved for a future light rail line or other transportation improvement. Twelve buildings have been constructed to date in Riverside South on Parcels A through J (north of West 62<sup>nd</sup> Street along Riverside Boulevard) and O (at 61<sup>st</sup> Street and West End Avenue), and two others are planned for Parcel K, immediately north of the Riverside Center site between Riverside Boulevard and Freedom Place South. In total, approximately 4,492 residential units have been or will be constructed in Riverside South outside the Riverside Center site. Of these, 583 affordable units have been or will be provided in buildings on Parcels D, F, O, and K, in

accordance with the developer's affordable housing obligations specified in the restrictive declaration.

The existing Riverside South buildings are high-rise residential towers with a mix of office, retail, and community facility uses on the lower floors and have been developed with below-grade public parking garages with a total of approximately 2,600 spaces. Most of the GLSD street plan has been constructed, including east-west cross streets (both mapped streets and public access easements) between the parcels and Riverside Boulevard, which has been completed concurrently with the construction of the Riverside South buildings and extends to approximately West 63<sup>rd</sup> Street. A small open space on the east side of Freedom Place south adjacent to Building O has also been constructed.

To the west and northwest of the project site from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street are the completed and future phases of Riverside Park South, a 21.5-acre park that was part of the approved plan for Riverside South. The Riverside South restrictive declaration ties the occupancy of completed buildings to the funding and completion by the developer of seven park phases. To date, approximately 13 acres comprising the first four waterfront phases of Riverside Park South have been completed, conveyed to the Department of Parks and Recreation, and opened to the public; the remaining three, upland phases have yet to be built, though the next phase (Phase V) is currently in design. Under the restrictive declaration, completion of the last phase of the park, Phase VII, will be triggered by occupancy of buildings on Parcels L/M/N. The park connects at its northern end to Riverside Park and at its southern end to Hudson River Park.

An elevated portion of State Route 9A/West Side Highway, often known as the Miller Highway, runs above Riverside Park South, separating the waterfront phases of the park from the upland phases. Under the 1992 approvals, two plans for the park were approved: one with the elevated highway remaining and one with the highway relocated below grade into a tunnel beneath and adjacent to Riverside Boulevard. As of today, the highway has not been relocated, and no funding is in place for this project. Four blocks of the northbound tunnel structure for the highway relocation, from West 65<sup>th</sup> Street to West 61<sup>st</sup> Street, will be constructed under

Riverside Boulevard as part of the developer's obligation to build that street.

The project site is located in an area of Manhattan's West Side that for decades has been undergoing conversion from a mix of industrial uses and residential tenements to a more heavily residential neighborhood characterized by high-rise housing with mixed institutional and commercial uses. This change was catalyzed following World War II by urban renewal plans that cleared 15 blocks west of Broadway in the vicinity of Lincoln Square and Columbus Circle. Developments resulting from these projects included the Amsterdam Houses, a 13-building housing complex operated by the New York City Housing Authority; Lincoln Center for the Performing Arts; the Lincoln Center campus of Fordham University; and the New York Coliseum, since demolished and redeveloped with the Time Warner Center.

The blocks adjacent to the project site contain a mix of residential, educational, and industrial uses. Across West 61<sup>st</sup> Street to the north, the western block is the future site of two towers, 13- and 33-stories tall, on Riverside South Parcel K, while the eastern block contains Riverside South Building O, a 25-story residential building, and a portion of the West End Towers housing complex. The Amsterdam Houses occupy the large superblock to the northeast along with The Beacon School, a public high school located on West 61<sup>st</sup> Street.

Immediately to the east of the project site, the blocks between West 58<sup>th</sup> and West 61<sup>st</sup> streets have been rezoned from manufacturing to commercial and residential districts in recent years (C 970086 ZMM, C 030214 ZMM, and C 060104 ZMM), facilitating considerable new residential and institutional development. This includes the John Jay College expansion, a 13-story, 600,000 square foot facility currently under construction between West 58<sup>th</sup> and West 59<sup>th</sup> streets; 10 West End Avenue and the Element, two recently completed residential condominium towers approximately 400 feet in height, between West 59<sup>th</sup> and West 60<sup>th</sup> streets; and Adagio 60, a recent condominium building approximately 116 feet in height, and Sessanta, a rental building approximately 300 feet in height, between West 60<sup>th</sup> and West 61<sup>st</sup> streets. Other institutional uses on these blocks include The Heschel School, a private high school, which occupies the northeast corner of West End Avenue and West 60<sup>th</sup> Street and recently received

variances from the Board of Standards and Appeals to construct a new, nine-story school building on adjoining lots at the corner of West End and 61<sup>st</sup> Street, and PS 191, a public elementary school, located at the east end of the same block.

To the south, the Clinton neighborhood contains a mix of industrial uses, including a corridor of auto-related uses along 11<sup>th</sup> Avenue, commercial uses such as broadcast studios, and residential buildings. Directly south of the project site, the Consolidated Edison 59<sup>th</sup> Street Generating Station (also known as the 59<sup>th</sup> Street Power House) occupies the full block between West 58<sup>th</sup> and 59<sup>th</sup> streets west of 11<sup>th</sup> Avenue (as West End Avenue is known south of 59<sup>th</sup> Street). The building was designed by the firm of McKim, Mead & White and constructed in 1900-04 to provide power for the IRT subway; in 1959 it was sold to Con Edison, which currently uses the facility to generate steam for the New York City steam system. The Landmarks Preservation Commission (LPC) held a public hearing on the designation of the Power House in July 2009, and a decision remains pending. To the southwest across the West Side Highway, Pier 99 is the site of the 59<sup>th</sup> Street Marine Transfer Station, a Department of Sanitation facility.

Zoning districts mapped in the vicinity include an R10 district covering most of Riverside South to the north, which allows a maximum floor area ratio (FAR) of 10.0 for residential uses. A C2-5 commercial overlay district is mapped over most of the Riverside South R10 district and allows up to 2.0 FAR for commercial uses. Medium- and high-density commercial districts are mapped to the north and east. The C4-7 district mapped on the project site (also mapped south of the site) allows commercial and community facility uses up to 10.0 FAR and residential uses up to 10.0 FAR; pursuant to a zoning text amendment (N 030549 ZRM) approved by the Commission in 2004, a provision limiting the maximum FAR in non-contextual R10-equivalent districts in Community District 7 to 10.0 was removed for C4-7 districts, allowing residential FAR in C4-7 districts to be increased up to 12.0 under the Inclusionary Housing Program. C6-2, mapped east and southeast of the site, permits a mix of commercial, residential, and community facility uses with a maximum FAR of 6.5, which may be increased to 7.8 with the provision of a public plaza. To the northeast, an R8 district covering the Amsterdam Houses and Lincoln Towers complexes allows residential uses up to 6.0 FAR and community facility uses up to 6.5.

A mix of manufacturing districts of various densities (M1-5, M1-6, M2-3, M3-2) are mapped south and southeast of the site. M1-5 allows manufacturing and commercial uses at a maximum FAR of 5.0 and community facility uses up to 6.5; M1-6 allows all three uses up to 10.0 FAR. M2-3 and M3-2 permit a maximum FAR of 2.0 for manufacturing and commercial uses. The northern boundary of the Special Clinton District runs along West 59<sup>th</sup> Street, and the Special Lincoln Square District begins east of Amsterdam Avenue and north of West 60<sup>th</sup> Street.

The nearest subway station to the project site is 59<sup>th</sup> Street-Columbus Circle, located approximately one-half mile east of the project site. This station offers local and express service via the A, B, C, D, and 1 trains. Two bus routes, the M31 and M57, provide service to the north on West End Avenue and to Midtown and the East Side along 57<sup>th</sup> Street. West End Avenue is the nearest north-south arterial street to the project site, and West 57<sup>th</sup> Street is the nearest major crosstown street. Vehicles can access the West Side/Miller Highway from West 59<sup>th</sup> Street (southbound only) and West 57<sup>th</sup> Street (both directions). The street network east and northeast of the site is characterized by a number of superblocks that create gaps in the regular Manhattan grid, a legacy of the urban renewal plans mentioned above. As a result, West 60<sup>th</sup> Street is the only east-west street between West 58<sup>th</sup> and 65<sup>th</sup> streets that provides a through connection between Broadway/Columbus Circle/Central Park and West End Avenue.

West End Avenue is a two-way wide street with two lanes of traffic in each direction, on-street parking, and dedicated turn lanes at West 59<sup>th</sup> and West 60<sup>th</sup> streets. West 59<sup>th</sup> Street and West 61<sup>st</sup> Street are two-way narrow streets with one lane of traffic in each direction and on-street parking (61<sup>st</sup> Street currently extends only to Freedom Place South; the remaining segment connecting to Riverside Boulevard will be constructed with the development of the project site). Riverside Boulevard north of the project site is a two-way wide street with two lanes of traffic and on-street parking. Adjacent to the project site, a future section of Riverside Boulevard will split into two separated roadways, one for each traffic direction, as it passes underneath the Miller Highway and connects to the West Side Highway, 12<sup>th</sup> Avenue, and 59<sup>th</sup> Street.

Riverside Park South and Hudson River Park are the major open space resources near the project

site and are part of the Manhattan Waterfront Greenway. The 2.2-acre Clinton Cove section of Hudson River Park is located between West 54<sup>th</sup> and 57<sup>th</sup> streets. West End Towers Park is a landscaped privately owned public space (POPS) with children's play areas located on West End Avenue between West 63<sup>rd</sup> and 64<sup>th</sup> streets. A small public plaza is located on the east side of Freedom Place South just north of the project site. Farther from the site, to the east, the Lincoln Center campus includes Damrosch Park as well as two large public plazas that are currently being upgraded. To the south, DeWitt Clinton Park has facilities for active recreation, including ball fields. Central Park is located approximately one-half-mile east of the project site.

### **Site Description**

The project site is a single zoning lot bounded by West 61<sup>st</sup> Street, West End Avenue, West 59<sup>th</sup> Street, and the future alignment of Riverside Boulevard. It is located in a C4-7 zoning district (R10 residential equivalent), which allows a range of commercial uses with a maximum FAR of 10.0; residential uses up to 10.0 FAR, which may be increased up to 12.0 under the Inclusionary Housing Program; and community facility uses up to 10.0 FAR.

The project site comprises Parcels L, M, and N in the Riverside South GLSD, and the GLSD approvals control permitted bulk and uses on the site. The GLSD currently allows a maximum 2.37 million square feet of floor area (6.66 FAR) on the zoning lot. On Parcels L and M, the GLSD approvals allow two towers, 272 feet and 249 feet in height respectively, with up to 572,192 square feet of residential floor area. 54,700 square feet of community facility use, 35,300 square feet of retail, 19,400 square feet of office, and 100,000 square feet of cinema use are also allowed on Parcels L/M/N. For Parcel N, the City Planning Commission approved an entertainment production studio use of up to 1.8 million square feet. The building containing the studio would cover Parcel N and have twin towers rising up to 363 feet on West End Avenue. However, the City Council's approval of Riverside South stipulated that any development of the studio would require additional public review and approval under ULURP. Development on Parcels L/M/N would occupy the entire two-block zoning lot and no interior streets or other public space would be provided. In the event that studio use is eliminated, the restrictive declaration requires that application be made to map West 60<sup>th</sup> Street through the site.

The project site has a lot area of 356,282 square feet. Most of the site is presently occupied by a public parking lot with a capacity of 1,850 spaces, some of which are in stackers. A 537-space, 3-story public parking garage is located on West 59th Street, and a lot where US Postal Service vehicles are stored is located in the southwest corner of the site. The Amtrak right-of-way is located in a below-grade tunnel in the southeast portion of the site and emerges into an open culvert as it passes through the northeast portion of the site; in addition, a small Amtrak pump house is located near the right-of-way on 59<sup>th</sup> Street. The site topography varies considerably, sloping down approximately 18 feet along 59<sup>th</sup> Street from West End Avenue toward the highway (as part of a larger slope from Central Park to the Hudson River) and down 22 feet along the western edge of the site from 61<sup>st</sup> to 59<sup>th</sup> Street.

### **Proposed Project**

The proposed project would develop five buildings on the site, ranging in height from 369 to 511 feet, along with three below-grade levels that would extend throughout the site. The above-grade development program would yield a total maximum floor area of 2,882,829 square feet (assuming full utilization of the Inclusionary Housing bonus) and would consist of approximately 2,000-2,500 dwelling units; a 239,678-square foot hotel with approximately 250 rooms; 116,491 square feet of retail uses, including a 35,632-square foot cinema; 101,390 square feet of office uses; and 19,595 square feet of auto showroom use. With the inclusion of a potential 132,000-square foot public school, total floor area could be increased up to 3,014,829 square feet, for a total FAR of 8.46 on the site.

Consistent with the current Riverside South GLSD approvals, the GLSD would set maximum allowable floor areas for each use on the project site – residential, community facility, office, retail, hotel, auto showroom – as well as the maximum number of parking spaces. Additionally, the GLSD would require a minimum amount of retail floor area. This construct would enable the proposed project to adjust the mix of uses in the development but in no case exceed the maximum allowable floor area for each building or for the site as a whole.

Below grade, an auto service center would occupy 181,677 square feet on the cellar level, and in the application as certified, 1,800 public parking spaces would occupy the first and second subcellar levels. The applicant has included two options in the application for the public parking component: (1) a single, integrated garage with a combination of attended and self parking; and (2) five separate, fully attended garages. Both parking options would use the same configuration of vehicular entrances and, in the application as certified, would contain a maximum of 1,800 spaces.

The project's proposed site plan would extend Freedom Place South through the site to West 59<sup>th</sup> Street, creating a terminating vista to the Con Edison building, and would extend West 60<sup>th</sup> Street approximately 250 feet (about one-third of the way through the site) to intersect with Freedom Place South. Both streets, though privately owned, would be subject to public access easements; the streets would be built according to Department of Transportation (DOT) standards and would be identical in appearance to City streets but would be owned and maintained by the owner or owners of the adjacent project buildings. As such, these streets would remain part of the zoning lot and would generate floor area. The site plan also includes a total of 2.8 acres of privately owned, publicly accessible open space, most of which would be located in a large plaza and park-like landscape west of Freedom Place South. A new pedestrian connection to Riverside Park South at West 61<sup>st</sup> Street and Riverside Boulevard would be provided in the interior of the project via West 60<sup>th</sup> Street and the public open space.

All of the proposed buildings, streets, and open space would be built over a platform to be constructed across most of the site. Construction of this platform and the below-grade levels would either occur in a single phase at the beginning of the project's build-out or would take place in stages, concurrently with the development of each building. The platform would create a level surface at an elevation of 24 feet above Manhattan datum. Because of the variations in topography around the platform, the sidewalks along Riverside Boulevard and West 59<sup>th</sup> Street west of Freedom Place South would be below platform level, necessitating stair and ramp connections from these sidewalks to the site.

## Urban Design / Architecture

The proposed project would extend the existing street grid partway into the site, creating three blocks in place of the existing superblock. At West End Avenue, Buildings 2 and 5 would be constructed over the below-grade Amtrak right-of-way and transitway easement, and the bases of these buildings would be angled back from the avenue as a response to this condition. West 60<sup>th</sup> Street, which provides the only through connection to Broadway and Central Park in the immediate area, would be the project's principal pedestrian and retail corridor. On either side of 60<sup>th</sup> Street, the towers of Buildings 2 and 5 would be shifted away from the street to create a more pedestrian-scale environment. The north side of the street would be anchored by a projecting, cubic portion of Building 2 with a transparent glass base, creating an elevated street wall.

Beginning west of Freedom Place South, a central plaza would be surrounded by buildings and anchored by the "Jewel Box," an approximately 160-foot-high element of Building 4 with an active use such as a restaurant located in its double-height, highly transparent base. While West 60<sup>th</sup> Street would terminate at Freedom Place South, in the application as certified, a linear water feature – in the application as certified, an ultra-shallow water "scrim" – approximately 185 feet in length would visually extend the street through the remainder of the site, reinforced by a row of trees along each side. To emphasize the relationship with West 60<sup>th</sup> Street, the water feature would have almost the same north-south dimension as the 60<sup>th</sup> Street roadbed. A major pedestrian path would begin in the central plaza and run along the south and west sides of Building 1 to connect with an entrance to Riverside Park South at West 61<sup>st</sup> Street and Riverside Boulevard. West of the plaza, a more densely planted landscape would cover much of the western third of the site between Buildings 1, 3, and 4 and would complete the transition from urban street grid, to urban plaza, and ultimately to Riverside Park South.

The proposed buildings are characterized by a marked variation of discrete scales in their massing – low, medium, and high – and a distinctive, largely non-orthogonal composition of complex, sculptural forms with numerous facets, slopes, and angles. The applicant has stated that the use of several distinct massing scales is intended to reduce the visual impact of the bulk

on pedestrians and to create a contemporary version of the variety in building scales that is characteristic of many parts of Manhattan. The applicant has also stated that the building design aims to use materials to signify different aspects of the buildings and to relate to the surrounding built environment. Each of the towers except for Building 4 would have faceted tower tops that would slope upward from southeast to northwest, enclosing mechanical space.

Buildings 2 and 5 would be towers with several medium-scale elements – including the aforementioned cubic portion of Building 2 and a large column descending from the tower of Building 5 to land in the setback area on West End Avenue. Both buildings would have bases, roughly 45 to 70 feet high, that would be distinguished from the towers above through the use of different building materials. Building 2 would rise to a height of 502 feet at its highest point, while Building 5, the tallest building in the project, would reach a height of 511 feet. (All building heights are taken above the platform level elevation of +24 feet.)

West of Freedom Place South, Building 4 would be an extruded tower with its central portion rising out of the open space to a height of 369 feet and a smaller secondary portion facing West 59<sup>th</sup> Street. A narrow glass connector would bridge the gap between the Jewel Box portion of Building 4 and the main tower, and the north side of the Jewel Box would align with the south line of West 60<sup>th</sup> Street to further reinforce the street’s visual extension through the site.

Building 3, located approximately 140 feet west of Building 4 in the southwest corner of the site, would be another extruded tower, rising to a total height of 433 feet. The proposed design is distinguished by its north façade, which forms a long, undulating curve up the tower facing the open space. In the application as certified, vehicles would access Buildings 3 and 4 from Freedom Place South via a shared driveway that would pass through Building 4 and end in a turnaround area in front the entrance to Building 3; in the revised version of the modified application, the driveway has been removed, and a smaller driveway from West 59<sup>th</sup> Street has been created for Building 3. Together, these buildings would frame the public open space on its south side.

Building 1, located on West 61<sup>st</sup> Street between Freedom Place South and Riverside Boulevard, has the largest footprint of any of the proposed buildings. The base of Building 1 would help define the central plaza and pedestrian path to the park and would activate these spaces with ground-floor transparency and retail uses. Above its base, Building 1 has two towers: a medium-scale secondary tower at 61<sup>st</sup> Street and Freedom Place South, from which three boxy, medium-scale elements swing out to the south toward the open space and climb toward the main tower, which reaches a height of 463 feet.

### Uses

In general, commercial uses would be located on the lower floors with residential uses above. An exception is the hotel, which would occupy part of the tower of Building 5 as well as part of the base, with its entrance on Freedom Place South. Residential lobbies would be located on Freedom Place South (Buildings 2 and 5), West 61<sup>st</sup> Street and the public open space (Building 1), and in the application as certified, the private driveway (Buildings 3 and 4).

The modified application includes a revised affordable housing proposal that would replace the affordable housing proposal in the application as certified. This change to the application was reflected in the “A” applications (C 100296A ZSM and N 100294A ZRM) filed on August 20, 2010. Under the original proposal, 12 percent of the dwelling units in the development would be required to be on-site affordable units, similar to the approach under the 1992 Riverside South restrictive declaration. Among other aspects of the original proposal, affordable units would be required to remain affordable for at least 20 years, and half of the units would be reserved for low-income households. In place of this proposal, the applicant now proposes to apply the Inclusionary Housing Program to the proposed project. This would require the provision of affordable housing equal to 20 percent of the residential *floor area* (not units) in order to reach the maximum floor area proposed by the applicant. Additionally, affordable units would be permanently affordable, and all of the units would be reserved for low-income residents.

Retail uses, mostly ground-floor with some second-floor spaces, would be concentrated along both sides of West 60<sup>th</sup> Street, on the central plaza in the Jewel Box and Building 1, and along

the open space and West 61<sup>st</sup> Street frontages of Building 1. The office uses in Building 1 would be accessed from 61<sup>st</sup> Street and would be located on the first, second, and third floors of the building. The cinema, which would have approximately 250 seats, would be located on the second through fourth floors of Building 5 and would be accessed from a lobby on West 60<sup>th</sup> Street. In the application as certified, the auto showroom would be located on the ground floor of Building 5, fronting on West End Avenue and a portion of 60<sup>th</sup> Street.

At certain locations, the applicant is proposing to include requirements for retail uses and ground-floor transparency beyond what is required by the underlying commercial streetscape regulations. Ground-floor retail use, including a minimum number of establishments with a minimum depth of 30 feet and separate entrances, would be required along both sides of West 60<sup>th</sup> Street, in the Jewel Box, and in Building 1 fronting on the public open space. Permitted retail uses in these locations would consist of Use Groups 6, 8A, and 10 and would not include auto-related uses. A minimum of 70 percent transparency measured to a height of 12 feet would be required along 60<sup>th</sup> Street and West End Avenue, around the Jewel Box, and along the south side of Building 1. These requirements would help create a lively and active pedestrian environment along these key street frontages as well as the central plaza and park connection.

The proposed public elementary and intermediate school would be located on the lower floors of Building 2. The School Construction Authority (SCA) has identified this space as a suitable location for a pre-Kindergarten through eighth grade school. Under terms agreed upon by the applicant and the SCA, the applicant would pay for the cost of the core and shell of a school with 480 seats – the projected number of students generated by the project – with the SCA responsible for the costs of school fit-out. A larger school, up to 132,000 square feet in size and accommodating 1,332 school seats, could instead be constructed at this location, with the SCA responsible for all its incremental costs.

Below grade, the auto service center would be located on the cellar level and would be connected to the auto showroom by means of a stair/elevator and a vehicle elevator. Public parking would be located on the first and second subcellar levels.

## Circulation

Vehicles would mainly approach the project site using West End Avenue/11<sup>th</sup> Avenue from the north and south, Riverside Boulevard from the north, and the West Side Highway/12<sup>th</sup> Avenue from the south. Leaving the site, vehicles would use the same routes, except that vehicles could access the southbound West Side Highway from the site at West 59<sup>th</sup> Street. Northbound access to the West Side Highway is at West 57<sup>th</sup> and 72<sup>nd</sup> streets.

The extensions of West 60<sup>th</sup> Street and Freedom Place South would both be narrow streets. West 60<sup>th</sup> Street would carry eastbound traffic in a 34-foot roadbed, with on-street parking on the north side and a bike lane on the south, while Freedom Place South would be two-way with a 40-foot roadbed, a bike lane on the west side, and on-street parking on the east (interrupted by a dedicated drop-off area for the hotel). Many of the development's service functions and vehicular access points would be located on West 59<sup>th</sup> Street. To help facilitate this function, the 59<sup>th</sup> Street roadbed would be widened from the existing 34 feet to 40 feet as part of the proposed project. Access to off-street loading facilities would be provided in two locations. In Building 5, a 30-foot curb cut on 59<sup>th</sup> Street would serve two truck elevators that would access seven required loading berths located below grade. Trucks would enter and exit the elevators head-first, eliminating the need for three-point turns. On West 61<sup>st</sup> Street, a 30-foot curb cut would access two loading berths required for the retail and office uses in Building 1.

The proposed public parking garage(s) would have five entrances, one in each of the buildings, with one entrance and one exit lane per entrance. Each of the entrances except for the one associated with Building 4 would be accessed by a 25-foot curb cut (splays included). Access via Buildings 1 and 2 would be located opposite each other on Freedom Place South. Building 3's curb cut would be located on West 59<sup>th</sup> Street; a separate entrance for the auto service center would be located 20 feet to the east. In the application as certified, ingress-only access for Building 4 would be provided from the private driveway, which would have a curb cut on the west side of Freedom Place South; the ramp to the garage would descend from the driveway underneath the archway formed by Building 4. As discussed further below, in the revised application, the driveway has been removed, and the curb cut would now access a two-way

entrance. Building 5 would have a garage curb cut on West 59<sup>th</sup> Street, at least 20 feet west of the loading curb cut.

All sidewalks on the perimeter of and within the project site would be 15 feet wide, supplemented in some locations by open space and building setbacks that would effectively create wider sidewalks. On West 61<sup>st</sup> Street, Riverside Boulevard, and West 59<sup>th</sup> Street, these perimeter sidewalk widenings would be achieved by utilizing strips of the applicant's property in the form of dedicated public access easements. At certain locations, such as a portion of the 61<sup>st</sup> Street school frontage of Building 2, ground-floor setbacks would create a widened sidewalk. Street lights and bike racks would be installed within five-foot cobblestone paver strips, and benches would be placed along West 60<sup>th</sup> Street and Freedom Place South. In the application as certified, on 59<sup>th</sup> Street between Building 3 and Freedom Place South, the grade change would be accommodated with terraced plantings and seat walls, and a conventional staircase would provide access from the sidewalk to the platform level. On Riverside Boulevard, three stairs and a ramp would access the open space.

### Open Space

The proposed project would include approximately 2.8 acres of privately owned, publicly accessible open space, mostly located west of Freedom Place South. Like the street extensions and perimeter sidewalk widenings, the open space would be publicly accessible via a grant of public access easements.

At the intersection of West End Avenue and West 60<sup>th</sup> Street, a shallow plaza would be formed by setbacks in the bases of the adjacent buildings that result from the presence of the rail right-of-way below. This plaza would be raised slightly to allow for plantings over the right-of-way. Along the north side of 60<sup>th</sup> Street, a raised terrace approximately 20 feet in width, with seat walls, planted areas, and café seating for adjacent restaurants, would run along the sidewalk. West 60<sup>th</sup> Street would lead to a wide central plaza defined by Freedom Place South, the Jewel Box, and Building 1. In the center of the plaza, several dozen dynamic fountain jets, aligned with the water scrim along 60<sup>th</sup> Street and illuminated at night, would serve as a focal point and

play area for children. A raised grove of trees with tables and chairs would extend south from Building 1, forming the beginning of the approximately 20-foot-wide pedestrian path along Building 1 to the entrance of Riverside Park South and providing informal seating opportunities on the steps of the grove. Additional chairs would be located in the plaza. The Jewel Box would be flanked on its east and west sides by an area of private café seating and another public seating grove. Along the west side of Freedom Place South adjacent to Building 4, an additional area of trees, planted areas, and seat walls would extend the open space to the West 59<sup>th</sup> Street intersection and facilitate views to the central plaza from the south.

Moving west, rows of trees would line both sides of the water scrim and the park connection, and a path with benches would border the south side. The landscape would offer pedestrians different experiences on either side of the water feature: To the north, an open lawn sloping down to the water; to the south, a meadow landscape of mounded areas planted with tall grasses and wildflowers. Well-lit secondary pedestrian paths would criss-cross the open space and the water, providing areas for strolling and routes to and from the perimeter access points and buildings. A variety of bench and seat wall types would be provided along the paths and in the small “rooms” formed by the intersections of paths. At the western end of the open space, more mounds would be planted with shrubs, groundcover, perennials, and coniferous trees that would help attenuate winds coming off the river and serve as a visual buffer to the elevated highway. Another area of café seating would be located on the west side of Building 1, along the park connection. The water would terminate in a six-foot cascade and pool lined with benches on Riverside Boulevard. In total, almost 1,500 linear feet of fixed and movable seating would be provided within the public open space and sidewalks of Freedom Place South and West 60<sup>th</sup> Street.

In the application as certified, the applicant proposed hours of operation of 7 am-11 pm for the main body of the public open space, west of Freedom Place South. No closure is proposed for the open space east of Freedom Place South, all of which is located close to adjacent streets. The hours of operation are reflected in a proposed new restrictive declaration for the project site.

## **REQUESTED ACTIONS**

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

### **Zoning Text Amendment (N 100294A ZRM)**

On August 20, 2010, the applicant submitted “A” applications that modified one of the two zoning text amendment applications (N 100294 ZRM) and the GLSD special permit application (C 100296 ZSM). The purpose of the modified applications is to replace the applicant’s affordable housing proposal at certification with the application of the Inclusionary Housing Program to Riverside Center. This text amendment would also address a technical issue relating to the definition of outer courts. Specifically, the proposed text would:

- Amend Section 23-144 and Appendix F to make the project site an Inclusionary Housing designated area.
- Amend Section 23-954(a) to clarify that the applicable bulk regulations for the project site are the underlying C4-7 district regulations and not contextual zoning regulations.
- Amend the general large-scale development regulations in Section 74-743 to allow the Commission, as part of the requested GLSD special permit, to establish appropriate base and maximum FARs for Inclusionary Housing and modify requirements regarding distribution of affordable housing units within buildings in this Inclusionary Housing designated area, as set forth in the project’s restrictive declaration.

The designation of the project site as an Inclusionary Housing designated area would permit the application of the Inclusionary Housing Program to the project. Clarification of Section 23-954(a) is necessary to ensure that, with application of the Inclusionary Housing Program, the applicable bulk regulations for the project site will continue to be the underlying C4-7 regulations. Because Riverside Center’s underlying C4-7 zoning would otherwise allow a base FAR of 9.0 and maximum FAR with bonus of 12.0, the amendment with respect to base and maximum FARs for Inclusionary Housing is necessary in order to allow the project’s restrictive

declaration to adapt this proportional relationship to the applicant's proposal. As a result, the maximum base FAR for this project would be approximately 6.3, and the maximum FAR with bonus would be approximately 8.5.

The text amendment would also allow the Commission to adjust the base FAR to account for non-residential floor area, such as the proposed school and commercial uses. This would help facilitate the mixed-use nature of the project and continue to require the provision of affordable housing equal to 20 percent of residential floor area in exchange for the full floor area bonus. Finally, with respect to the amendment to modify requirements regarding distribution of affordable units within buildings, Inclusionary Housing regulations currently require affordable units in buildings that also have market-rate units to be distributed among at least 65 percent of residential floors and limit the proportion of affordable units on any given floor to no more than one-third of the total units. The text would permit modification of these requirements by the Commission subject to a finding that such modification facilitates a desirable mix of uses in the project and a plan consistent with the objectives of the Inclusionary Housing Program and the site planning objectives of the GLSD special permit. These modifications would be available only for the Inclusionary Housing designated area which comprises the Project Site.

- Amend Section 74-743(a) of the GLSD regulations to allow the Commission to modify, as part of the GLSD special permit, the definition of "outer court" in the Zoning Resolution to include any open area that is bounded on all sides but one by building walls and is not a yard or an inner court.

The irregular building forms in the proposed project result in open areas between portions of buildings that are not necessary for light and air purposes but rather are a function of the faceted, angled building forms. Many of these open areas, while meeting the generally understood definition of outer courts, do not meet the technical definition of outer courts in the Zoning Resolution because they do not open onto a front lot line, a front yard, a rear yard, or the entire length of a rear or side lot line. Therefore, the text amendment is necessary to allow the applicant to treat these spaces as outer courts for the purpose of applying to the Commission for

the waivers needed to facilitate the building design. The proposed text would be applicable only on certain GLSD sites in C4-7 districts in Manhattan Community District 7 and would specify that no legally required windows in such outer courts could be located less than 30 feet from a building wall opposite the window.

**Zoning Text Amendment (N 100295 ZRM)**

The applicant has proposed a text amendment that would modify the text governing modification of use regulations within GLSDs in Section 74-744(a). Under the proposed text, the Commission may allow by special permit automotive sales and service establishments with auto service uses, including repair services and preparation for delivery, which are not permitted by the underlying zoning district. The special permit would be available only for certain GLSD sites in C4-7 districts in Manhattan Community District 7. To grant the special permit, the Commission would have to make findings pertaining to the location of the auto service uses, space for storage of vehicles, and local traffic and pedestrian conditions. The Commission would be authorized to prescribe appropriate conditions and safeguards to minimize any adverse effects on the character of the development.

**Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)**

Pursuant to Section 74-743 of the Zoning Resolution (Special Provisions for Bulk Modification), the applicant is requesting a general large-scale development special permit. As noted above, the applicant has filed a modified application for this special permit, which is the subject of this report. The purpose of the modified “A” application is to facilitate the application of the Inclusionary Housing Program to the proposed project and the applicant’s request for modification of the Program’s unit distribution requirements. The application was revised on October 27, 2010 to incorporate revisions to the site plan and open space, which are discussed in the Consideration section of this report.

This special permit would establish envelopes for each of the proposed buildings and would grant specific modifications to applicable bulk regulations. The special permit would include

controls to ensure that certain architectural features and relationships between buildings are preserved, as well as controls on ground-floor transparency and the location and number of retail establishments along certain building frontages. The special permit would restrict total development on the project site to 2,882,829 square feet (which could be increased up to 3,014,829 square feet with the inclusion of the public school) and would set floor area limitations for different uses (and in the case of retail, a minimum floor area).

In addition to provisions relating to the application of the Inclusionary Housing Program to the project as discussed above, the new restrictive declaration for the project associated with the special permit would include provisions relating to: development of the project site as a GLSD in accordance with the approved plans and floor area restrictions; the provision of a public school in Building 2; project components related to the environment (PCREs) for construction, design, and operation of the buildings, and sustainability; modifications to the Con Edison West 59<sup>th</sup> Street Generating Station; environmental mitigation measures; third-party monitoring of certain PCREs and mitigation measures; construction completion, hours of operation, and maintenance of the project's public open space and access areas, including the obligations of any property owners' association with respect thereto, and the granting of public easements over such public spaces. This declaration would run with the land and would be binding upon the Declarant and its successors and assigns, together with the existing Riverside South declaration, which will remain in effect, as modified by the related action (M 920358D ZSM).

To grant the special permit for bulk waivers, the Commission must make findings relating to the quality of the overall site plan and its relationship to the surrounding area, access to light and air, and the adequacy of surrounding streets and may prescribe additional conditions and safeguards to improve the quality of the GLSD.

Several types of bulk waivers would be required to permit the proposed building envelopes:

- *Special Height and Setback Regulations:* Pursuant to Sections 23-634 and 33-433, in Manhattan Community District 7, front building walls on wide streets and on narrow streets

within 50 feet of a wide street are subject to special regulations that require a street wall of at least 125 feet or the full height of the building, whichever is less. Above a height of 125 feet, setbacks – 10 feet on a wide street, 15 feet on a narrow street – are permitted, and these setbacks are required above a height of 150 feet. The applicant is requesting modification of the front building wall and setback requirements for the Riverside Boulevard and West End Avenue frontages of the zoning lot and the West 59<sup>th</sup> and 61<sup>st</sup> Street frontages within 50 feet of Riverside Boulevard and West End Avenue. This modification would facilitate the proposed building forms, which are towers with various medium- and low-scaled elements.

- *Tower Regulations:* Pursuant to Section 33-451, towers may encroach into the sky exposure plane associated with the underlying zoning district by a specified amount of area, as viewed in plan. Up to 1,875 square feet of tower encroachment is permitted within 50 feet of a narrow street. The proposed towers, which would generally be located at the perimeter of the site in order to maximize light and views from West 60<sup>th</sup> Street and the public open space, would not comply with these regulations along the site's narrow street frontages. The applicant requests modification of the encroachment requirements for Buildings 1 and 2 along West 61<sup>st</sup> Street and Buildings 3, 4 and 5 along West 59<sup>th</sup> Street. The areas of encroachment on the West 61<sup>st</sup> Street frontage would be 13,066 square feet for Building 1 and 5,964 square feet for Building 2; the areas of encroachment on the West 59<sup>th</sup> Street frontage would be 3,983 square feet for Building 3, 5,273 square feet for Building 4, and 8,450 square feet for Building 5.

Pursuant to Sections 23-65 and 33-451, above a height of 85 feet towers must set back at least 10 feet on a wide street and 15 feet on a narrow street. The proposed towers would not comply with these setback requirements at the following locations and to the following extents:

Building 1

- Riverside Boulevard: The tower envelope encroaches into the prescribed setback by as much as eight feet in depth and as much as 318 feet in height.

- West 61<sup>st</sup> Street: The tower envelope encroaches into the prescribed setback by as much as 13 feet in depth and as much as 338 feet in height.

#### Building 2

- West 61<sup>st</sup> Street: The tower envelope encroaches into the prescribed setback by as much as 13 feet in depth and as much as 401 feet in height.
- West End Avenue: The tower envelope encroaches into the prescribed setback by as much as 10 feet in depth and by as much as 309 feet in height.

#### Building 3

- Riverside Boulevard: The tower envelope encroaches into the prescribed setback by as much as eight feet in depth and as much as 286 feet in height.
- West 59<sup>th</sup> Street: The tower envelope encroaches into the prescribed setback by as much as seven feet in depth and as much as 276 feet in height.

#### Building 4

- West 59<sup>th</sup> Street: The tower envelope encroaches into the prescribed setback by as much as seven feet in depth and as much as 96 feet in height.

#### Building 5

- West End Avenue: The tower envelope encroaches into the prescribed setback by as much as 10 feet in depth and as much as 167 feet in height.
- West 59<sup>th</sup> Street: The tower envelope encroaches into the prescribed setback by as much as seven feet in depth and as much as 384 feet in height.

- *Outer Courts:* Pursuant to the amended text that is proposed as part of this application, the special permit would allow certain open areas in the proposed buildings that are bounded on all sides but one by building walls and are not considered yard or inner courts, but do not meet the technical definition of an outer court in the Zoning Resolution, to be considered as outer courts. The requested waivers would apply to 17 outer courts: two each on Buildings 1, 2 and 3; six on Building 4 and five on Building 5. The applicant requests modification of the dimensional and proportional requirements of Section 23-84 (Outer Court Regulations) for outer courts lying within specified waiver zones shown on the approved drawings and also requests that up to five percent of each court may be covered. These non-complying courts

result from the proposed non-orthogonal building forms, which consist of numerous slopes and angles. The minimum sizes of these outer courts would be set by the building envelopes.

- *Inner Courts:* Seven inner courts are proposed in the plans: two in Building 1, two in Building 2, and three in Building 5. The applicant requests modification of the dimensional requirements of Section 23-851 (Minimum Dimensions of Inner Courts) for inner courts lying within specified waiver zones shown on the approved drawings. These non-complying courts result from the proposed non-orthogonal building forms, which consist of numerous slopes and angles.
- *Minimum Distance between Buildings:* The proposed building designs include a number of vertical notches that do not comply with the minimum distance between building requirements of Sections 23-82 and 23-711. The applicant is requesting modification of these requirements at certain specified locations on all five buildings.

This special permit, as modified in the (A) application, would also facilitate the applicant's revised affordable housing plan. The applicant is requesting that the special permit modify the Inclusionary Housing base and maximum FARs specified in Section 23-952, with the base FAR adjusted to account for non-residential floor area while maintaining an incentive to provide affordable housing equal to 20 percent of the residential floor area. The base and maximum FARs would be specified in the project's restrictive declaration. In addition, the applicant is proposing to establish a separate Inclusionary Housing bonus for each building in the project (under standard Inclusionary regulations, the base/bonus structure applies to the zoning lot as a whole). This feature would effectively require that affordable floor area be provided in proportion to market-rate floor area in each phase of development in order for each building to be built to its maximum proposed floor area, thereby preventing affordable units from being provided entirely during the last phase of construction.

More specifically, under the project's restrictive declaration, each building would be assigned a base floor area based on the proposed size of the building and mix of uses within it. This base

floor area could be increased up to a maximum floor area with the provision of affordable housing equal to 20 percent of the residential floor area in the building. Should a building fail to utilize the Inclusionary Housing bonus available to it, that unused bonus floor area would be deducted from the total floor area allowed in the development.

The applicant also requests modification of Inclusionary Housing requirements regarding the distribution of affordable units. Under Section 23-96(b), in buildings with a mix of affordable units and market-rate units, the affordable units must be distributed among at least 65 percent of the residential floors, and no more than one-third of the housing units on any floor may be affordable units.

In order to grant the above modifications, the Commission must find that they facilitate a desirable mix of uses in the project and a plan consistent with the objectives of the Inclusionary Housing Program and the site planning objectives of the GLSD special permit.

### **Special Permit for Development in a Railroad/Transit Right-of-Way or Yard**

#### **(C 100287 ZSM)**

The proposed project would be located in a former rail yard (“railroad or transit air space” in the Zoning Resolution) and would also be constructed over the Amtrak right-of-way. Accordingly, the applicant is requesting a special permit pursuant to Section 74-681 (Development Within or Over a Railroad or Transit Right-of-Way or Yard) to allow development in this former rail yard. Specifically, the special permit would allow the area of the platform over the Amtrak right-of-way and light rail easement, as well as the entire area formerly devoted to railroad use, to be used to calculate the lot area of the site for zoning calculation purposes. The special permit would also establish the elevation of the platform level (+24 feet) as the reference plane for zoning calculation purposes. In order to grant the special permit, the Commission must make findings relating to the adequacy of surrounding streets, distribution of bulk and dwelling units, compatibility of uses, and the preservation of the rail/transit right-of-way for future transportation use and may prescribe appropriate conditions and safeguards to minimize any adverse effects on the character of the surrounding area. The Commission may also require the

structural design of the development over the active railroad use to make allowance for possible changes to the right-of-way as part of future transportation improvements.

**Special Permits for Public Parking Garage(s) (C 100288 ZSM, C 100289-100293 ZSM)**

The proposed project would include 1,800 spaces of off-street public parking on the site. As described above, the application would allow the parking to be constructed in accordance with either of two proposed options. In the first option, a single, integrated garage with a maximum of 1,800 spaces would be constructed on the first and second subcellar levels of the development. In the second, five separate garages, each associated with one of the buildings and having a total combined maximum of 1,800 spaces, would be constructed generally on the first and second subcellar levels. The same configuration of five entrances on West 59<sup>th</sup> Street and Freedom Place South would serve both options.

Pursuant to Sections 13-562 (Public Parking Garages and Public Parking Lots) and 74-52 (Parking Garages or Public Parking Lots in High Density Central Areas) of the Zoning Resolution, the applicant is requesting six special permits, one for the single garage option and one for each of the separated garages under the second option. In order to grant the special permit, the Commission must make findings relating to compatibility with uses in the surrounding area, effects on local traffic and pedestrian conditions, location of the garage in the street network, provision of sufficient reservoir spaces, and adequacy of surrounding streets. The Commission may prescribe appropriate conditions and safeguards to minimize any adverse effects on neighborhood character.

*Option 1 (Single Garage):* In the application as certified, the single, integrated parking garage would have a total area of 482,400 square feet and a maximum of 1,800 attended and self-park spaces. Of this total, 1,101 spaces would be attended spaces located on the first subcellar level of the development, and 699 would be self-park spaces on the second subcellar level. Vehicles would access the garage via the five curb cuts described above under “Proposed Project – Circulation” and “Revisions to the Proposed Project.” Each of these curb cuts would access a two-way, 22-foot-wide entrance. Vehicles would descend the ramps past the cellar level to the

first subcellar level, where vehicles seeking attended parking would pull into queuing areas from which attendants would park the vehicles on this level. Vehicles seeking self-parking would continue down one of two ramps accessing the second subcellar level, which would have striped parking bays. Fifty reservoir spaces, the maximum required, would be provided in the garage.

*Option 2 (Separated Garages):* In the application as certified, the five separated garages would each have the following maximum number of spaces, area, and reservoir spaces:

<b>Building</b>	<b>No. of Spaces</b>	<b>Area (square feet)</b>	<b>Reservoir Spaces</b>
1	460	115,722	23
2	230	78,933	12
3	290	75,718	15
4	370	92,231	19
5	450	113,476	23

All of the garages would be fully attended and would be located on the first and second subcellar levels with the exception of the Building 2 garage, which would be on all three below-grade levels. The location of curb cuts and entrances would be the same as described above for the single garage option. In each garage, vehicles would descend a ramp to the first subcellar level (or in the case of the Building 2 garage, the cellar level). Attendants would then park the vehicles on that level or take them to the second subcellar level (in the case of the Building 2 garage, both subcellar levels) via a ramp.

**Special Permit to Modify Use Regulations (C 100297 ZSM)**

The applicant is requesting a modification of the underlying use regulations pursuant to the amended text of Section 74-744(a) of the Zoning Resolution (Modification of Use Regulations), which allows modification of use regulations within general large-scale developments by special permit. In the C4-7 district in which the project site is located, Use Group 16B auto service uses are not permitted as-of-right. Pursuant to Section 74-744(a)(2), as proposed to be amended, the requested special permit would allow the proposed auto service center on the cellar level of the development. In order to grant the special permit, the Commission must make findings

pertaining to the location of the auto service uses, space for storage of vehicles, and effects on local traffic and pedestrian conditions, and the Commission may prescribe appropriate conditions and safeguards to minimize any adverse effects on the character of the development.

The proposed auto service center would be located entirely on the cellar level and would have a dedicated vehicular entrance on West 59<sup>th</sup> Street in Building 3, at least 20 feet east of the parking garage entrance. The facility would include queuing space for vehicles, service bays, vehicle and parts storage, offices and waiting areas, and a delivery area for vehicles that have been sold. The service center would be associated with the auto showroom, and the two would be physically connected. According to the applicant, work performed at the service center would not include vehicle painting or body work.

#### **Authorization for a Curb Cut (N 100298 ZAM)**

The applicant requests an authorization pursuant to Section 13-553 of the Zoning Resolution (Curb Cuts) to allow a curb cut on West End Avenue, which is not permitted as-of-right because West End Avenue is a wide street. This would facilitate the extension of West 60<sup>th</sup> Street west through a portion of the project site. Because the West 60<sup>th</sup> Street extension would be a public access easement and not a mapped City street, the west side of the intersection would be considered a curb cut on West End Avenue. The intersection would be designed to look like and function as a normal intersection of two public streets. In order to grant the authorization, the Commission must make findings relating to traffic safety, local traffic and pedestrian conditions, potential interference with bus lanes, special streets, and transit facilities, and streetscape character.

#### **Commission Certifications for Curb Cuts (N 100286 ZCM, N 100299 ZCM)**

The applicant requests two certifications for curb cuts on narrow streets. Under Section 26-15 of the Zoning Resolution (Curb Cuts), each narrow street frontage of a zoning lot is allowed one curb cut. Zoning lots larger than 30,000 square feet may be allowed additional curb cuts by certification of the City Planning Commission and the Department of Transportation that such curb cuts will not result in conflict between pedestrians and vehicles and will help create a good

site plan. On West 59<sup>th</sup> Street, which has 800 feet of zoning lot frontage, the proposed project would locate a total of four curb cuts for access to below-grade parking, the auto service center, and loading berths. One curb cut for off-street loading would be located on West 61<sup>st</sup> Street, which has 731 feet of frontage. The intersections of these streets with Freedom Place South would also be considered curb cuts.

### **Commission Certification to Modify Streetscape Regulations (N 100300 ZCM)**

The applicant is requesting a certification pursuant to Section 27-17 of the Zoning Resolution (Streetscape Modifications) to modify the following provisions of the streetscape regulations in Section 37-30 that apply within high-density commercial districts:

- *Retail Continuity:* Section 37-35 requires that a front building wall that is 50 feet or more in length and fronts on a wide street contain commercial uses for at least 50 percent of its length. The applicant requests a waiver of this requirement for the Riverside Boulevard frontage of Building 3 in order to provide a more appropriate and viable use at this location.
- *Sign Regulations:* Section 37-36 limits the height of signage to no more than 17 feet above curb level. Due primarily to high ground-floor ceiling heights in some of the buildings, the applicant is proposing to locate signage above 17 feet along five frontages: Building 2 on West 61<sup>st</sup> Street (17.25 feet) and West End Avenue (17.5 feet); Building 3 on Riverside Boulevard (32.25 feet) and West 59<sup>th</sup> Street (32.25 feet); and Building 5 on 59<sup>th</sup> Street (18.4 feet).
- *Street Wall Articulation:* Section 37-37 requires that building walls adjoining a sidewalk be at least 50 percent transparent, measured to a height of 12 feet. In the application as certified, the proposed buildings would not achieve this requirement along certain frontages: Building 2 on West 61<sup>st</sup> Street (33 percent); Building 3 on West 59<sup>th</sup> Street (29 percent); Building 4 on 59<sup>th</sup> Street (zero percent), and Building 5 on 59<sup>th</sup> Street (14 percent). These lower levels of transparency reflect the concentration of vehicular entrances and service functions on 59<sup>th</sup> Street as well the presence of the school in Building 2.

In order to grant the certification, the City Planning Commission must make a finding related to the design quality of the development.

### **Modification of Riverside South Special Permit and Restrictive Declaration**

#### **(M 920358D ZSM)**

The applicant proposes to modify the original general large-scale development special permit for Riverside South, approved in 1992 and modified three times since, and the associated restrictive declaration. The Riverside South restrictive declaration has been previously modified four times: the first time to correct typographical errors and three subsequent times to update various drawings in connection with applications to modify the original special permit (M 920358A/B/C ZSM). The proposed modification would revise the special permit approval drawings and declaration to reflect the proposed project, including elimination of the originally proposed studio use on Parcel N. Revisions to the drawings would include removing drawings that specify the existing bulk controls for Parcels L/M/N and revising the tables that control permitted floor area and uses in the GLSD. Revisions to the restrictive declaration would include updating the attached drawings; allowing retail use on Parcels G and H; and removing the requirement to map West 60<sup>th</sup> Street through the project site in the event that the studio use is eliminated. The declaration would also be modified to allow for a new, separate restrictive declaration for the project site that would reflect the new land use actions and environmental review and contain other provisions specific to the proposed project.

The proposed project would continue to be bound by certain provisions of the Riverside South restrictive declaration, all of the open space provisions relating to the development and maintenance of Riverside Park South, the Riverside South Implementation Task Force provisions with respect to the development of the park, and the transitway easement option provision. The sewer hook-up provisions in the original restrictive declaration would no longer apply to Parcels L/M/N, as they were determined by DEP not to be necessary based on current data.

### **Extensions of Special Permits and Authorization**

Pursuant to Sections 74-99 and 11-42(a) of the Zoning Resolution, special permits and authorizations automatically lapse if substantial construction (defined as the substantial construction of at least one building) in accordance with the approval has not been completed within four years of their effective date. The applicant is requesting that, pursuant to Section 11-42(c), the Commission extend this period to 10 years in order to allow for the possibility that unexpected conditions in the real estate and/or financing markets could delay construction of the proposed project.

### **ENVIRONMENTAL REVIEW**

The certified application (C 100296 ZSM) and the modified application (C 100296A ZSM) in conjunction with application M 920358D ZSM and the applications for the related actions (N 100294 ZRM, N 100294A ZRM, N 100295 ZRM, C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, C 100297 ZSM, N 100298 ZAM, N 100286 ZCM, N 100299 ZCM, and N 100300 ZCM) were 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 09DCP020M. The lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on November 19, 2008. The Positive Declaration was distributed, published and filed, and the applicant was asked to prepare a Draft Supplemental Environmental Impact Statement (DSEIS). As noted above, the project site is the southernmost development site in the existing Riverside South GLSD and comprises Parcels L, M, and N in Riverside South. A Final Environmental Impact Statement (FEIS) for the Riverside South GLSD was issued on October 11, 1992 by the City Planning Commission as lead agency (CEQR No. 85-253M). The Riverside Center project differs from what was analyzed in the 1992 FEIS

for Parcels L, M, and N. Because the development resulting from the proposed project may result in significant adverse environmental impacts not identified in the 1992 FEIS, a Supplemental Environmental Impact Statement (SEIS) was deemed necessary pursuant to SEQRA. The purpose of the SEIS is to analyze the extent to which the development and zoning actions as currently proposed could potentially result in any significant adverse impacts not previously identified in the 1992 FEIS.

Together with the Positive Declaration, a Draft Scope of Work for the DSEIS was issued on November 19, 2008. A public scoping meeting on the Draft Scope of Work was held on January 8, 2009, and a Final Scope of Work, reflecting comments made during scoping, was issued on May 19, 2010.

The applicant prepared a DSEIS and the lead agency issued a Notice of Completion for the DEIS on May 21, 2010. As noted above, the applicant submitted modified “A” applications subsequent to the issuance of the DSEIS that would apply the Inclusionary Housing Program to the proposed project. As a result, a Technical Memorandum was prepared to assess whether the amended application would alter the conclusions presented in the DSEIS. The Technical Memorandum also considered whether the revised methodologies contained in the 2010 *New York City Environmental Quality Review (CEQR) Technical Manual* (effective May 17, 2010) would change the results of the analyses or affect the conclusions presented in the DSEIS. This Technical Memorandum was completed on September 10, 2010 and made available through the Department of City Planning’s website.

Pursuant to SEQRA regulations and CEQR procedures, a joint public hearing was held on the DSEIS on September 15, 2010 in conjunction with the Uniform Land Use Review Procedure (ULURP) applications and other applications subject to public review. The Final Supplemental Environmental Impact Statement (FSEIS) was completed, and a Notice of Completion of the FSEIS was issued on October 15, 2010. The FSEIS considered, in addition to the ULURP applications as originally certified, the amended applications filed on August 20, 2010, and proposed modifications to the Proposed Project which have been incorporated into the revised

applications filed on October 27, 2010.

The Notice of Completion for the FSEIS identified significant adverse impacts in the following areas: community facilities (child care), active open space, pedestrians, traffic, transit (bus service), construction traffic, and construction noise. Details of these impacts and measures to minimize or eliminate these impacts, where feasible and practicable, are described below.

#### *Community Facilities – Child Care*

The FSEIS estimates that the proposed project would generate 79 children under the age of six who would be eligible for publicly funded child care programs. If no new child care facilities are added in the study area to respond to this new demand, the new children from the proposed project would exacerbate the predicted shortage in child care slots and the project-generated demand would represent 18 percent of the collective capacity of child care centers serving the area. This increase would result in a significant adverse impact on child care facilities in the area.

Possible mitigation measures for this significant adverse impact include adding capacity to existing facilities if determined feasible through consultation with the New York City Administration for Children’s Services (ACS) or providing a new child care facility within or near the project site. The Restrictive Declaration for the proposed project requires the project sponsor to work with ACS to consider the need for and the implementation of measures to provide any needed additional capacity as required to mitigate a significant adverse impact in day care facilities within the 1-½ mile study area or within Community Board 7. Based on the results of the analysis, the proposed project would need to provide 44 child care slots to reduce the increase in the utilization rate to less than five percent. Absent the implementation of such needed mitigation measures, the proposed project could have an unmitigated significant adverse impact on child care facilities.

#### *Active Open Space*

Given the size of the decrease (5.7 percent) in the active open space ratio due to the proposed project and the already high utilization of many of the active open space resources that would be available to future users, both within and outside the study area, the proposed project would result in a significant adverse active open space impact.

Measures that could mitigate this active open space impact include creating new public open spaces on-site or elsewhere in the study area of the type needed to serve the proposed population and offset their impact on existing open spaces in the study area, and improving existing open spaces in the study area to increase their utility, safety, and capacity to meet identified needs in the study area. Potential on-site mitigation measures considered for the active open space ratio

deficit included: ball fields, handball courts, basketball courts, playgrounds, volleyball courts, and skate parks. Additionally, existing open spaces in the study area were examined with respect to their condition and utility. No practicable opportunities for off-site mitigation were identified as of the date of the FSEIS.

To fully mitigate this significant adverse impact, a substantial amount of the on-site open space would need to be programmed for active uses. Given site constraints and the overall design objectives, providing this amount of open space on the project site would not be compatible with the goals and objectives of the proposed site plan. Therefore, in order address the active open space impact with on-site active uses, measures to partially mitigate the impact were explored. The inclusion of a children's play area (at 3,033 square feet) as part of the proposed project's publicly accessible open space was identified as the most appropriate mitigation for the identified significant adverse active open space impact. The implementation of this mitigation measure would only partially mitigate the identified significant adverse active open space impact, which would therefore remain unmitigated.

### *Traffic*

The proposed project would result in significant adverse impacts at 24 study area intersections during one or more analyzed peak hours. Specifically, 17, 13, 12, and 13 intersections would be impacted in the weekday AM, weekday midday, weekday PM, and Saturday midday peak hours, respectively. With the proposed traffic mitigation measures, outlined below, all significant adverse traffic impacts due to the proposed project would be fully mitigated with the exception of impacts at three intersections along Route 9A—Twelfth Avenue at West 56<sup>th</sup> Street (in the AM and PM peak hours), Twelfth Avenue at West 54<sup>th</sup> Street (in the PM peak hour) and Twelfth Avenue at West 52<sup>nd</sup> Street (in the AM and PM peak hours). At one of these intersections (Twelfth Avenue and West 56<sup>th</sup> Street) mitigation has been proposed and that mitigation is currently being reviewed by the New York State Department of Transportation (NYSDOT). However, if NYSDOT decides to not implement the mitigation measure proposed for this intersection, then the significant impacts would remain.

Measures to mitigate project-generated significant adverse traffic impacts would consist of minor adjustments to signal timing in order to increase green time for impacted movements, daylighting intersections (i.e., changing parking regulations to prohibit parking near some intersections during certain peak time periods), installing a new traffic signal and converting West 59<sup>th</sup> Street between West End Avenue and Amsterdam Avenue to one-way westbound from two-way operation. The operational changes proposed for each intersection are discussed below.

*Twelfth Avenue Northbound Service Road and West 59<sup>th</sup> Street:* This is an unsignalized intersection of two-way West 59<sup>th</sup> Street and the one-way Twelfth Avenue northbound service road. The northbound approach at this intersection would be impacted during all four peak hours. The proposed mitigation at this intersection is to introduce a new 90 second traffic signal allowing the northbound

phase to have 55 seconds of the cycle length (which includes five seconds for the yellow and all red) and the eastbound phase to have 35 seconds of the cycle length.

*Twelfth Avenue and West 57<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 57<sup>th</sup> Street and the two-way (north-south) Twelfth Avenue. The northbound approach (service road) would be impacted during the weekday AM peak hour. The proposed mitigation at this intersection is to transfer one second of green time from the westbound only phase to the northbound only phase during the AM peak period.

*Twelfth Avenue and West 56<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 56<sup>th</sup> Street and the two-way (north-south) Twelfth Avenue. The northbound approach would be impacted during the weekday AM and PM peak periods while the southbound approach would be impacted during the weekday AM, midday, PM and Saturday midday peak periods. The proposed mitigation at this intersection is to transfer three seconds of green time from the northbound only phase to the southbound only phase during the weekday midday and Saturday midday periods, which would fully mitigate the significant adverse impacts during these peak hours. However, the significant adverse impacts to the northbound and southbound approaches during the weekday AM and PM peak hours would remain unmitigated. NYSDOT is currently reviewing additional proposed mitigation measures that consist of removing prohibitive striping along the eastside of the northbound approach. The removal of this striping would allow for a fifth northbound travel lane, eliminating the significant impact at this location. However, if NYSDOT decides to not implement this mitigation measure, then the significant impact would remain.

*Twelfth Avenue and West 54<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 54<sup>th</sup> Street and the two-way (north-south) Twelfth Avenue. West 54<sup>th</sup> Street is only two-way between Eleventh and Twelfth Avenues. During the weekday PM peak hour, the northbound approach would be impacted. Shifting one second of green time from the current southbound left and westbound right-turn phase to the north-south phase during the PM peak period could help to mitigate the impact, but does not fully mitigate this significant adverse impact. With the proposed mitigation measures the impacts at this intersection would only be partially mitigated.

*Twelfth Avenue and West 52<sup>nd</sup> Street:* This intersection consists of the one-way eastbound West 52<sup>nd</sup> Street and the two-way (north-south) Twelfth Avenue. Without mitigation, the northbound approach would be impacted during the weekday AM, midday, PM and Saturday midday peak hours. The proposed mitigation at this intersection is to transfer two seconds from the eastbound only phase to the north-south phase during the weekday midday period and transfer one second from the eastbound only phase to the north-south phase during the Saturday midday peak hour, fully mitigating the significant adverse impacts during these peak hours. However, the significant adverse impacts to the

northbound approach during the weekday AM and PM peak hours would remain unmitigated. With the proposed mitigation measures, the impacts at this intersection during the AM and PM peak hours would be partially mitigated, and the impacts at this intersection during the midday and Saturday midday would be fully mitigated.

*Twelfth Avenue and West 42<sup>nd</sup> Street:* This intersection consists of the two-way (east-west) West 42<sup>nd</sup> Street and the two-way (north-south) Twelfth Avenue. Without mitigation, the northbound approach would be impacted in the weekday AM, midday, and Saturday midday peak hours. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the north-south phase during the weekday AM, and two seconds of green time from the east-west phase to the north-south phase during the midday and Saturday midday peak periods.

*Twelfth Avenue and West 41<sup>st</sup> Street:* This intersection consists of the one-way westbound West 41<sup>st</sup> Street and the two-way (north-south) Twelfth Avenue. West 41<sup>st</sup> Street also has eastbound traffic that exits the Pier 81 parking lot. Without mitigation, the northbound approach would be impacted in the weekday AM, midday and Saturday midday peak hours and the southbound approach would also be impacted during the AM and Saturday midday peak hours. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the north-south phase during the weekday midday peak period and to transfer three seconds of green time during the weekday AM and two seconds during the Saturday midday peak periods.

*Twelfth Avenue and West 37<sup>th</sup> Street:* This intersection consists of the one-way eastbound West 37<sup>th</sup> Street (from the ferry terminal) and the two-way (north-south) Twelfth Avenue. Without mitigation, the southbound approach would be impacted in the weekday AM, midday and Saturday midday peak hours. The proposed mitigation at this intersection would transfer three seconds of green time from the eastbound only phase to the north-south phase during the weekday AM and Saturday midday peak periods, with one second transferred during the midday peak period.

*Riverside Drive and West 79<sup>th</sup> Street:* This intersection consists of the two-way (north south) Riverside Drive and the two-way (east-west) West 79<sup>th</sup> Street. Without mitigation, the southbound left-turn movement would be impacted in the weekday AM peak hour. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the southbound phase during the weekday AM peak hour.

*Riverside Drive and West 72<sup>nd</sup> Street:* This intersection consists of the two-way (north-south) Riverside Drive and the two-way (east-west) West 72<sup>nd</sup> Street. Without mitigation, the southbound approach would be impacted in the Saturday midday peak hour. The proposed mitigation at this intersection would transfer two seconds of green time from the east-west phase to the southbound and westbound phases during the Saturday midday peak period.

*Riverside Boulevard and West 70<sup>th</sup> Street:* This unsignalized intersection consists of the two-way (north-south) Riverside Boulevard and the one-way westbound West 70<sup>th</sup> Street. Without mitigation, the northbound approach would be impacted in the weekday PM peak hour. The PM peak hour impact could be mitigated by implementing a No Standing regulation for 100 feet, along the east curb of the northbound approach during the PM peak period (weekday evenings between 4PM-7PM).

*West End Avenue and West 79<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 79<sup>th</sup> Street and the two-way (north-south) West End Avenue. Without mitigation, the northbound approach would be impacted in the weekday PM peak hour. The PM peak hour impact could be mitigated by restriping the northbound approach to one 11 foot left-through lane and one 19 foot through-right lane with parking.

*West End Avenue and West 72<sup>nd</sup> Street:* This intersection consists of the two-way (east-west) West 72<sup>nd</sup> Street and the two-way (north-south) West End Avenue. Without mitigation, the westbound approach would be impacted in the weekday AM and midday peak periods. The proposed mitigation at this intersection would transfer one second of green time from the north-south phase to the east-west phase during the weekday AM peak period, and also transferring one second of green time from the east-west phase to the north-south phase during the weekday midday peak period.

*West End Avenue and West 70<sup>th</sup> Street:* This intersection consists of the two-way West 70<sup>th</sup> Street (to the east) and the two-way (north-south) West End Avenue. Without mitigation, the southbound approach would be impacted in the weekday PM and Saturday midday peak hours. The proposed mitigation at this intersection would transfer two seconds of green time from the eastbound phase to the north-south phase during the weekday PM and Saturday midday peak periods.

*West End Avenue and West 66<sup>th</sup> Street:* This intersection consists of the two-way West 66<sup>th</sup> Street (to the west) and the two-way (north-south) West End Avenue. Without mitigation, the westbound left turn lane group would be impacted in the weekday AM peak hour. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the north-southbound phase during the weekday AM peak period.

*West End Avenue and West 59<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 59<sup>th</sup> Street and the two-way (north-south) West End Avenue. Without mitigation, the westbound approach would be impacted in the weekday AM, midday, PM and Saturday midday peak hours. The proposed mitigation at this intersection is to convert the two-way operation of West 59<sup>th</sup> Street between West End Avenue and Amsterdam Avenue to one-way westbound operation along with transferring three seconds of green time from the north-south phase to the east-west phase during the weekday AM peak hour periods. West 59<sup>th</sup> Street would be restriped to include one 13-foot shared through-right turn lane and one 22-foot left turn lane with parking.

*Eleventh Avenue and West 57<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 57<sup>th</sup> Street and the two-way (north-south) Eleventh Avenue. Without mitigation, the southbound left-turn movement would be impacted in the weekday AM peak hour. The AM peak hour impacts could be mitigated by implementing a No Standing regulation for 100 feet, along the east curb of the northbound approach during the AM peak period (weekday mornings between 7AM-10AM). The existing parking regulation along the east side of the northbound approach is “No Parking Except NYP Plates,” therefore approximately two New York press parking spaces would be eliminated during the weekday AM period between 7AM-10AM with the proposed parking regulation change. Additionally, impacts could be mitigated by changing the northbound approach from one-left turn lane and two through-right lanes to one left turn lane and three through-right lanes during the weekday AM peak period.

*Amsterdam Avenue and West 59<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 59<sup>th</sup> Street and the one-way northbound Amsterdam Avenue. Without mitigation, the eastbound movement would be impacted in the weekday AM peak hour. The proposed mitigation at this intersection would eliminate the eastbound left turn.

*Tenth Avenue and West 57<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 57<sup>th</sup> Street and the one-way northbound Tenth Avenue. Without mitigation, the eastbound approach would be impacted in the weekday AM peak hour. The proposed mitigation at this intersection would transfer one second of green time from the northbound phase to the east-west phase during the weekday AM peak period.

*Columbus Avenue and West 66<sup>th</sup> Street:* This intersection consists of the one-way westbound West 66<sup>th</sup> Street and the one-way southbound Columbus Avenue. Without mitigation, the southbound approach would be impacted in the weekday midday, and PM peak periods as well as Saturday midday peak hours. The proposed mitigation at this intersection would transfer one second of green time from the westbound only phase to the southbound only phase during the weekday midday, PM and Saturday midday peak hours.

*Columbus Avenue and West 60<sup>th</sup> Street:* This intersection consists of the one-way eastbound West 60<sup>th</sup> Street and the one-way southbound Columbus Avenue. Without mitigation, the eastbound right turn movement would be impacted in the weekday AM, midday, and PM peak periods as well as Saturday midday peak hours. The proposed mitigation at this intersection would transfer two seconds of green time from the southbound only phase to the eastbound only phase during the weekday AM peak hours and transfer three seconds of green time during the midday, PM and Saturday midday periods.

*Ninth Avenue and West 57<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 57<sup>th</sup> Street and the one-way southbound Ninth Avenue. Without mitigation, the eastbound approach would be impacted in the weekday AM, midday, and PM peak hours, the westbound left turn would be impacted in the

weekday AM and the westbound through movement would be impacted in the midday, PM, and Saturday midday peak hours. The weekday AM, midday, PM and Saturday midday peak period impact could be mitigated by transferring one second of green time from the southbound only phase to the east-west phase during the weekday AM peak period and transferring two seconds of green time from the southbound only phase to the east-west phase in the weekday midday, weekday PM and Saturday midday peak periods.

*Central Park West and West 72<sup>nd</sup> Street:* This intersection consists of the two-way (east-west) West 72<sup>nd</sup> Street and the two-way (north-south) Central Park West. Without mitigation, the northbound approach would be impacted in the weekday midday peak hour. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the north-south phase during the weekday midday peak period.

*Central Park West and West 66<sup>th</sup> Street:* This intersection consists of the two-way (east-west) West 66<sup>th</sup> Street and the two-way (north-south) Central Park West. Without mitigation, the westbound through movement would be impacted in the weekday AM, midday, PM and Saturday midday peak periods and the southbound approach would be impacted in the weekday PM peak hour. The proposed mitigation at this intersection would transfer one second of green time from the east-west phase to the north-south phase during the weekday AM, midday, PM and Saturday midday peak periods. Additional mitigation at this intersection consists of implementing a No Standing Anytime regulation for 125 feet along the west curb of the southbound approach and changing the southbound approach from two through-right lanes to one right-turn lane and two through lanes. In addition, the south curb of West 66<sup>th</sup> Street is proposed to include No Standing Anytime for 40 feet west of the intersection.

*Implementation of Traffic Mitigation:* Upon completion of Buildings 2 and 5, considered to be the first part of the project, approximately 73 percent of the total vehicle trip demand projected in the future with the proposed development would occur. Therefore, all practicable mitigation measures would need to be implemented upon completion of these two buildings. Riverside Boulevard between West 59<sup>th</sup> and West 61<sup>st</sup> streets is not expected to become an operational street until the proposed project is completed in full. Consequently, mitigation measures proposed for intersections at these locations would not be implemented until such time as the street becomes operational and functions as a through street.

As part of the traffic mitigation, the project sponsor has committed to conduct a traffic monitoring program (TMP). Such monitoring will be conducted in two phases: at an interim milestone and upon completion (full buildout) of the Proposed Project. The project sponsor will submit for the NYC Department of Transportation (NYCDOT) review and approval a TMP for a proposed scope for the monitoring of the interim and full buildout conditions. The Restrictive Declaration will include provisions necessary to implement this measure.

*Transit – Public Bus Service*

According to current New York City Transit (NYCT) guidelines, increases in bus load levels to above their maximum capacity at any load point is considered a significant impact as it would necessitate the addition of more bus service along that route. With the proposed project, eastbound M31 and M57 local bus service would be significantly adversely impacted by project-generated demand in the AM peak hour, and northbound M11 and westbound M31 and M57 service would be significantly impacted in the PM peak hour. In the AM peak hour, eastbound M31 and M57 buses would be operating with capacity shortfalls of 11 spaces and 143 spaces, respectively. In the PM peak hour, northbound M11 service would operate with a capacity shortfall of 36 spaces, while westbound M31 and M57 buses would operate with capacity shortfalls of 95 spaces and 207 spaces, respectively.

If the M31 route were modified to better serve the project site (at West 59<sup>th</sup> Street between Twelfth Avenue and West End Avenue), it is expected that passengers using the M57 to travel to the Columbus Circle subway station would use either the M31 or the M57. As a result, subway riders utilizing the buses were assigned to both bus routes as opposed to solely the M57, which would be the case before the M31 route modification. However, the implementation of the M31 route modification would result in the passengers who currently access the bus near the western terminal of the route having to walk three additional blocks to access the M31 bus route. NYCT has stated that they would extend the M31 bus to the project site contingent upon installation of a bus stop and necessary pedestrian control measures to safely access the bus stop along West 59<sup>th</sup> Street.

Although the M31 route modification would better serve the project site, it would not fully mitigate the transit bus impacts. To mitigate the impacts in full would require increase bus service on both the M57 and modified M31 routes by the addition of two buses to both the eastbound M31 and M57 routes in the AM peak hour and the addition of three buses to both the westbound M31 and M57 routes in the PM peak hour. The general policy of NYCT is to provide additional bus service where demand warrants, taking into account financial and operational constraints. Based on NYCT's ongoing passenger monitoring program, comprehensive service plans are generated to respond to specific known needs with capital and/or operational improvements where fiscally feasible and operationally practicable. NYCT's capital program is developed on a five-year cycle; through this program, expansion of bus services would be provided as needs are determined, subject to operational and financial feasibility.

### *Pedestrians*

The proposed project would create new pedestrian demand along the West 60th Street corridor between the project site and the 59th Street-Columbus Circle subway station and that these new demands would result in significant adverse impacts at a total of five crosswalks in the project area.

Through a combination of crosswalk widening and adjusting signal timing as detailed below, all the proposed project's significant adverse impacts at

crosswalks would be mitigated. Furthermore, as stated above under “Traffic,” the project sponsor has committed to conduct a traffic monitoring program (TMP). This TMP will also include provisions for the monitoring of pedestrian conditions. The project sponsor will incur the costs associated with the implementation of crosswalk widenings (i.e., restriping and the relocation of structures such as street furniture and lamp posts that may impede pedestrian flow, to the extent relocation is required by NYCDOT at the time of implementation). These mitigation measures would be implemented in accordance with the project’s Restrictive Declaration.

*North Crosswalk on Amsterdam Avenue at West 60<sup>th</sup> Street:* Pedestrian demand from the proposed project would significantly adversely impact the north crosswalk on Amsterdam Avenue at West 60<sup>th</sup> Street in the AM and PM peak hours. To address these impacts, it is proposed to widen this crosswalk to 16.9 feet in width from 12.8 feet in width. Additionally, a signal timing change would transfer one second of green time from the northbound phase to the east/west phase at this location during the AM peak period and four seconds of green time from the northbound phase to the east/west phase at this location during the PM peak period.

*South Crosswalk on Amsterdam Avenue at West 60<sup>th</sup> Street:* Pedestrian demand from the proposed project would significantly adversely impact the south crosswalk on Amsterdam Avenue at West 60<sup>th</sup> Street in the weekday AM and PM peak hours and Saturday midday peak hour. To address these impacts, it is proposed to widen this crosswalk to 15.3 feet in width from 12 feet in width. Additionally, a signal timing change would transfer one second of green time from the northbound phase to the east/west phase at this location during the AM peak period, four seconds of green time from the northbound phase to the east/west phase at this location during the PM peak period, and two seconds of green time from the northbound phase to the east/west phase at this location during the Saturday midday peak period.

*North Crosswalk on Columbus Avenue at West 60<sup>th</sup> Street:* Pedestrian demand from the proposed project would significantly adversely impact the north crosswalk on Columbus Avenue at West 60<sup>th</sup> Street in the weekday AM and PM peak hours and the Saturday midday peak hour. To address these impacts, it is proposed to widen this crosswalk to 17.6 feet in width from 15 feet in width. Additionally, a signal timing change would transfer four seconds of green time from the southbound phase to the east/west phase at this location during the AM and PM peak periods and three seconds of green time from the southbound phase to the east/west phase at this location during the Saturday midday peak period.

*South Crosswalk on Columbus Avenue at West 60<sup>th</sup> Street:* Pedestrian demand from the proposed project would significantly adversely impact the south crosswalk on Columbus Avenue at West 60<sup>th</sup> Street in the weekday AM, midday and PM peak hours and the Saturday midday peak hour. To address these impacts, it is proposed to widen this crosswalk to 15.8 feet in width from 12 feet in width.

Additionally, a signal timing change would transfer four seconds of green time from the southbound phase to the east/west phase at this location during the AM and PM peak periods and three seconds of green time from the southbound phase to the east/west phase at this location during the weekday midday and Saturday midday peak periods.

*West Crosswalk on Columbus Avenue at West 60<sup>th</sup> Street:* The proposed mitigation at the intersection of Columbus Avenue and West 60<sup>th</sup> Street includes the widening of the west crosswalk to 14 feet in width from 13 feet in width. This widening would increase the average square feet per pedestrian, which would be reduced by the proposed signal timing changes for both traffic and pedestrian mitigation during all periods, and would avoid this crosswalk from becoming impacted due to the signal timing adjustments of four seconds of green time from the southbound phase to the east/west phase at this location during the AM and PM peak periods and three seconds of green time from the southbound phase to the east/west phase at this location during the weekday midday and Saturday midday peak periods.

*North Crosswalk on West End Avenue at West 59<sup>th</sup> Street:* Pedestrian demand from the proposed project would significantly adversely impact the north crosswalk on West End Avenue at West 59<sup>th</sup> Street in the AM, PM and Saturday midday peak hours. The proposed traffic mitigation measures for this intersection include a signal timing change that would transfer 3 seconds from the north/south phase to the east/west phase during the AM peak period, and the conversion of West 59<sup>th</sup> Street between Amsterdam Avenue and West End Avenue to a one-way westbound from a two-way operation. Additionally, it is proposed to widen this crosswalk to 12.5 feet in width from 10.8 feet in width.

#### *Construction Traffic*

Significant adverse traffic impacts due to construction are predicted to occur at one intersection during the 6:00-7:00 AM peak hour and three intersections during the 3:00 – 4:00 PM peak hour. A combination of early implementation (i.e., during the construction period) of the project traffic mitigation strategies described above along with temporary mitigation strategies for construction proposed for the area adjacent to the project site, the construction-related significant traffic impacts at the three intersections cited above would be fully mitigated.

*Ninth Avenue and West 57<sup>th</sup> Street:* Early implementation of proposed operational traffic mitigation would fully mitigate the PM peak hour construction traffic impact at this location. Proposed mitigation measures would include transferring three seconds of green time from the southbound-only phase to the east-west phase during the weekday PM peak period.

*Columbus Avenue and West 60<sup>th</sup> Street:* Early implementation of proposed operational traffic mitigation would also fully mitigate the expected PM peak hour construction traffic impact at this location. Mitigation at this intersection

would consist of transferring three seconds of green time from the southbound phase to the east-west phase during the weekday PM period.

*West End Avenue and West 59<sup>th</sup> Street:* Early implementation of a portion of the proposed operational traffic mitigation along with the implementation of temporary construction mitigation would fully mitigate the expected AM and PM peak hour traffic impacts at this location. Mitigation at this intersection would include the conversion of West 59<sup>th</sup> Street between Amsterdam Avenue and West End Avenue into a one way westbound street. A temporary construction mitigation measure at this intersection would consist of implementing a No Standing Anytime regulation for 100 feet along the south curb of the eastbound approach to allow for two travel lanes: one 12-foot-wide eastbound left-turn only lane and one 11-foot-wide right turn lane. The westbound approach would allow for two travel lanes: one 14-foot-wide westbound left-turn only lane and one 13 foot wide thru/right turn lane. Mitigation at this intersection would include also the early implementation of the transfer of three seconds of green time from the north-south phase to the east-west phase in the AM peak period. Another temporary construction mitigation measure at this intersection would include the transfer of two seconds of green time from the north-south phase to the east-west phase in the PM peak period.

#### *Construction Noise*

Construction activities would result in a significant adverse noise impact at receptor locations A1, A2, B2, C, D, E, F, H1, N1, N2, O, Q, R, U, and V with the podium approach and at receptor locations A2, C, D, E, N1, N2, U, and V with the individual basement approach. However, with the exception of receptors B2, all receptor locations have double-glazed windows and have some form of alternative ventilation (i.e., central air conditioning or PTAC units), which would provide a significant amount of sound attenuation, and would result in interior noise levels during much of the time when project-related construction activities are occurring that are below 45 dBA L<sub>10</sub> (the CEQR acceptable interior noise level criteria).

Receptor site B2 (i.e., the corner building at Amsterdam Houses), has double-glazed windows and some tenants have installed air conditioning units on some windows. To maintain an interior L<sub>10(1)</sub> noise level of 45 dBA (the CEQR acceptable interior noise level criteria), a minimum of 25-30 dBA window/wall attenuation would be required. At locations on this building where significant noise impacts are predicted to occur, if the podium approach is utilized, the project sponsor would provide window air conditioning units to mitigate these impacts (provision for these mitigation measures will be included in the Restrictive Declaration). With the existing double-glazed windows and the alternative ventilation (provided by the project sponsor), interior noise levels during much, if not all, of the time when project construction activities are taking place, would be expected to be below 45 dBA L<sub>10(1)</sub> noise level (the CEQR acceptable interior noise level criteria).

With regard to the residential terrace locations (i.e., receptors A1, A2, D, F, H1, N1, and N2 for the podium approach and receptors A2, D, N1, and N2 for the individual basement approach), the highest  $L_{10(1)}$  noise levels would range from approximately 73 to 79 dBA during some peak periods of construction activity. While even without construction, noise levels at these terraces would exceed the CEQR acceptable range (55 dBA  $L_{10(1)}$ ) for an outdoor area requiring serenity and quiet, during the weekday daytime time periods when construction activities are predicted to significantly increase noise levels, construction activities would exacerbate these exceedances and result in significant adverse noise impacts at the terraces at these identified buildings. There are no feasible mitigation measures that could be implemented to eliminate the significant noise impacts at these locations.

As discussed in detail in the Consideration section of this report, the City Planning Commission has determined to make certain modifications to the proposed project. A Technical Memorandum was prepared and issued on October 26, 2010 which determines that such modifications would not have the potential to result in new or different significant adverse impacts from those identified in the FSEIS.

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

The original special permit application (C 100296 ZSM), in conjunction with the related applications (C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, and C 100297 ZSM), was certified as complete by the Department of City Planning on May 24, 2010 and was duly referred to Manhattan Community Board 7 (CB7) and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b). The applications for the related non-ULURP applications (N 100294 ZRM, N 100295 ZRM, N 100298 ZAM, N 100286 ZCM, N 100299 ZCM, N 100300 ZCM, and M 920358D ZSM) were also referred to CB7 and the Manhattan Borough President for information and review. On August 20, 2010, pursuant to Section 2-06(c)(1) of the ULURP rules, the applicant filed a modified special permit application (C 100296A ZSM) and zoning text amendment application (N 100294A ZRM) for public hearing and consideration by the City Planning Commission. On October 27, 2010, the applicant withdrew related applications C 100296 ZSM and N 100294 ZRM and submitted a revised version of the modified special permit application C 100296A ZSM.

### **Community Board Public Hearing**

Community Board 7 held a public hearing on the original special permit application (C 100296 ZSM) and the related applications (N 100294 ZRM, N 100295 ZRM, C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, C 100297 ZSM, N 100298 ZAM, N 100286 ZCM, N 100299 ZCM, N 100300 ZCM, and M 920358D ZSM) on July 22, 2010 and on that date, by a vote of 35 to 3, adopted a report recommending conditional disapproval of the application. The full report is attached. The Community Board's summary of the recommendation was as follows:

### **Appendix A – Summary of MCB7 Recommendations**

#### **1. Givens**

**Public School:** The application should be modified to include a new 6-section-per-grade pre-K through 8 school of at least 151,598 SF fully fitted out, built in the first

building constructed at the site, and fully funded by the Developer.

**Affordable Housing:** The application should be modified to include 30% mixed-income permanently affordable housing, primarily integrated within the site.

**Sustainability:** The application should be modified to incorporate the highest available LEED certification standards and the inclusion of green technologies that pay back within 10 years. The Developer should immediately retain a LEED-accredited professional to join the design and construction team.

## 2. Site Plan Modifications

**Restrict total density to 2.4 Million SF** to meet 1992 approvals and achieve MCB7's Lower Density Build Alternative. **Clarify density measurements during the ULURP process.**

**Remove Building 4** to reduce density, expand useful Public Open Space, provide for active recreation, increase light and air, reduce shadow and wind, and provide an engaging relationship with West 59<sup>th</sup> Street and the historic powerhouse. Removal of Building 4 would achieve approximately 2/3 of the density reduction recommended by MCB7.

**Bring the Site to Grade** (eliminate the platform) to make the Public Open Space visible and accessible from West 59<sup>th</sup> Street and from Riverside Boulevard, enhance the West 59<sup>th</sup> Street corridor to and from Riverside Park South, connect the site to the historic powerhouse, and increase mutual visibility between Public Open Space and sidewalks, making them more inviting, safer, and less isolated.

**Extend 60<sup>th</sup> Street to Riverside Boulevard**, either as a pedestrian or limited vehicular way, angled along the front of Building 1, to expand Public Open Space, break up the superblock, draw in pedestrian traffic, provide a street front for the Building 1 lobby, and facilitate circulation within and through the site.

**Surround the Public Open Space with publicly accessible streets or broad pathways**, either for pedestrian or limited vehicular use, to improve circulation, delineate public from private space, drive pedestrian traffic to public spaces, and enable building lobbies to open onto public ways.

**"Straighten" Freedom Place South** to expand the Public Open Space, reinforce the city grid, and provide visual perspectives of the historic powerhouse.

**Modify the Footprint of Building 5** to accommodate the "straightening" of Freedom Place South, expand the Public Open Space, further reduce density, reinforce the city grid, and provide visual perspectives of the historic powerhouse.

**Eliminate the Private Driveway** that serves Building 3 to expand Public Open Space and reinforce the city grid.

**Remove the 30-foot curb cut** for the ramp to the lower level designed to serve the auto service center.

**Widen sidewalks along West 59<sup>th</sup>, 60<sup>th</sup> and 61<sup>st</sup> Streets** to invite pedestrian traffic and signal access to the Public Open Space and to Riverside Park South, include bicycle parking to encourage cyclists to visit and shop.

**Position and Configure Retail Spaces and Destination Uses** along the site perimeter, particularly along West End Avenue and West 59<sup>th</sup> Street, close to the street line and at sidewalk elevation, varying sizes of stores to invite pedestrian traffic and support a mixture of large destination retail and small business retail that best serves the community.

**Include breaks in the faceted façade of the buildings** to reflect traditional set-backs and minimize the canyon-like effect on West 61<sup>st</sup> Street, a narrow residential way.

**Require further MCB7 and City Planning review and approval** once a general massing and specific design for these buildings is set and before the NYC Department of Buildings issues permits, if there are any significant departures from the approved schematic design of the buildings or deviations from the footprint, shape, contour, size, height, bulk, massing, or relationship between the buildings.

### 3. Site Program Recommendations

**Eliminate the above-ground auto showroom and replace** with relevant and vibrant retail that attracts customers and visitors.

**Eliminate the below-ground repair center and replace** with relevant and vibrant retail that attracts customers and visitors.

**Include facilities for affordable childcare** to address the impact of new families joining the neighborhood.

**Include a playground for children** that could also be used by the public school.

**Accommodate a broad variety of engaging and useful retail** that serves the local community.

**Work with the Department of Small Business Services** to create designs and incentives that attract viable small businesses to the site.

### 4. Circulation and Transportation

**Incorporate specific plans to accommodate and manage a substantial influx of vehicular, bicycle, and pedestrian traffic along West 59<sup>th</sup> Street.**

**Incorporate the integrative potential of West 59<sup>th</sup> Street,** rather than

exacerbating its use as a service corridor.

**Construct Riverside Boulevard first**, completing the connection from West 72<sup>nd</sup> Street to West 59<sup>th</sup> Street.

**Analyze traffic impacts with updated data** that reflect recent explosive growth in the area surrounding the Project.

**Include pedestrian, cyclist and vehicular traffic safety designs both inside and outside the site** (including curb extensions, midblock chicanes, planted areas with seating, highly visible crosswalks, signals with leading pedestrian intervals, and bike lanes) **rather than relying on signage or signals alone.**

**Study (in conjunction with MCB7 and NYC DOT) the traffic directions of roads surrounding the site**, including West End Avenue, West 59<sup>th</sup>, West 60<sup>th</sup>, West 61<sup>st</sup> Streets, Riverside Boulevard, and Freedom Place South.

**Move the pedestrian refuge planned for West 61<sup>st</sup> Street and West End Avenue to West 62<sup>nd</sup> Street and West End Avenue.**

**Take immediate steps to address traffic safety concerns of residents** in Riverside South buildings along Riverside Boulevard and Freedom Place.

**Optimize loading/unloading and circulation below-ground** to minimize curb cuts and surface truck traffic.

**Limit underground parking to 1000 spaces** in a **single garage** that serves the entire site, to optimize underground loading/unloading and minimize surface traffic.

**Include car-sharing facility below-ground on the site.**

**Include a car rental facility below-ground on the site** that serves the community and supports local residents who don't own cars.

**Include plug-in connections for electric cars.**

**Request added capacities and routing adjustments for the M57, M31, M66 and M72 buses**, to better serve the site.

**Make substantial investments in local infrastructure** to offset the significant influx in traffic to be generated by above-ground and below-ground uses of the site.

## 5. Mitigations and Community Investments

### a. Active Open Space

**Create Additional Public Open Space**, by **Removing Building 4**. Create significant

active recreation facilities in the additional open space, including a playground for children.

**b. Riverside Park South**

**Contribute significantly toward completion of the permanent Riverside Park South**, and toward the maintenance, remediation of deteriorated conditions, capital improvements and other park needs. As with the existing Restrictive Declaration, there should be provision for MCB7 to participate in the planning process for each element of the Park.

**c. Construction Coordination**

**Make periodic reports to the Landmarks Preservation Commission** staff, and provide for vigilant oversight by the Department of Buildings.

**Establish a Construction Coordinating Group**, under the auspices of MCB7, and add this requirement to the General Construction Plans and the Restrictive Declaration.

**d. Public School**

**Build and outfit a 151,598 SF public school.**

**e. Light Rail**

**Investigate the opportunity to access the light rail easement on the site** to make mass transit more accessible to local residents.

**f. Job Training and Employment**

**Provide a job training program for local residents.**

**Ensure that residents of Community District 7 fill at least 20% of all jobs related to construction and operation of the site.**

**g. Community Meeting Space**

**Construct and make available in perpetuity a meeting space**, outfitted with state-of-the-art audiovisual equipment and seating for up to 200 people, for use by organizations of the Upper West Side **at no cost.**

Along with the report, the Community Board adopted the following resolutions:

Zoning Text Amendment (N 100294 ZRM)

The Community Board, by a vote of 34 to two with one abstention, adopted a resolution recommending approval of the application.

Zoning Text Amendment (N 100295 ZRM)

The Community Board, by a vote of 36 to zero with one abstention, adopted a resolution recommending disapproval of the application. The Community Board's resolution stated, in part:

WHEREAS, MCB7 strongly believes that the Riverside Center development should set a high standard for environmental sustainability and responsibility, as well as architectural and urban design; and  
WHEREAS, MCB7 desires a mix of street-enlivening, neighborhood-oriented and more broadly attractive retail uses; and  
WHEREAS, an automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor to contribute to a lively streetscape in any way;

Special permit to modify bulk regulations (C 100296 ZSM)

The Community Board, by a vote of 34 to three with one abstention, adopted a resolution recommending disapproval of the application subject to the condition that the Board would approve the application if "Building 4 is eliminated from the project and the footprint of Building 5 is modified in accordance with the drawings of MCB7's consultants Michael Kwartler & Associates and BFJ Planning, and the proposal for the Project is modified in accordance with MCB7's *July 2010 Report on Riverside Center*."

Special Permit for Development in a Railroad/Transit Right-of-Way or Yard (C 100287 ZSM)

The Community Board, by a vote of 35 to two with one abstention, adopted a resolution recommending disapproval of the application subject to the condition that the Board "would approve the application if Section 74-681(c)(4) were deleted and the project reference plane established at curb level."

Special Permit to Modify Use Regulations (C 100297 ZSM)

The Community Board, by a vote of 36 to two with one abstention, adopted a resolution recommending disapproval of the application. The Community Board's resolution stated, in part:

- WHEREAS, MCB7 strongly believes that the Riverside Center development should set a high standard for environmental sustainability and responsibility, as well as architectural and urban design; and
- WHEREAS, MCB7 desires a mix of street-enlivening, neighborhood-oriented and more broadly attractive retail uses; and
- WHEREAS, an automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor to contribute to a lively streetscape in any way;

Special Permit for a Public Parking Garage (C 100288 ZSM)

The Community Board, by a vote of 35 to two with one abstention, adopted a resolution recommending disapproval of the application subject to the condition that the Board "would approve a single, below-ground public parking garage, with 1000 spaces." The Community Board's resolution stated, in part:

- WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and
- WHEREAS, the applicant is proposing an 1800-space garage to serve the entire Riverside Center site (Parking Option "A") with 5 access points (i.e., one at each proposed building) on two levels (Subcellar #1 and Subcellar #2, both beneath the cellar level proposed for an automotive service center, which use MCB7 disapproves – see relevant resolutions); and
- WHEREAS, MCB7 prefers Parking Option "A" to Parking Option "B" (i.e., separate garages for each of the five buildings proposed for Riverside Center); and
- WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Blvd. & West 59<sup>th</sup> Street; and
- WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and
- WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for this site; and
- WHEREAS, MCB7 disagrees with the applicant's DSEIS analysis that 600 spaces are required to accommodate those who park in the garages and lots currently

on the site; and  
WHEREAS, MCB7 finds the accessory ratios used by the applicant in the DSEIS to be excessively high (i.e. approximately .5 spaces for each residential unit vs. .3 spaces per market-rate residential unit and .08 spaces per affordable unit on the Hudson Yards site);

Special Permit for a Public Parking Garage (C 100289 ZSM)

The Community Board, by a vote of 36 to one with one abstention, adopted a resolution recommending disapproval of the application. The Community Board's resolution stated, in part:

WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option "A" (i.e., a single garage serving the entire Riverside Center site) to Parking Option "B" (i.e., separate garages for each of the five buildings proposed for Riverside Center);

Special Permit for a Public Parking Garage (C 100290 ZSM)

The Community Board, by a vote of 36 to one with one abstention, adopted a resolution recommending disapproval of the application. The Community Board's resolution stated, in part:

WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-

space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

Special Permit for a Public Parking Garage (C 100291 ZSM)

The Community Board, by a vote of 36 to one with one abstention, adopted a resolution recommending disapproval of the application. The Community Board’s resolution stated, in part:

WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

Special Permit for a Public Parking Garage (C 100292 ZSM)

The Community Board, by a vote of 36 to one with one abstention, adopted a resolution recommending disapproval of the application. The Community Board’s resolution stated, in part:

WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street;

and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

Special Permit for a Public Parking Garage (C 100293 ZSM)

The Community Board, by a vote of 36 to one with one abstention, adopted a resolution recommending disapproval of the application. The Community Board’s resolution stated, in part:

WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

Authorization for a Curb Cut (N 100298 ZAM)

The Community Board, by a vote of 37 to zero with one abstention, adopted a resolution recommending approval of the application.

Commission Certifications for Curb Cuts (N 100299 ZCM)

The Community Board, by a vote of 32 to one with four abstentions, adopted a resolution recommending disapproval of the application subject to the condition that the Board “would approve an application to allow two additional curb cuts on West 59<sup>th</sup> Street.”

Commission Certifications for Curb Cuts (N 100286 ZCM)

The Community Board, by a vote of 36 to one, adopted a resolution recommending approval of the application.

Commission Certification to Modify Streetscape Regulations (N 100300 ZCM)

The Community Board, by a vote of 35 to zero with three abstentions, adopted a resolution recommending disapproval of the application subject to the condition that the Board would approve the application if “application N 100300 ZCM with regard to Building 3 and Building 5 is withdrawn.”

Modification of a Special Permit (M 920358D ZSM)

The Community Board, by a vote of 36 to two, adopted a resolution recommending disapproval of the application subject to the condition that the Board “would approve an application modified in accordance with the foregoing report and the drawings of MCB7’s consultants, Michael Kwartler & Associates and BFJ Planning.”

**Borough President Recommendation**

The original special permit application (C 100296 ZSM), in conjunction with the related applications (N 100294 ZRM, N 100295 ZRM, C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, C 100297 ZSM, N 100298 ZAM, N 100286 ZCM, N 100299 ZCM, N 100300 ZCM, and M 920358D ZSM), was considered by the Borough President, who issued a recommendation on August 31, 2010 recommending conditional disapproval of the applications. The full recommendation is attached. The Borough President’s recommendation stated, in part:

The Riverside Center development has the potential to either improve the neighborhood or to recreate the past mistakes of Riverside South. Significant environmental impacts are unmitigated, and many community concerns regarding the proposed design have not been addressed. Most important, the proposal fails to meet many of the findings of the proposed actions and, as such, does not warrant approval.

Therefore, the Manhattan Borough President recommends conditional disapproval of application M 920358 (D) ZSM (modification of the 1992 restrictive declaration) unless

the applicant reduces density, mitigates new impacts, and addresses outstanding impacts on the school system associated with the Riverside South large-scale development.

Further, the Manhattan Borough President recommends approval of application N 100294 (A) ZRM (text amendment to allow modification of outer courtyard regulations and to include the site in the Inclusionary Housing Program) as the action would allow the City Planning Commission greater flexibility to encourage interesting architectural design and will make 20 percent of the floor area permanently affordable housing.

Further, the Manhattan Borough President recommends conditional disapproval of application C 100296 (A) ZSM (large-scale development special permit) unless the total density is reduced; the amount of open space is increased; West 59<sup>th</sup> Street is activated; and the site is redesigned to prevent the open space from being cast in shadows and obscured from the public street. Without the proposed alterations, the applicant does not meet the findings that the application results in a better relationship between the development and the surrounding area than would otherwise be possible, and will thus benefit the occupants of the development, neighborhood, and the City; that the modifications will not obstruct light and air; or that the surrounding streets are adequate to handle resulting traffic flow. However, the Manhattan Borough President recognizes that the provision of inclusionary housing in this special permit is a positive development since the application's certification.

Further, the Manhattan Borough President recommends disapproval of applications N 100295 ZRM and C 100297 ZSM (text amendment and special permit for the automobile showroom and service center) as the service center will create or contribute to traffic congestion and is inconsistent with sound public policy by placing non-essential, semi-industrial uses in residential neighborhoods.

Further, the Manhattan Borough President recommends conditional disapproval of applications C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, and C 100293 ZSM (public parking garages) unless the public parking garage is limited to 1,100 spaces, which could be achieved by removing the lowest sub-cellar floor, as the proposed garage contributes to or creates serious traffic congestion and inhibits pedestrian flow (particularly on West 59<sup>th</sup> Street) and thus does not meet the required findings.

Further, the Manhattan Borough President recommends conditional disapproval of application C 100287 ZSM (construction over a railroad right-of-way) unless ADA-accessible entrances to the open space are provided at Riverside Boulevard and West 59<sup>th</sup> Street, and West 59<sup>th</sup> Street is brought to grade.

Further, the Manhattan Borough President recommends approval of applications N 100298 ZAM and N 100286 ZCM (curb cut on West 61<sup>st</sup> Street and West End Avenue) as they will be used for the extension of Freedom Place South and the West 60<sup>th</sup> Street, which will enhance the site's overall design;

Further, the Manhattan Borough President recommends conditional disapproval of application N 100299 ZCM and N 100300 ZCM (streetscape modifications) to allow multiple curb cuts on West 59<sup>th</sup> Street and waive streetscape requirements as the current

configuration negatively impacts West 59<sup>th</sup> Street and has the potential of creating unsafe, inactive conditions. The proposed treatment should be revisited to encourage active uses and bring a greater portion of West 59<sup>th</sup> Street to grade. Without such changes, the proposed actions will not enhance the site plan or enhance the design as compared to an as-of-right scenario.

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

On August 25, 2010 (Supplemental Calendar No. 12), the City Planning Commission scheduled September 15, 2010 for a public hearing on this special permit application (C 100296A ZSM). The hearing was duly held on September 15, 2010 (Calendar No. 28), in conjunction with the hearings on the related applications subject to a public hearing requirement under the City Charter (N 100294 ZRM, N 100294A ZRM, N 100295 ZRM, C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, C100296 ZSM, and C 100297 ZSM). There were 18 speakers in favor of the applications and 32 in opposition.

Seven of the speakers in favor of the application were representatives of the applicant who described the proposed project. The president of Extell Development Company enumerated what he identified as major public benefits of the project, including its site plan, architecture and open space, the proposed public school, affordable housing, and economic benefits for the City and State. He highlighted the costs involved in developing the site, in particular the cost of building site infrastructure, bridging over the existing Amtrak railroad tracks, and construction costs. He also discussed how the applicant had increased their commitment to provide affordable housing beyond the original Riverside South affordable obligations by agreeing to apply the City's Inclusionary Housing Program to the project. In reference to the applicant's decision to propose extending West 60<sup>th</sup> Street only partway through the site, the Extell president explained this choice as allowing for level rather than stepped or sloping streets and open space, which he contended would allow for a more integrated public place. He described the auto uses as a critical financial generator for the project and stressed that the project's neighborhood retail component would help to draw people into and through the site. He further stated that the reduction in density associated with the removal of Building 4, as recommended by the Community Board, would make the project financially infeasible.

Several members of the applicant’s design team spoke about the project’s site plan, architecture, and open space design. The design architect gave a conceptual overview of the project’s urban design framework, describing how a “theatrical sequence” of public spaces from West 60<sup>th</sup> Street to the central plaza and park-like open space is intended to draw people into and through the site. He also elaborated on the benefits, including unique views of the plaza and buildings, created by angling Freedom Place South to the west between West 60<sup>th</sup> and 59<sup>th</sup> streets and discussed how the presence of the Riverside Boulevard and Miller Highway viaducts drove the decision to raise the elevation of the western portion of the open space. The executive architect described in concept potential changes to the site plan along West 59<sup>th</sup> Street that are intended to improve the pedestrian experience by creating more active frontage and allowing views directly into the open space. The project’s landscape architects talked about the potential changes to 59<sup>th</sup> Street as well as potential changes to the western edge of the open space along Riverside Boulevard, focusing on how grade changes would affect pedestrian access. They noted that a children’s play area would be added to the plan in order to provide more active open space and strengthen the open space as a destination for neighborhood families. The landscape architects stated that the water scrim had been changed to a reflecting pool that would function as the focal point of the open space and a visual amenity. They also discussed the different functions of the lawn and meadow landscapes in the open space along with other issues, such as soil depth and wind mitigation, that informed the design of the open space.

The applicant’s environmental consultant summarized the conclusions of the project’s Draft Supplemental Environmental Impact Statement (DSEIS) as well as a technical memorandum that examined whether the recent updates to the CEQR Technical Manual and the revisions to the applicant’s affordable housing proposal would affect those conclusions. He also stated that the applicant was working with Con Edison to evaluate a fuel switching option for the combustion turbine located in the 59<sup>th</sup> Street Power House as an alternative to the emissions rerouting option identified in the DSEIS. The applicant’s co-land use counsel responded to the financial analysis of the project performed by the Regional Plan Association (see below), stating that this study failed to take into account important factors such as the time value of money and did not support

its assumptions about the increase in value attributed to the presence of the public school. He discussed the provisions in the existing Riverside South restrictive declaration that allow it to be modified and also described the new restrictive declaration that would add an “overlay” of provisions specific to the project site. He also stated that the school would be constructed in one of the first two buildings in the project.

Other speakers in favor of the proposed project included a former Deputy Manhattan Borough President, who testified that the existing parking uses on the site generate little economic activity and called on the Commission to facilitate the redevelopment of the site. A representative of the Real Estate Board of New York conveyed his organization’s support for the project and cited the economic benefits and public amenities that the development could provide. Other speakers, including the presidents of the condominium boards and two other residents of the Riverside South buildings the Rushmore and the Avery (80 and 100 Riverside Boulevard, respectively), expressed their support for the project, citing their desire to see amenities such as the proposed public open space, retail services, and the public school provided on the site, and expressed concern that the applicant could become overburdened with expensive obligations that would make development impossible. An architect who was one of the designers of the Riverside South plan commended the project’s design and site plan but stated that, in his opinion, it could be improved if one of the buildings were removed to allow more sunlight to reach the open space and to better integrate the 59<sup>th</sup> Street Power House with the development. The president of the Municipal Arts Society spoke favorably about the waterfront park that has been partially completed as part of Riverside South but encouraged the Commission to find a way to fund the relocation of the elevated Miller Highway into a tunnel, as contemplated by the 1992 Riverside South plan.

Speakers in opposition to the application included a number of representatives of Manhattan Community Board 7 (CB7). The Chair of CB7 referenced the work that the Community Board had done over the past several years to understand and develop the detailed recommendations contained in their report. He stated that, although CB7 welcomes development of the site, they believe that the applicant’s proposal fails to link the site with the waterfront and surrounding

neighborhoods. He emphasized that the site presents a unique opportunity “to turn this lackluster corner of our district into a vibrant and irresistible destination” but stated that some of the proposed street-level uses would deaden rather than activate the streetscape. He also expressed concern about the long-term impacts associated with the increase in population that the proposed project would generate. Another representative of CB7, a former Chair of the Board, reiterated the Community Board’s concern about grade separation between the open space and perimeter streets and noted her satisfaction that the applicant had proposed sloping the site along a portion of West 59<sup>th</sup> Street, which CB7 believes is a critical street in the area. She stated that the visual extension of West 60<sup>th</sup> Street in the form of a water scrim or reflecting pool was, in CB7’s opinion, unsuccessful and should be redesigned to prioritize pedestrian and possibly vehicular movement. She also said that the project’s retail uses should be located on West End Avenue and other major streets. She stated that the developer should have to demonstrate the need for the requested increase in density and that this need should be balanced with public planning goals.

Several CB7 speakers, including a former Chair of the Board and the Chair of CB7’s Youth, Education, and Libraries Committee, described the community’s serious concerns about overcrowding in local schools and expressed unease about the lack of assurances from the applicant and the City that the school would be built, and if built, would be built to its maximum proposed size. The Co-Chair of the Parks and Environment Committee noted that the Miller Highway has not yet been relocated; she also expressed concern about the additional demand for open space, particularly active open space, that would be created by the project and stated that CB7 was working with the Department of Parks and Recreation to identify ways that the active open space impact could be mitigated with additional funding for Riverside Park South. Another CB7 speaker maintained that green building technologies would add little incremental cost and should be incorporated into the project. A CB7 representative also addressed the Board’s concern that the proposed 1,800 public parking spaces is excessive and stated CB7’s preference for no more than 1,000 spaces in a single, integrated garage.

Several elected officials and their representatives spoke in opposition to the application. The City Council Member for the Sixth District, which includes the project site, complimented the Community Board on their extensive recommendation and expressed her support for their conclusions; she also complimented the applicant on their willingness to listen to community input and make changes. She stated that the project's proposed density is excessive and endorsed CB7's recommendation to remove a building from the plan. The Council Member stressed her belief that the larger-size school is essential and discussed affordable housing, opining that a larger commitment of 30 percent affordable housing would be necessary to ensure economic integration in the area and suggested that such an increase from the applicant's proposal could consist of off-site units. She also cited the redesigned public spaces at the Lincoln Center campus as a model for making the project's open space more open and welcoming to the public.

The Director of Land Use for the Manhattan Borough President stated that while the Borough President believes that redevelopment of the site is generally desirable, he is concerned that the proposed project turns its back on public streets with the placement of curb cuts, service entrances, and auto uses. He expressed the Borough President's concern that the project as certified would not provide adequate access for pedestrians and the disabled due to grade separation and that the open space would be negatively affected by shadows and insufficient visibility from surrounding streets. He also expressed the Borough President's view that the applicant had not demonstrated sufficient public benefit to justify the requested increase in density and that the applicant had not adequately addressed the demands that the proposal would place on infrastructure in the area, particularly public schools. Representatives of the US Representative for the Eighth Congressional District, the State Senator for the 29<sup>th</sup> Senate District, and the State Assemblymember for the 67<sup>th</sup> Assembly District stated that the prospective development represents an important opportunity for the West Side but expressed a number of concerns relating to the proposed density of the project and unmitigated impacts, the need for more public school capacity in the area, the need for affordable housing, and enhancing access to, and the public character of, the proposed open space.

Several representatives of the Coalition for a Livable West Side spoke in opposition to the proposed project and outlined a range of concerns including what the speakers characterized as excessive density and public parking, traffic, and inappropriately located curb cuts, and recommendations such as requiring the developer to fund the larger-size school, providing additional affordable housing, bringing the perimeter of the site to grade where separation is currently proposed, mapping West 60<sup>th</sup> Street and Freedom Place South as City streets, and eliminating the proposed auto uses. An architect affiliated with the Coalition described an alternative plan for the site. A representative of the Committee for Environmentally Sound Development stated that in view of global warming, tall buildings such those in the proposed project should not be constructed in a low-lying area. Other speakers in opposition included two members of the parents' associations of PS 199 and PS 87, who described problems resulting from what they identified as insufficient school capacity to meet local demand and urged that the larger-size school be required in the approvals. Other speakers discussed the need for more open space to serve this growing community and expressed concern about impacts associated with increased density, including traffic, obstructed views, demands on schools, and pedestrian crowding on sidewalks.

Several speakers in opposition stated that the proposed project should facilitate the construction of a Metro-North rail station on the site, citing a study by the Metropolitan Transportation Authority that identified the area around the project site as a superior location for a station if and when Metro-North service to Penn Station is established in the future. A representative of the Upper West Side Streets Renaissance Campaign stated her organization's opposition to the project and listed what she characterized as deficiencies of the proposed streetscape and circulation plan, including inadequate traffic management and bike infrastructure and grade separation between streets and open space.

A representative of the Riverside South Planning Corporation (RSPC) stated that the applicant should continue to be bound by several aspects of the 1992 approvals and restrictive declaration for Riverside South, including the limitation of density on the project site to 2.4 million square feet and the existing requirement to map West 60<sup>th</sup> Street through the site in the event that the

studio use is not constructed. The RSPC representative mentioned the provisions in the 1992 approvals regarding energy conservation measures for Riverside South buildings, which in his view the applicant has abandoned. He also urged the Commission to make approval of the application contingent upon the applicant constructing six blocks of the tunnel shell for the future relocation of the Miller Highway.

The Executive Director of Regional Plan Association (RPA) expressed RPA's opposition to increasing the density allowed on the site. He cited a financial analysis of the proposed project prepared by RPA that concluded that the requested increase in density and change in allowable uses on the site would significantly increase the potential profit available to the developer and stated that, if the increase in density is approved, the Commission should require that a portion of this increase in value be applied to the relocation of the highway. He also expressed RPA's support for locating a Metro-North station at the site should this prove to be feasible. Two other speakers, including a former Deputy Mayor for Policy and Planning, reviewed the history of the highway relocation proposal and urged the Commission to require the applicant to construct additional segments of the tunnel shell in order to make relocation more feasible in the future.

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

## **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This action, as revised and in conjunction with the related actions, was 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 09-002.

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 (C 100296A ZSM), as modified herein, in conjunction with the related applications for special permits (C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM, and C 100297 ZSM), as modified herein, zoning text amendments (N 100294A ZRM, N 100295 ZRM), authorization (N 100298 ZAM), Commission certifications (N 100286 ZCM, N 100299 ZCM, N 100300 ZCM), and modification of a previously approved special permit and restrictive declaration (M 920358D ZSM), is appropriate.

The Commission recognizes the importance of the project site as one of the last remaining large development sites on the West Side of Manhattan and also for its proximity to the Hudson River waterfront. In the 18 years since the Commission approved Riverside South, Hudson River Park and Riverside Park South have transformed the waterfront south of West 72<sup>nd</sup> Street into a major open space resource for the West Side and the City. The Commission observes that during the same period of time, facilitated in part by the development of Riverside South as well as several rezonings that allowed high-density mixed-use development, this area of the West Side has undergone a rapid transformation into a dense and thriving residential mixed-use neighborhood. While this growth has brought a large increase in population, including many families, to the area, it has not thus far been accompanied by commensurate growth in local retail services. In addition, the Commission notes that, due in part to factors as the prevalence of industrial, auto, studio, and warehouse uses, particularly along 11<sup>th</sup> Avenue to the south, the development of inward-focused superblocks facilitated by the Lincoln Square Urban Renewal Plan to the northeast and east, and the distance from the subway, the neighborhood still lacks a coherent focal point or spine that would serve as an animating public space and convenient concentration point for neighborhood services. The Commission concludes that the project site therefore presents a major opportunity to provide such a focal point and to strengthen the connection between the neighborhood and the waterfront.

The Commission acknowledges that the existing general large-scale development (GLSD) approvals, which allow a large-footprint entertainment production studio of up to 1.8 million square feet and do not permit residential use on the eastern two-thirds of the site, no longer represent the most desirable or appropriate uses for this area. The Commission further acknowledges that the approved GLSD site plan contains no public open space or internal streets and would continue the pattern of development along Riverside Boulevard that has done little to foster connections between the residential communities to the east and the waterfront and open space resources to the west. In addition, the current use of this eight-acre site for public parking and storage of commercial vehicles contributes little to the livability of the neighborhood and creates a major gap in the cityscape at a crucial location.

The applicant has proposed a new plan for a mixed-use development of approximately three million square feet of floor area in five high-rise buildings constructed over multiple below-grade levels and arranged around new streets and a series of linked public spaces. While the Commission believes that the proposed site plan is superior and the density and mix of uses are appropriate for the area, the Commission has identified several aspects of the proposal that warrant modification. Those modifications, adopted by the Commission as part of this approval, are discussed in detail below. The Commission is confident that the proposed development, as modified, will enhance the neighborhood with thoughtful site planning, distinctive and compelling architecture, well-designed open space, and other important amenities such as activated streets with retail services, a new public school and, assuming the developer proceeds as planned to maximize the development potential of the site, a significant amount of affordable housing.

The Commission believes the proposed project should be modified. The modifications are intended to ensure that an appropriate amount of public parking is provided on the site; that certain streets and public spaces in the development are enlivened by active ground-floor uses; and that the requested modification of the Inclusionary Housing Program's unit distribution requirements, the process for which is set forth in the project's restrictive declaration, is used

appropriately and to the minimum extent necessary to facilitate the successful implementation of the affordable housing plan. These modifications are as follows:

- The total maximum amount of public parking permitted on the site is limited to 1,260 spaces instead of the 1,800 spaces proposed by the applicant. The reasons for this modification are discussed in detail below under the section heading “Special Permits for Public Parking Garages.”
  
- Frontage for the proposed auto showroom is prohibited in the following locations, as shown on approved drawing Z-138 (Ground Floor Auto Dealership Plan):
  - In Building 5 on West End Avenue and a portion of West 60<sup>th</sup> Street as indicated on the drawing; and
  - In Building 1 along the south and west sides of the building.

The reasons for this modification are discussed below under the section heading “Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM).”

- The requested modification of unit distribution requirements is subject to the following restrictions, which are incorporated in the restrictive declaration for the proposed project:
  - Where units in a Building with Affordable Housing are accessed by a single elevator core, there shall be no separate building entrances or lobbies for market-rate and affordable housing units; and
  - No modification of the distribution requirements shall be effective unless the Commissioner of the Department of Housing Preservation and Development certifies to the Chair of the City Planning Commission that the modification granted is the minimum necessary to implement the affordable housing plan and that the affordable housing plan is consistent with the prohibition of separate entrances.

The reasons for this modification are discussed below under the section heading “Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM).”

### **Zoning Text Amendments (N 100294A ZRM, N 100295 ZRM)**

The Commission believes that the proposed zoning text amendments are appropriate. The applicant has proposed text changes to: (1) the regulations relating to the Inclusionary Housing Program in Sections 23-144, 23-954(a), and Appendix F, to apply the Inclusionary Housing Program to the project site and clarify the applicable bulk regulations for the site, and to the GLSD special permit in Section 74-743 to allow the Commission to set base and maximum FARs for the development and to modify the requirements for distribution of affordable housing units; (2) the GLSD special permit governing modification of uses in Section 74-744, to allow the Commission to permit auto service use in this GLSD; and (3) the GLSD special permit text in Section 74-743 of the Zoning Resolution, to allow the Commission to modify the technical definition of “outer courts” for this GLSD so that the proposed buildings would be eligible for the requested outer court modifications.

#### *Inclusionary Housing*

The Commission is committed to fostering economic integration in communities throughout the City. By establishing strong incentives for the creation and preservation of affordable housing in conjunction with new development, the Inclusionary Housing Program has provided a powerful and effective tool in this endeavor. In recent years, the Commission has approved the expansion of the Inclusionary Housing Program for large sites where proposed redevelopment would introduce residential use where none had existed or would significantly increase residential densities, such as the First Avenue/East River Realty, Clinton Park, 470 Vanderbilt Avenue, and New Domino projects. The Commission believes that given the size and scale of the Riverside Center proposal and the transformative effect the development would have on the neighborhood, the promotion of affordable housing is an important element in the consideration of this project.

Under the Inclusionary Housing Program as incorporated into area-wide rezonings and large-scale developments, beginning with the Greenpoint-Williamsburg Rezoning in 2005, residential developments may receive a floor area bonus of up to 33 percent in exchange for the provision of affordable housing equal to 20 percent of the floor area in the development, or one and one-quarter square feet for every one square foot of affordable housing provided. In an R10-

equivalent district, the “new” Inclusionary Housing Program establishes a base as-of-right density of nine FAR and a maximum density of 12 FAR. Developments may satisfy the affordable housing requirement by providing new affordable housing units on- or off-site, or by preserving existing housing at affordable rents; in either case, the affordable housing must remain affordable permanently. Off-site affordable units must be located within the same community district or within a half-mile of the development in an adjacent community district. They may be rental units or, under a modification to the program approved by the Commission in 2009, owned by their occupants. The affordable units are available to households with incomes up to 80 percent of the area median income (AMI). Affordable units created pursuant to the program are subject to extensive standards and requirements, including those regarding bedroom mix, minimum size, and rent stabilization rules. Finally, the new program permits public funding of any affordable housing provided.

At the time of certification, the proposed project contained an affordable housing proposal that differed significantly from the Inclusionary Housing Program. This proposal reflected the affordable housing program under the 1992 Riverside South approvals, which predate the new Inclusionary Housing Program. The applicant’s proposal would have required affordable housing equal to only 12 percent of the *units* in the development, and the affordable units would have been required to remain affordable for 20 years, not permanently. The applicant’s proposal also made the provision of affordable housing mandatory, rather than voluntary in exchange for a floor area bonus. The Commission observes that a mandatory requirement could place the City at a disadvantage when negotiating an affordable housing plan with the developer, in that the City’s reluctance to accept certain terms could stand in the way of development of the project. The Commission believes that the design of the Inclusionary Housing Program strikes an appropriate balance between the goal of producing affordable housing and the City’s obligation to ensure that limited public resources are spent with maximum effectiveness.

The Commission notes that in response to concerns raised by the Commission, Community Board 7, and others during the public review process, the applicant submitted modified text amendment and special permit applications that would apply the Inclusionary Housing Program

to the proposed project. With full utilization of the available floor area bonus, the project could produce or preserve approximately 400 to 500 affordable housing units. The Commission notes that such a large component of affordable housing would constitute a major contribution to the stock of permanently affordable housing on the West Side of Manhattan.

The applicant's proposed text amendment would amend the provisions governing the GLSD special permit for bulk modifications under Section 74-743 to allow for the modification of the Inclusionary Housing base and maximum FARs and requirements regarding distribution of affordable units. The modifications allowed by the text would only be available to developments within this particular "Inclusionary Housing designated area," meaning, in this case, only on the project site. Under the proposed text, in order to make these modifications, the Commission must find that they will facilitate a desirable mix of uses in the GLSD and a plan consistent with the objectives of the Inclusionary Housing Program and the site planning objectives of the GLSD text. The Commission believes that these findings provide sufficient assurances that the modifications, if adopted, are appropriate.

As part of the modified text amendment application, a new Inclusionary Housing designated area comprising the project site would be established. Because the maximum total FAR proposed in the application is approximately 8.5, and in this C4-7 district, the Inclusionary Housing Program would otherwise specify a base FAR of 9 and a maximum FAR with bonus of 12, the Commission notes that this proportional relationship must be adapted to the applicant's proposal. Therefore, the Commission believes that the GLSD special permit should be modified so that the project's restrictive declaration may set a base FAR for the project such that, in order to reach the maximum proposed FAR of 8.5, affordable housing equal to 20 percent of the project's floor area would have to be provided.

The proposed text would also enable the Commission to permit modification of the base floor area calculations for non-residential floor area. The proposed text would allow non-residential floor area in the proposed project, such as the retail, school, and office uses, to be included in the maximum base FAR specified in the restrictive declaration. This amendment would help

facilitate the mixed-use nature of the project, which the Commission notes is consistent with the underlying C4-7 zoning and believes is crucial to achieving the project's goal of creating an active, vibrant center for the neighborhood. Moreover, the Commission notes that a mix of residential, commercial, and community facility uses would generate activity on the project's sidewalks and in its plaza and open spaces at different times of day by different groups of people. These uses are often mutually reinforcing, as, for example, the proposed public school would provide an essential service for the residential use, and the retail uses would provide services and amenities for residents of the project buildings while gaining customers from among them.

The Commission notes that without the proposed text amendment, the current Inclusionary Housing rules would be a deterrent to the type of mixed-use project the Commission believes is desirable for the site. As more non-residential floor area is provided, the applicant's affordable housing obligations could increase significantly above an amount equal to 20 percent of the project's *residential* floor area. The Commission notes that under the proposed text, the developer would have to provide affordable housing equal to 20 percent of the development's residential floor area and further notes that this is fully consistent with the goals of the Inclusionary Housing Program.

The applicant is also proposing to amend the zoning text to allow the Commission to modify the requirements for distribution of affordable units in buildings with both affordable units and market-rate units. Under the Inclusionary Housing Program, affordable units may be provided on-site or off-site. If on-site, affordable units may be located in buildings with market-rate units or in a single building or building segment. Under Inclusionary Housing regulations governing a building with both affordable and market-rate units, affordable units must be distributed among at least 65 percent of the residential floors, and no more than one-third of the housing units on each floor may be affordable units. The proposed text would allow the Commission to grant relief from the distribution requirements.

The Commission recognizes the importance of the distribution requirements and believes that the ability to waive such requirements should be available only in narrow circumstances. In that

regard, the Commission notes that at this stage of project development, the applicant has yet to finalize many project details, including the details of how to develop the affordable units that would be created through the Inclusionary Housing Program. However, the applicant has indicated that they expect to pursue 421-a tax exemptions for the buildings, in which case 20 percent of the units in the project would be on-site affordable units, and any remaining Inclusionary Housing obligations (to reach 20 percent of the development's residential floor area) would likely be met by providing affordable housing off-site. The Commission recognizes that the proposed project has a complex development program that includes substantial infrastructure and open space components, unusual building forms and floor plates, and buildings that are expected to be developed largely as condominiums, as well as a very large number of affordable units that would have to be provided or preserved for full utilization of the floor area bonus. The Commission also recognizes that the funding mechanisms that would be used to create these affordable units are not known at this time.

The Commission acknowledges that the Department of Housing Preservation and Development has determined that given this uncertainty, it is sensible to allow for some future flexibility regarding the unit distribution requirements. The Commission believes that such flexibility would allow both the developer and the agencies overseeing public subsidies to make appropriate decisions in the future to facilitate a development program that can successfully produce the required number of affordable units and achieve the objectives of the Inclusionary Housing Program. Such flexibility would also allow the developer to meet the affordable housing obligations in a greater number of ways, including providing affordable units in advance of the market-rate units that would utilize the bonus floor area thus generated (as mentioned below).

The Commission notes that the applicant has proposed to apply the Inclusionary Housing base/bonus structure to each building in the project. The Inclusionary Housing Program prescribes base and maximum FARs that may be achieved on a zoning lot as a whole. The Commission recognizes that in a large-scale development with multiple buildings on a large site, such as the proposed project, additional measures are required to ensure that affordable units are

not “back-loaded,” that is, not provided until the last phase of construction. The Commission believes that requiring each project building to secure bonus floor area in order to achieve its maximum size, as proposed by the applicant, would ensure that the provision of affordable housing does not lag behind market-rate units. Instead, affordable housing would be provided either in advance of market-rate units or on a proportional basis at the same time as market-rate units, beginning with the first phase of construction, rather than being postponed for many years. The Commission believes that this aspect of the applicant’s proposal represents an appropriate condition for the utilization of the Inclusionary Housing Program to address a specific issue associated with the development of large sites.

The proposed text would also amend the Inclusionary Housing regulations to specify that developments within this Inclusionary Housing designated area would not be subject to a requirement that developments in designated areas comply with contextual bulk regulations. The Commission notes that with this text change, the underlying C4-7 zoning would continue to govern the project site and believes that such consistency with respect to applicable bulk regulations is appropriate.

#### *Auto Service Use*

The applicant has proposed a text amendment to the GLSD special permit in Section 74-744 for modification of permitted uses. The proposed text change would add a provision to this special permit allowing the Commission to permit, within this GLSD, auto service use not allowed as-of-right in this C4-7 district. The proposed text and special permit would facilitate the proposed auto service center, which would occupy approximately 182,000 square feet on the cellar level of the development and would be associated with, and physically connected to, an auto showroom located on the ground floor of one of the project buildings.

The Commission notes that the proposed text would include findings that the Commission would have to make in order to grant the requested special permit. Specifically, the Commission would have to find that the auto service uses will be located entirely below-grade; that the proposed service center will contain sufficient space for storage of vehicles for service and for sale in the

showroom; and that the service center will not cause or contribute to serious traffic congestion or inhibit vehicular traffic or pedestrian movement. The Commission believes that these findings, if met, would ensure that the auto service use would be compatible with the other uses in the proposed project and in the surrounding area.

The Commission recognizes that the project site presents a rare opportunity to create an optimally sized and efficiently laid-out auto service facility in Manhattan. The Commission believes that the creation of such a facility would strengthen the “automobile row” along 11<sup>th</sup> Avenue to the south of the project site and notes that this cluster of auto dealerships and service centers generates economic activity for New York by capturing spending and facilitating employment that might otherwise take place outside the City. The Commission observes that auto companies have recently made major investments in developing similar facilities in this corridor, including in the Clinton Park development that was approved by the Commission in 2009, where Mercedes-Benz recently announced plans to construct an expanded showroom and a large new service center to replace a much smaller existing location.

The Commission believes that the project site is a sensible location for such a facility. The site is located at the northern end of the 11<sup>th</sup> Avenue auto corridor, where the presence of multiple auto sales and service establishment is mutually reinforcing. The Commission notes that the project site has excellent vehicular access from major roadways. The West Side Highway/Miller Highway is immediately west of the site, and a southbound entrance and northbound exit are located at the southwestern corner. West End Avenue/11<sup>th</sup> Avenue, a major two-way, north-south arterial, runs along the eastern edge of the site, and West 57<sup>th</sup> Street, a major crosstown street, is located two blocks to the south. The Commission further notes that the proposed text would require that the service center be located entirely below-grade, thereby helping to ensure that it would not have a negative effect on the streetscape and would not interfere with other uses on the project site.

The Commission acknowledges that the development of a combined auto dealership and service center, along with the below-grade public parking, could provide a significant amount of income

in advance of developing the buildings that could be put toward the considerable cost of the site's infrastructure, which includes bridging over the rail right-of-way and constructing the platform and streets. The development of the service center would also facilitate the excavation and construction of the below-grade structures and platform in advance of the project buildings, as opposed to constructing the below-grade space and platform piece-by-piece with each building. The Commission notes that having the platform and below-grade levels in place at the beginning of the project could expedite the development of the buildings and public open space by reducing the costs associated with each building. The Commission believes that this would benefit the surrounding community by delivering the public open space and other amenities associated with the project sooner than if the site were developed in a piecemeal fashion.

*Definition of "Outer Court"*

The proposed text amendment would amend the GLSD special permit for bulk modifications in Section 74-743 to allow the Commission to modify the definition of "outer court" for this GLSD. The Commission believes that this text change is necessary because the definition of outer courts in Section 12-10 of the Zoning Resolution presupposes the presence of side and rear lot lines and therefore is not relevant to certain large sites such as the project site, where there are no side or rear lot lines and where courts open onto large open areas between buildings. The Commission also notes that because the proposed new streets in the project are not mapped City streets, they do not establish "front lot lines" (as this term is defined in the Zoning Resolution) for the buildings, as would normally be the case. The Commission observes that this simply reflects a limitation in the definition of an outer court and does not make the spaces formed by the proposed buildings any less worthy of being considered as outer courts. Furthermore, the Commission notes that the proposed text would stipulate that any dwelling unit windows opening onto an outer court that are legally required pursuant to the State Multiple Dwelling Law or any other applicable statute must have at least 30 feet of distance between the window and a facing wall.

**Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)**

The Commission believes that the proposed site plan, arrangement of bulk, and building massing facilitated by this special permit, as modified herein, are superior both to as-of-right development pursuant to the underlying zoning district as well as the site plan and building forms required by the current GLSD approvals.

The Commission believes that the project's proposed density is appropriate. The project site is located in a C4-7 zoning district that allows residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with the Inclusionary Housing Program. Much of the area surrounding the site is also zoned C4-7, and an M1-6 district located one block to the south also allows a maximum FAR of 12. The Commission notes that a recent development immediately east of the site, 10 West End Avenue, has utilized the Inclusionary Housing bonus to build to the maximum 12 FAR. The project's maximum proposed density is approximately 8.5 FAR (this increases to approximately 9.9 FAR if the proposed street extensions are subtracted from the zoning lot area for the purpose of calculating density). The proposed density is thus less than would be permitted as-of-right without Inclusionary Housing, whether or not the proposed street extensions are included in the zoning lot area. The Commission notes that since the project would have to provide affordable housing pursuant to the Inclusionary Housing Program in order to achieve its maximum density, the appropriate point of comparison is in fact 12 FAR. The proposed density with Inclusionary Housing of 8.5 FAR is considerably less than 12.

The Commission recognizes that the 1992 GLSD approvals limited floor area on the project site to approximately 2.4 million square feet, and that overall density for the Riverside South development was seriously debated and ultimately negotiated during the project's public review. However, the Commission believes that it is important to examine the current project's proposed density in the context of its new proposed uses and site plan, in addition to recent land use and zoning changes that have occurred in the surrounding area. As described earlier in this report, between 1999 and 2007, the Commission adopted three privately sponsored rezonings of the

blocks immediately east of the project site between West 58<sup>th</sup> and West 61<sup>st</sup> streets – River Center, 2 West End Avenue, and West 60<sup>th</sup> Street – that allowed medium- and high-density mixed-use development in this area. These actions, the latter two of which fell within Community District 7 and were supported by Community Board 7, helped to fill in a land use framework for the area begun earlier with the Lincoln West and Riverside South rezonings.

The 1992 GLSD approvals approved 1.8 million square feet of entertainment production studio use on the project site, as well as approximately 572,000 square feet of residential use and small amounts of retail and other uses. The Commission acknowledges that there is general agreement that the studio use would now be inappropriate and that residential, retail, and community facility uses are much more consistent with the neighborhood's residential and mixed-use character. The Commission also recognizes that, due in part to the very large footprint occupied by the studio, the 1992 site plan does not provide for any streets within the superblock or any public open space. Finally, the Commission notes that the amount of affordable housing that the applicant would be obliged to provide in order to achieve the residential density described in the proposed project – approximately 480,000 square feet – is almost equal to the 500,000-square foot increment between the approved 2.37 million square feet and the applicant's proposed maximum floor area (without the public school) of 2.88 million square feet.

The Commission notes that the proposed site plan would extend two existing City streets, West 60<sup>th</sup> Street and Freedom Place South, into the project site. The Commission believes that bringing these streets into the site would have several key benefits. The extension of the Manhattan grid would help integrate the site into the surrounding area by providing an overall framework that signifies the public realm to New Yorkers. The Commission sees West 60<sup>th</sup> Street as particularly important because this street provides a continuous connection to Central Park, Columbus Circle, and a major subway station that is not available immediately to the north or south. The site offers an opportunity to maximize the potential of West 60<sup>th</sup> Street as a corridor between major City parks while strengthening the community's ties to the waterfront. The Commission also recognizes that the extension of the grid into the site would break up this

very large superblock into three smaller blocks and allow for blockfronts that are more pedestrian-scaled and more consistent with the surrounding context.

The Commission notes that the site plan would visually extend West 60<sup>th</sup> Street beyond its terminus at Freedom Place South by means of several strong design cues, including the linear water feature (which would match the width of the 60<sup>th</sup> Street roadbed), a double row of trees flanking the pool on each side, and the alignment of the Jewel Box portion of Building 4 with the south line of the street. This visual extension of West 60<sup>th</sup> Street across the site would be clearly visible from the east and would serve as a powerful advertisement for the public space west of Freedom Place South.

The Commission notes that while the extensions of West 60<sup>th</sup> Street and Freedom Place within the project site would not be mapped streets, they would be designed to look and feel like regular New York City streets, and public access would be guaranteed through public access easements established through the project's restrictive declaration.

The Commission believes that the proposed site plan and architecture will be successful in creating a stronger connection and transition between the surrounding area and the waterfront. In addition to being striking visual objects in their own right, the proposed buildings, with their unique sloped and angled forms, would serve an important placemaking role by marking this waterfront gateway with prominent and noteworthy architecture. The Commission notes that at West End Avenue and West 60<sup>th</sup> Street – the development's urban “front door” – the tower portion of Building 5 would taper to a slender column landing arrestingly in the plaza at West End Avenue, while the bases of the buildings on either side of 60<sup>th</sup> Street would be angled back slightly from the avenue to present a welcoming aspect. This welcoming aspect would be reinforced by the presence of retail uses as well as planted areas and seating facing West End. The Commission believes that the overall combination of urban activity, architectural drama, and attractive streetscape will create an appealing “event” on West End Avenue and will prove effective at drawing the public into the project. At the northwest corner of the site, the main tower of Building 1 would cantilever high overhead, an architectural feature the Commission

believes will help mark this entrance to the project's open space for the public approaching from Riverside Boulevard or the waterfront park.

The Commission further notes that the applicant has proposed a sequence of dynamic public spaces to draw the public into and through the site. The sequence begins with West 60<sup>th</sup> Street, which would be programmed with frequent retail storefronts to create a familiar, pedestrian-friendly rhythm and would include a raised terrace on the north side of the street with space for outdoor cafés. The Commission believes the spacious central plaza, surrounded by a remarkable ensemble of buildings, framed by streets, retail uses, and the Jewel Box element of Building 4, and filled with jumping fountains and a seating grove, has the ingredients of a great public space for the surrounding community. Beyond the plaza, a wide pedestrian path angles north from the 60<sup>th</sup> Street axis and runs along the south side of Building 1, with retail uses on one side and a row of trees and benches on the other. The path wraps around the west side of Building 1, where it leads to the corner of West 61<sup>st</sup> Street and Riverside Boulevard and one of the entrances to Riverside Park South. The Commission believes that by deftly mediating between naturalistic landscape to the west and the urban grid to the east, this sequence of public spaces establishes a strong link between West End Avenue and the waterfront.

The Commission is confident that the proposed project will enhance the streetscape. The development would provide appropriately wide, 15-foot sidewalks that would be attractively and functionally improved with canopied street trees, planted areas, bike racks, and seating. The Commission acknowledges that in order to provide 15-foot sidewalks along Riverside Boulevard, West 59<sup>th</sup> Street, and West 60<sup>th</sup> Street, the applicant is dedicating strips of its own property totaling approximately 8,000 square feet. The Commission also acknowledges that the applicant has proposed to require at least 70 percent ground-floor transparency measured to a height of 12 feet for all frontage along West End Avenue, West 60<sup>th</sup> Street, the south and west sides of Building 1 fronting on the plaza and pedestrian path, and the Jewel Box. This requirement would supplement the existing requirements in the Zoning Resolution for at least 50 percent transparency, which under the application would apply to the 59<sup>th</sup> Street frontage of Building 4 and the 61<sup>st</sup> Street frontage of Building 1.

The Commission further notes that the applicant has committed to locating retail uses, not including auto showroom use, along key frontages where such uses are critical for generating a vibrant streetscape. The locations where the applicant is proposing to require such retail uses are the north side of West 60<sup>th</sup> Street; the south corner of 60<sup>th</sup> Street and West End Avenue and the south side of 60<sup>th</sup> Street as far as the Building 5 setback; and the Jewel Box portion of Building 4. The applicant is also proposing that Building 1 be required to have at least two retail establishments with entrances on the public open space and that the retail or community facility space on 59<sup>th</sup> Street in Building 4, created as part of the revisions to the application, would be limited to these uses.

The Commission believes that these requirements for retail uses, combined with the transparency requirements, will help to ensure that all three east-west streets, as well as the central plaza and pedestrian path to the park, are enhanced with urban activity and street life. However, the Commission shares the Community Board's concern that the applicant's proposal to locate an auto showroom on West End Avenue in Building 5 could work against the other steps the applicant has taken to promote a lively, active public realm. The Commission notes that while the proposed showroom may be attractively designed, for most people who own cars, the purchase of one happens once every few years at most. As a result, the showroom would likely not generate the kind of daily foot traffic and interaction with neighborhood life that is highly desirable for a ground-floor use at a very prominent location – the intersection of a major avenue (West End) and the street (West 60<sup>th</sup>) by which most people would approach the project from the east. In addition, the Commission observes that because of the space requirements associated with the public school, the West End frontage of Building 2 may not turn out to be a suitable location for retail along the full length of its frontage, thereby placing more of a burden on Building 5 to provide active uses along its avenue frontage.

The Commission's concerns about the auto showroom as an active use extend to the frontage of Building 1 along the plaza and pedestrian path to the park, where having uses that generate activity and are of more than very occasional relevance to the local public is also important.

Therefore, the Commission has determined that the application should be modified to prohibit auto showroom frontage on West End Avenue in Building 5 and on the public open space in Building 1. The Commission notes that there remain several locations where the showroom could conceivably be located. These include the northwest portion of Building 5 fronting on West 60<sup>th</sup> Street, Freedom Place South, and the plaza; in Building 1 fronting on West 61<sup>st</sup> Street; and in Building 3, which under the application would have signage visible from the adjacent highway.

The Commission believes that the proposed open space west of Freedom Place South will serve as a valuable resource for the neighborhood as well as a destination for the wider public. The more densely landscaped portion of the open space west of the central plaza would effect a transition between the street grid and urban plaza to the east and the river and park landscape to the west. Another subtle transition is afforded by the linear water feature, which serves to visually extend West 60<sup>th</sup> Street when viewed from a distance and up close becomes a unifying and tranquil element in the landscape. The Commission notes that on either side of the pool there would be two complementary landscapes, one consisting of open lawn and the other a striking meadow landscape of tall grasses and wildflowers. These landscapes would be crossed by pedestrian paths, including a 12-foot-wide path connecting the Riverside Park South access point with West 59<sup>th</sup> Street. The Commission appreciates that the open space is well appointed with numerous and varied seating opportunities, including benches along the south side of the fountains and pool; tables and chairs in the seating groves; benches at intersections of the paths, which the applicant calls “landscape rooms”; terraced seating around the children’s play area discussed below; and informal seating opportunities such as the lawn and the long steps at the edge of the plaza seating grove.

The Commission notes that usability considerations have influenced the design of the open space. In order to provide pedestrians relief from strong winds coming off the river, the landscape architects have arranged coniferous and marcescent deciduous trees that would attenuate wind, especially during the blustery winter months. The trees would also partially obscure the view to the elevated Miller Highway. At the western end of the West 60<sup>th</sup> Street

axis, where a three-tiered waterfall ends in a pool on Riverside Boulevard, the sound of water would help partly mask the sound of traffic on the highway above, while at the same time providing an unexpected gesture for pedestrians on this street.

The Commission understands that in a revision to the modified application, filed on October 27, 2010, the applicant has agreed to make several changes to the site plan and open space design west of Freedom Place South in response to concerns expressed by Community Board 7, the Borough President, the City Planning Commission, and members of the public regarding the pedestrian experience on West 59<sup>th</sup> Street and Riverside Boulevard (see “Uniform Land Use Review Procedure,” above). The Commission believes that these revisions to the site plan, described below, will improve the open space and the project’s engagement with surrounding streets.

The revised site plan proposed by the applicant would create approximately 4,000 square feet of additional public open space between Buildings 3 and 4 and approximately 120 feet of open space frontage along West 59<sup>th</sup> Street. In order to make room for the additional open space, the driveway serving Buildings 3 and 4 from Freedom Place South has been removed from the plan. In response to concerns about the way in which the proposed plan mediated the change in grade from the platform level to the 59<sup>th</sup> Street sidewalk at the western portion of the site, the applicant has replaced the level platform between Buildings 3 and 4 with a gradual slope intended to provide more generous and welcoming access and clear views into the open space and improve the 59<sup>th</sup> Street pedestrian experience. In place of a single, long stair, pedestrians would reach the interior of the site from this portion of West 59<sup>th</sup> Street via short segments of stairs and an ADA-accessible ramp. Sloping this portion of the site would also allow the additional open space to be visible and easily accessible from the 59<sup>th</sup> Street sidewalk.

The additional open space would include a children’s play area conceived as a “tot lot” for children ages 2 through 5, approximately 3,000 square feet in size and surrounded by planted areas and terraced seating. A public seating grove would be located next to Building 4 across from the tot lot. Additionally, in order to encourage a more activated streetscape on West 59<sup>th</sup>

Street, the applicant has reconfigured the southern portion of Building 4 to create space for retail or community facility use fronting on 59<sup>th</sup> Street as well as the additional open space and Freedom Place South. The new 59<sup>th</sup> Street frontage of Building 4 would achieve the 50 percent ground-floor transparency required by the underlying streetscape regulations. The west side of Building 4 has been pulled back approximately 26 feet to the east so as to allow for more at-grade access to the additional open space from 59<sup>th</sup> Street.

In lieu of the private driveway off of Freedom Place South serving Buildings 3 and 4, the applicant has proposed a circular driveway for Building 3 that would allow vehicles to drop off and pick up off of West 59<sup>th</sup> Street. Building 3 is extended approximately 17 feet to the west and would cover the turnaround portion of the circular driveway. In order to avoid increasing the number of curb cuts on 59<sup>th</sup> Street, the two separate vehicular entrances (auto service center and parking garage) that were to be located in Building 3 have been combined into a single shared entrance. Vehicles accessing the garage and the service center would use the same curb cut and would be directed to their destinations by signage. As a result, one of the below-grade entrances is eliminated, and the distance between the two curb cuts has been increased by approximately 56 feet.

The applicant has also proposed changes to the open space in the center and western portions of the site. Instead of a water scrim, the linear water feature would take the form of a shallow reflecting pool occupying, like the scrim, approximately the same width as West 60<sup>th</sup> Street. In addition, a proposed path crossing the scrim would be eliminated. The applicant intends these changes to be responsive to community concerns about the fragmentation of the open space by providing a more substantial water feature that would more effectively serve as a strong unifying element in the landscape of lawn, meadow, and pedestrian paths. At the western end of the open space along Riverside Boulevard, the applicant proposes, as on 59<sup>th</sup> Street, to create a more gradual slope from the platform level to the street. In this area, the scrim is replaced by a tiered, three-part cascade of water down to a pool and bench at the sidewalk. As a consequence of the slope, the southernmost stair from Riverside Boulevard near Building 3 is reduced in length by about a third. The applicant intends this change to make the open space more perceptible and

accessible to pedestrians on Riverside Boulevard.

As part of the revisions, the applicant has changed their proposed hours of operation for the public open space west of Freedom Place South from 7 am-11 pm to 6 am-1 am. The Commission notes that this change brings the project in line with other large open spaces on or near the West Side waterfront, such as Hudson River Park and the future open space on the Western Rail Yards.

The Commission recognizes that West 59<sup>th</sup> Street is an important pedestrian corridor to the waterfront, in particular because it provides access to the only at-grade entrance to Riverside Park South. The applicant's revisions will enhance the pedestrian experience along 59<sup>th</sup> Street by allowing views directly into the open space and bringing the public open space to the street, where it was formerly separated by an abrupt change of grade and a driveway. Notably, the revised open space plan would provide approximately 120 feet of open space frontage along the sidewalk. The Commission notes that the revisions will create more generous access to the open space from 59<sup>th</sup> Street, including a gently sloped, ADA-accessible ramp. By shifting the west façade of Building 4 to the east, the architects have made possible more at-grade access to the expanded open space from West 59<sup>th</sup> Street.

The Commission also notes that the site plan revisions would create approximately 4,000 square feet of additional public open space, including an additional seating grove adjacent to Building 4. The Commission believes that the creation of the tot lot adds a welcome source of activity to the western portion of the open space while providing a needed resource for area families with young children and serving as partial mitigation for the active open space impact identified in the FSEIS. The Commission believes that the proposed changes to the western edge of the open space along Riverside Boulevard improve the visual connection and access to the open space for pedestrians while preserving the advantages of locating most of the open space at platform level. The Commission commends Community Board 7 for its recommendations relating to improvements along West 59<sup>th</sup> Street which have led to these revisions.

The Commission notes that the applicant has proposed a plan for the phased delivery of open space and streets. This plan, which is incorporated into the project's restrictive declaration, ensures that the public realm – including public open space, streets, and sidewalk widening – would be provided as the buildings are constructed. The plan defines parcels associated with each building and assigns each parcel specific obligations with respect to open space and streets. The restrictive declaration includes provisions linking the issuance of certificates of occupancy for the buildings to completion of the associated open space and streets. The Commission notes that the parcel boundaries have been configured so that each parcel contains space sufficient to stage construction of the associated building and to locate construction activity as far as possible from completed buildings and, in particular, from the school. Under the parcel plan, Buildings 2 and 5, on the eastern end of the site, would be required to construct the adjacent portion of Freedom Place South; in addition, West 60<sup>th</sup> Street would be constructed as part of whichever of these two buildings is constructed first. West of Freedom Place South, the open space would be divided between Buildings 1, 3, and 4 in such a way as to provide for coherent and usable open spaces that would not be unduly affected by the subsequent construction of later buildings.

Based on information provided by the applicant, construction of buildings would generally proceed from east to west and would likely begin with Building 2, which would contain the proposed public school. The Commission notes that under the restrictive declaration, Building 2 is required to be one of the first two residential buildings constructed so that the school would be in place as residential units generating demand for the school come online. The applicant has described two scenarios for constructing the development: (1) The platform and below-grade levels may be constructed all at once at the beginning of the build-out; or (2) the platform and below-grade levels may be constructed with each building parcel, following the garage demarcation lines shown on the approved drawings for the separated garages option. In the second scenario, the parking associated with each building would be constructed with the building itself.

The Commission notes that the special permit also includes open space plans for two potential interim conditions that could occur during the development of the site. The first condition

involves Scenario 1 above, where the platform is built at the beginning of development and at least one building has also been constructed. Interim open space consisting of lawn, meadow, and gravel paths would be provided on some or all of Parcels 1, 3, and 4. The other interim condition would occur in the building-by-building scenario (Scenario 2 above), whereby completed buildings and open space would co-exist, for some period of time, with existing conditions (e.g., surface parking) on other parcels. This interim open space plan would include special edge treatment where completed open space would border parcels that are yet to be developed. The process for the implementation of these interim plans and the provision of public access easements thereupon are set forth in the project's restrictive declaration. The Commission believes that planning for these interim conditions is important given the very large size of the development, the different scenarios for its construction, and the likelihood that development would unfold over a number of years. The Commission therefore welcomes the applicant's commitment to provide open space in a suitable manner as the project build-out progresses.

The Commission believes that the requested modifications to bulk regulations are appropriate. The proposed buildings would generally be located along the perimeter streets, in order to allow space for the street extensions and public open space. The Commission recognizes that, given this, modifications are needed to tower encroachment and setback regulations for tower portions of the buildings located at the perimeter of the site. On West 59<sup>th</sup> Street, the towers, while rising straight up from the sidewalk, would actually be set back eight feet from the property line due to the applicant's widening of 59<sup>th</sup> Street. The Commission notes also that the towers would be positioned so as to allow more light and air to reach the open space west of Freedom Place South as well as the sidewalks of West 60<sup>th</sup> Street. The towers would also be widely spaced, with Buildings 2 and 5 surrounded by streets, and the other three buildings separated by large areas of open space. The application would require at least 133 feet of distance between the upper tower portions of Buildings 3 and 4 so that the open space would have a generous southern exposure, and approximately 100 feet between Buildings 4 and 5, to preserve a generous view corridor to the historic Power House building along Freedom Place South. Likewise, almost 100 feet of distance between Building 1 and the Jewel Box would preserve the view corridor along 60<sup>th</sup> Street and its visual extension.

The Commission observes that the site plan does not concentrate bulk in any one part of the site but rather would distribute it around the site in five buildings and notes that the application would limit the width of towers in order to further ensure access to light and air, both within and surrounding the site. In keeping with sound planning practice, the tallest towers would be located on the wide streets while lower towers would be placed in the middle portion of the site. The proposed towers would present relatively narrow profiles as viewed from the east and west, thereby preserving views toward the river and limiting the amount of shadow that would be cast on the open space and on the waterfront parks.

The Commission further notes that placing the towers back from the open space and West 60<sup>th</sup> Street maximizes views to the elegant and visually compelling composition of building forms that the architects have created. The massing scheme devised by the architects, while full of complex shapes, would break down the considerable bulk of the buildings into a few distinct and clearly recognizable scales, with low-rise bases and medium-scale elements wrapping the towers. The Commission considers this an intelligent and sophisticated approach to accommodating bulk in a way that reduces its impact on pedestrians while enhancing their experience of the buildings with a varied and interesting array of forms and compositions. The Commission notes that the proposed building heights are consistent with the surrounding area and believes that the marked variation in heights and faceted, sloping tower tops will make for a dynamic ensemble of towers and a worthy addition to the skyline.

The Commission is comfortable that the proposed building envelopes will effectively result in the sculpted forms and architectural features that distinguish them as superior architecture, while providing a modest amount of flexibility for the developer to make relatively minor adjustments as necessary.

The bulk modifications requested by the applicant include a number of modifications to the regulations governing the dimensions and proportions of courts and requirements for minimum distance between buildings. The Commission notes that these modifications result from the

proposed building forms, which are generally non-orthogonal in character and consist of numerous slopes, faceted shapes, and vertical notches. Such forms fall somewhat outside the framework of the Zoning Resolution's bulk regulations, which generally contemplate rectilinear buildings. The requested modifications are therefore necessary to allow the sculptural quality of the buildings to be realized. The Commission notes that in no case would any legally required windows have less than 30 feet of clear distance between the window and a facing building wall. The Commission also observes that the outer courts, and well as the vertical notches necessitating the minimum distance modifications, would open onto streets and large open spaces that would provide more than adequate light and air for these portions of the buildings.

The Commission believes that the requested modification of the definition of "outer court" responds to a limitation in the current technical definition of outer courts and is appropriate.

The Commission believes that the proposed arrangement of uses in the development is appropriate. Residential uses would be located above non-residential uses, as required by zoning. Commercial uses that provide little activation of street frontage, such as offices, hotel check-in and ballroom space, and the proposed cinema, would generally be located on upper floors, with ground-floor space for such uses limited to entrances and elevator banks. This would allow active retail uses that depend on foot traffic to occupy limited ground-floor space. An exception would be the proposed public school, which would occupy almost all of the West 61<sup>st</sup> Street frontage of Building 2. The Commission notes that this would afford the school an appropriate measure of separation from the other ground-floor uses and also notes that a 12-foot setback along part of 61<sup>st</sup> Street would provide useful circulation space off of the public sidewalk. Entrances to the residential buildings and hotel would be distributed around the site and would front both on streets – Freedom Place South, West 61<sup>st</sup> Street – and, for Building 1, the pedestrian path in the open space on the south side of the building. The Commission believes that distributing these entrances among other ground-floor uses and in various parts of the development helps ensure that no one area of the site is occupied exclusively by the movements of the project residents and will encourage the mixing of residents and the general public in the project's streets and public spaces.

The Commission welcomes the applicant's proposal to include space for a public school of up to 132,000 square feet, or 1,332 seats, in the project and believes that, with the school incorporated into the project, as well as the provisions of the project's restrictive declaration governing mitigation for child care impacts, there is no need for the Commission to require any addition to public facilities serving the area as a condition of the GLSD special permit.

During the public review process, the Commission heard serious concerns from local parents, school advocates, and the Community Board about lack of sufficient capacity in the area's public schools. The Commission notes that the proposed school would fully accommodate the public school demand generated by the proposed project and, if built to its maximum potential size, would provide additional capacity to serve this fast-growing area, where utilization of public schools has increased significantly in recent years. The Commission acknowledges that the applicant has signed a letter of intent with the School Construction Authority that commits the developer to bear the cost of constructing the core and shell for the size of school required to meet the project-generated demand (approximately half the maximum proposed size) and believes that, combined with land costs, this represents a significant share of total costs that would be borne by the developer. The Commission commends both parties for reaching a preliminary agreement on business terms and engaging in a cooperative planning process, including preliminary design work, that greatly increases the likelihood that a school will be constructed on the site.

The Commission believes that the system of vehicular circulation and loading devised by the applicant will safely and successfully organize traffic around and within the site. The proposed site plan would extend existing streets into the site, creating additional street frontage for vehicles to access the buildings and allowing some of the parking garage entrances to be located off the perimeter streets. The new portion of West 60<sup>th</sup> Street, the Commission notes, would be one-way eastbound, and as a result traffic would flow away from the central plaza, creating a safer environment for pedestrians and removing the need for bollards or other safety devices along the edge of the plaza.

The site plan would locate several of the access points to loading facilities and below-grade levels on West 59<sup>th</sup> Street. The Commission believes that this decision makes sense for several reasons. The entire south side of 59<sup>th</sup> Street is occupied by the Power House, which has no entrances on the street and generates very little traffic. By locating curb cuts and vehicle entrances on 59<sup>th</sup> Street, the applicant is able to avoid placing them on other streets, such as West 61<sup>st</sup> Street near the proposed school, 60<sup>th</sup> Street, and Freedom Place South along the length of the open space, where they could have a more disruptive effect on pedestrian movement and the quality of the open space. The Commission notes that the applicant's proposed revisions would remove a driveway serving Buildings 3 and 4 and believes that this change, in addition to benefitting 59<sup>th</sup> Street and the open space, would remedy what had been an excessive allocation of space to the circulation of vehicles accessing these buildings. The Commission also notes that the revisions would consolidate the vehicular movements associated with the Building 3 garage entrance and the auto service center into one curb cut and would increase the distance between this curb cut and the curb cut to the east (now used for the Building 3 drop-off) from 30 feet to approximately 80 feet.

The Commission believes that having five separate entrances to the below-grade public parking would have a positive effect on circulation and the pedestrian environment. While there would be more curb cuts than if parking was accessed via a single entrance, the Commission notes that having five access points greatly reduces the intensity and volume of vehicle movements at any one entrance. The garage entrances are widely distributed, with two located on separate blocks of West 59<sup>th</sup> Street, one at the south end of Freedom Place South, and two at the north end of Freedom Place South. The Commission notes that this distribution avoids overly burdening any one part of the streetscape with vehicle movements and allows most of the site's street frontage, including all of the wide street frontage and much of 59<sup>th</sup> Street, to be continuous and free of curb cuts.

The Commission notes that most of the required loading berths for the development would be provided on below-grade levels underneath Building 5, where the hotel would be located, and

these berths would be accessed from West 59<sup>th</sup> Street via two truck elevators. The Commission notes that this configuration would allow trucks accessing the elevators to make only head-in/head-out movements, obviating the need for trucks to back into the loading berths and block traffic on 59<sup>th</sup> Street.

The Commission believes that the streets providing access to the proposed project will be adequate to handle traffic resulting from the project. The project site has excellent vehicular access from major roadways. The West Side Highway/Miller Highway is immediately west of the site, and a southbound entrance and northbound exit are located at the southwestern corner. West End Avenue/11<sup>th</sup> Avenue, a major two-way, north-south arterial, runs along the eastern edge of the site, and West 57<sup>th</sup> Street, a major crosstown street, is located two blocks to the south. When Riverside Boulevard is completed, it will provide a continuous two-way connection from its terminus just south of the site north to West 72<sup>nd</sup> Street, where there is an entrance to the Henry Hudson Parkway. West 61<sup>st</sup> Street is a two-way street with sufficient width in its 40-foot roadbed to allow a vehicle pass another vehicle that is standing or turning left. The Commission notes that the applicant has proposed to widen the roadbed of West 59<sup>th</sup> Street, where two of the garage entrances and access to most of the loading berths would be located, from its existing width of 34 feet to match the 40-foot width of 61<sup>st</sup> Street.

The detailed traffic analysis in the project's Final Supplemental Environmental Impact Statement (FSEIS) identified 24 intersections within the study area where significant adverse impacts would be expected to occur with the development of the proposed project. (The project's study area was bounded by West 79<sup>th</sup> Street and West 34<sup>th</sup> Street to the north and south and Central Park West/Eighth Avenue and the West Side Highway/Henry Hudson Parkway to the east and west.) Of these 24 impacted intersections, the FSEIS concluded that 21 could be fully mitigated by employing various mitigation measures, including minor adjustments to signal timing, changing parking regulations to prohibit parking near some intersections during peak time periods (known as "daylighting"), and the installation of a traffic signal at the intersection of West 59<sup>th</sup> Street and 12<sup>th</sup> Avenue/Riverside Boulevard. The Commission notes that the FSEIS found that these intersections would also be impacted with the development of a project with

similar uses as the proposed project but limited to 2.4 million square feet, the density allowed under the 1992 Riverside South approvals. (This smaller project was analyzed in the FSEIS as the “Lesser Density Alternative.”)

The three remaining intersections are located at the West Side Highway and West 52<sup>nd</sup>, 54<sup>th</sup>, and 56<sup>th</sup> streets. The FSEIS examined the possibility of mitigation at these impacted intersections but found that such measures that were identified would not fully mitigate these intersections or may not be acceptable to the New York State Department of Transportation, which controls the highway (State Route 9A). Therefore, at least two of these intersections would remain unmitigated. The Commission recognizes that the West Side Highway/Route 9A is a major regional arterial roadway with very heavy north-south through traffic, so there is very little opportunity to provide additional capacity through the types of well-established mitigation measures that would be implemented for the other impacted intersections. Further, the congestion on the West Side Highway relates to factors pertaining to transportation infrastructure and traffic management at the scale of Manhattan as a whole, the city and the region, and not to development in any single area of the city. The Commission further recognizes that according to the FSEIS, in order to eliminate the impacts at these intersections, development on the project site would have to be reduced to approximately one million square feet, an amount that is less than half that permitted under the Riverside South approvals and well below the maximum density permitted on the site and in the surrounding area. The unmitigated impacts to these intersections would thus exist with the Lesser Density Alternative as well and therefore cannot be attributed to the increase in density associated with the proposed project.

#### *Inclusionary Housing Modifications*

Pursuant to the amended GLSD special permit, the applicant has requested modification of the Inclusionary Housing Program base and maximum FARs and modification of Inclusionary Housing requirements regarding the distribution of affordable units. The Commission believes that the application should be modified with respect to the requested modification of distribution requirements, as discussed below.

For R10 and equivalent districts, the new Inclusionary Housing Program instituted in 2005 establishes a base as-of-right FAR of nine and a maximum FAR with bonus of 12. Because the maximum total FAR proposed in the application is approximately 8.5, this proportional relationship must be adapted to the applicant's proposal. The applicant is proposing to establish a base FAR for the project such that, in order to reach the maximum proposed FAR of 8.5, affordable housing equal to 20 percent of the residential floor area in the project would have to be provided. The Commission notes that this base FAR would be approximately 6.3.

The Commission further notes that the applicant has proposed to apply the Inclusionary Housing base/bonus structure to each building in the project. The project's restrictive declaration would specify a base amount of total floor area for each building, which the building may only exceed by providing affordable housing according to the standard Inclusionary Housing ratio of one and one-quarter square feet of bonus floor area for every one square foot of affordable housing provided. As a general matter, the Inclusionary Housing Program prescribes base and maximum FARs that may be achieved on a zoning lot as a whole. The Commission recognizes, however, that in a large-scale development with multiple buildings on a large site, such as the proposed project, additional measures may be required to ensure that affordable units are not "back-loaded," that is, not provided until the last phase of construction. The Commission believes that requiring each project building to secure bonus floor area in order to achieve its maximum size, as proposed by the applicant, would ensure that the provision of affordable housing does not lag behind market-rate units. Instead, affordable housing would be provided either in advance of market-rate units or on a proportional basis at the same time as market-rate units, beginning with the first phase of construction, rather than being postponed for many years. The Commission believes that this represents an appropriate condition for the utilization of the Inclusionary Housing Program to address a specific issue associated with the development of large sites.

The applicant also requests that the Commission allow non-residential floor area in the proposed project, such as the retail, school, and office uses, to be included in the maximum base FAR specified in the restrictive declaration. This change would facilitate the mixed-use nature of the project, which the Commission believes is critical to achieving the project's goal of creating an

active, vibrant center for the neighborhood. The project's proposed mix of uses is consistent with the underlying C4-7 zoning. Moreover, the Commission notes that a mix of residential, commercial, and community facility uses would generate activity on the project's sidewalks and in its plaza and open spaces at different times of day by different groups of people. These uses are often mutually reinforcing, as, for example, the proposed public school would provide an essential service for the residential use, and the retail uses would provide services and amenities for residents of the project buildings while gaining customers from among them. The Commission notes that with the requested modification, in order to maximize the development potential of the project site, the developer would have to provide affordable housing equal to 20 percent of the development's residential floor area and further notes that this is fully consistent with the goals of the Inclusionary Housing Program and with the treatment of non-residential floor area in prior projects under the Program.

Under the Inclusionary Housing Program, affordable units may be provided on-site or off-site. If on-site, affordable units may be located in buildings with market-rate units or in a single building. Under Inclusionary Housing regulations governing buildings with both affordable and market-rate units, affordable units must be distributed among at least 65 percent of the residential floors, and no more than one-third of the housing units on each floor may be affordable units. The applicant is requesting that the Commission grant relief from the distribution requirements.

The Commission notes that at this stage of project development, the applicant has yet to finalize many project details, including the details of how to develop the affordable units that would be created through the Inclusionary Housing Program. However, the applicant has indicated that they expect to pursue 421-a tax exemptions for the buildings, in which event 20 percent of the units in the project would be on-site affordable units; any remaining Inclusionary Housing obligations (to reach 20 percent of residential floor area) would likely be met by providing affordable housing off-site. The Commission recognizes that the proposed project has a complex development program that includes substantial infrastructure and open space components, unusual building forms and floor plates, and buildings that are expected to be developed largely as condominiums, as well as a very large number of affordable units that would have to be

provided for full utilization of the floor area bonus. The Commission also recognizes that the funding mechanisms that would be used to create these affordable units are not known at this time.

The Commission acknowledges that the Department of Housing Preservation and Development (HPD) has determined that given this uncertainty, it is sensible to allow for some future flexibility regarding the unit distribution requirements. The Commission believes that such flexibility would allow both the developer and the agencies overseeing public subsidies to make appropriate decisions in the future to facilitate a development program that can successfully produce a large number of affordable units and achieve the objectives of the Inclusionary Housing Program. Such flexibility would also allow the developer to meet the affordable housing obligations in a greater number of ways, including the “front-loading” scenario discussed above.

However, the Commission, in consultation with HPD, has concluded that the application must be modified to provide assurance that any future use of the modification of distribution requirements would be consistent to the maximum extent possible with the goal of mixing affordable and market-rate units. The Commission is therefore requiring that the restrictive declaration include language providing that no modification of the distribution requirements could take effect unless the HPD Commissioner certifies to the Chair of the City Planning Commission that such modification is the *minimum necessary* to implement the proposed affordable housing plan successfully. This provision would also require that copies of the applicant’s affordable housing plan, including information about the extent of and rationale for any requested modification of distribution requirements, be provided to Community Board 7. The HPD Commissioner’s certification, along with reasons for granting the certification, would also have to be provided to the Community Board. This transparent process would ensure that the modification would be employed only to the extent that the City official responsible for affordable housing believes it to be necessary.

The Commission is aware that concerns have been raised during public review by elected officials that, with the modification of distribution requirements, the developer may seek to create separate entrances and lobbies for market-rate units and affordable units that use the same elevator core. While it is not clear whether the applicant intends this as a possibility, the Commission is nonetheless concerned that the modification of distribution requirements not facilitate an outcome that would be plainly undesirable and at odds with the intent of the Inclusionary Housing Program. The Commission is therefore requiring that the restrictive declaration include language that would prohibit such separate entrances. The provision would also require the HPD Commissioner to certify, as part of the certification process described above, that the developer's affordable housing plan is in compliance with this requirement.

With these provisions added to the restrictive declaration, the Commission believes that the requested modification of distribution requirements is appropriate.

#### *Restrictive Declaration*

The project's restrictive declaration will also include, in addition to the above provisions governing affordable housing, provisions relating to: development of the site as a GLSD in accordance with the approved plans and floor area restrictions; the provision of a public school in Building 2; project components related to the environment (PCREs) for construction, design, and operation of the buildings, and sustainability; modifications to the Con Edison West 59<sup>th</sup> Street Generating Station; environmental mitigation measures; third-party monitoring of certain PCREs and mitigation measures; construction completion, hours of operation, and maintenance of the project's public open space and access areas, including the obligations of any property owners' association with respect thereto, and the granting of public easements over such public spaces. This declaration will run with the land and will be binding upon the Declarant and its successors and assigns, together with the existing Riverside South declaration which will remain in effect as modified by the related action (M 920358D ZSM).

## *FSEIS*

The Commission recognizes that the proposed project's FSEIS identified potential significant adverse impacts in the categories of community facilities (child care), active open space, pedestrians, traffic, transit (bus service), construction traffic, and construction noise and is pleased that, with only limited exception discussed above, appropriate measures have been identified to mitigate these impacts in whole or in part. The Commission notes that in order to achieve consistency with the citywide greenhouse gas reduction goals set forth in PlaNYC, the applicant has agreed to employ a number of specific sustainability measures in the construction and operation of the project. These include: use of the City steam system for heat and hot water; a commitment to achieve 10 percent lower energy consumption than code requires, to be achieved through the implementation of various energy efficiency measures, including the use of ENERGY STAR appliances; building commissioning and verification of these energy efficiency measures; use of reduced-emissions construction equipment; use of locally-sourced and recycled construction materials, when possible; installation of water-conserving toilets and faucets; and installation of electric vehicle battery-charging stations in the parking garage(s). Finally, the Commission acknowledges that the applicant has reached an agreement with Con Edison to implement the conversion of the combustion turbine in the 59<sup>th</sup> Street Generating Station to natural gas, as discussed in the October 26 Technical Memorandum, and is pleased to note that this measure will improve air quality for the residents of the surrounding area as well as Riverside Center.

The Commission notes that all of the above-referenced commitments from the applicant are memorialized in the project's restrictive declaration.

### **Special Permit to Modify Use Regulations (C 100297 ZSM)**

The Commission believes that the special permit to modify underlying district use regulations for this GLSD, as modified, is appropriate. The requested special permit would allow the proposed auto service center.

The Commission notes that the auto service center would be located entirely on the cellar level of the development, underneath the platform that would cover the site and which would be established as curb level/reference plane pursuant to the special permit for development in a railroad/transit right-of-way or yard (C 100287 ZSM).

The Commission believes that sufficient space for storage of vehicles would be provided in the service center. The Commission notes that the service center would occupy a total of approximately 182,000 square feet, or over four acres. Based on information in a memorandum and illustrative layout provided by the applicant's architects, the Commission understands that the service center would have approximately 30,000 square feet allocated to the storage of vehicles waiting to be serviced or awaiting pick-up after servicing. Between 60 and 70 service bays would be available for servicing up to 200 vehicles per day. The applicant's architects state that there would be approximately 29,000 square feet dedicated to the storage and delivery of vehicles for sale and storage of "loaner" vehicles used by people who have left their vehicles to be serviced. The memo further states that vehicle inventory for the auto dealership would be stored off-site and brought to the site only as they are sold. These deliveries would occur at night and would consist of individual vehicles as opposed to truck deliveries of multiple vehicles at a time.

The Commission is satisfied that the service center has been designed in such a way that it would not create or contribute to traffic congestion and will not unduly inhibit surface traffic. The vehicular entrance to the service center would be through a 25-foot-wide curb cut located on West 59<sup>th</sup> Street in Building 3, at the southwestern corner of the site, at least 50 feet from the intersection with Riverside Boulevard and no less than 30 feet west of the driveway for Building 3. This location would provide easy access to and from the West Side Highway as well as Riverside Boulevard and West End Avenue. The block immediately south of the project site is occupied by the 59<sup>th</sup> Street Power House, which produces very little vehicular traffic or pedestrian activity on this street.

The entrance to the service center would be shared with one of the five parking garage entrances. The intersection between the parking garage ramp and the turnoff for the service center would be a T intersection, to minimize the risk of vehicle conflicts, and would be clearly marked with signage. The entry door to the service center would be located far enough off the shared ramp to allow, in the event that a vehicle arrives when the service center is closed, space for that vehicle to stop and turn around without obstructing movement on the shared ramp. Vehicles exiting the service center would come to a halt at a stop line before turning onto the ramp. Inside the service center, two drop-off lanes would provide queuing spaces for approximately 28 vehicles, and two pick-up lanes would provide the same amount of space for vehicles being retrieved. The Commission notes that according to the applicant, servicing would usually take place by appointment, thereby limiting the likelihood of vehicles arriving all at once at a particular time.

The Commission further notes that the intensity of vehicle use associated with the service center is relatively low compared with other uses. According to the project's FSEIS, the auto service center would generate a projected 201 total in and out movements during the morning, midday, evening, and Saturday midday peak hours. Based on CEQR analyses of other projects, this is roughly comparable to a 200-space public parking garage located in a high-density, mixed-use residential neighborhood in Manhattan. The combined number of vehicle movements generated by the service center and the parking garage entrance would be somewhat greater than the movements generated by the garage entrance at Building 5 but less than the entrance at Building 1.

The Commission believes that the service center would not unduly inhibit pedestrian movement. As discussed below, the total number of vehicle movements associated with the service center is relatively low compared with other uses. The Commission notes that an audible/visible warning device would be placed at the entrance to the service center and garage to alert pedestrians to exiting vehicles. The Commission also notes that the showroom would not have a separate curb cut for delivery of display vehicles; rather, these vehicles would be delivered from the service center via a vehicle elevator.

### **Special Permits for Public Parking Garages**

The applicant has proposed 1,800 spaces of off-street public parking on the site. The application would allow the parking to be constructed in accordance with either of two proposed options. In the first option, a single, integrated garage with a maximum of 1,800 spaces, including both attended and self-park spaces, would be constructed on the first and second subcellar levels of the development. In the second, five separate, fully attended garages, each associated with one of the buildings and having a total combined maximum of 1,800 spaces, would be constructed generally on the first and second subcellar levels. Both options would use the same configuration of five vehicular entrances and would contain a total maximum of 1,800 spaces. Pursuant to Sections 13-562 (Public Parking Garages and Public Parking Lots) and 74-52 (Parking Garages or Public Parking Lots in High Density Central Areas) of the Zoning Resolution, the applicant is requesting six special permits, one for the single garage option and one for each of the separated garages in the second option.

The Commission believes that these applications should be modified. This modification relates to the GLSD special permit finding for a “better site plan...[that] will thus benefit both the occupants of the general large-scale development, the neighborhood, and the City as a whole.” The Commission acknowledges that in recent years, City policy has sought to limit parking supply in the densest parts of Manhattan while taking into account market demand and affirms that this approach is consistent with promoting the pedestrian-friendly, transit-oriented character of this part of the city. In considering what is the appropriate amount of public parking for the project site, the Commission notes that two main factors have informed its decision. The first is the need to provide an appropriate number of spaces for existing parkers who currently park on the site and would be displaced by the development. The second is the need to provide parking to serve the uses in the development.

At present, according the FSEIS, approximately 1,650 parking spaces are utilized on the project site during peak hours. The FSEIS data and observations indicate that most of these spaces are being used by City residents for weekly or monthly storage of vehicles, as opposed to serving commuters or visitors to the area. These parkers are likely drawn to the relatively low-cost

parking available on the site. Because the cost of new construction will likely mean that the new parking on the site will be considerably more expensive than the existing parking, these parkers are unlikely to seek parking in the development. In any event, the Commission believes that while parking should be provided on the project site in an amount sufficient to meet the needs of residents of the surrounding area, providing parking to serve a wider area of the city is not an appropriate use for the site. The Commission notes that available data indicates that roughly half of the vehicles parked overnight on the site today come from outside the two zip codes that the site straddles, in particular from the north. (Vehicles parked overnight can reasonably be assumed to belong to residential parkers storing vehicles on the site.) Those parkers who are drawn from more distant locations can reasonably be expected to find parking in their neighborhoods or at another distant location.

With regard to parkers who live in the surrounding area, the Commission notes that according to the FSEIS, existing public parking garages within a quarter-mile of the site have capacity available to accommodate some of the parkers who would be displaced by the development. The Commission believes that parking for existing users from the surrounding area should be provided on the site in an amount that assumes the existing garages would operate at an operational capacity of roughly 90 percent. A higher operational capacity is likely to increase the number of vehicles circling local streets in search of parking. Based on the above assumptions, the amount of parking for vehicles that cannot be reasonably accommodated in existing garages in the area is approximately 430 spaces.

The Commission believes that the as-of-right ratios for permitted accessory off-street parking that apply in Community District 7 should be applied to calculate the amount of parking for the uses in the proposed project, with several adjustments. The as-of-right ratios set forth in Article I, Chapter 3 of the Zoning Resolution specify that for developments in Manhattan Community Districts 7 and 8, the number of parking spaces accessory to residential uses may not exceed 35 percent of the residential units. The Commission believes that a separate ratio should be applied to the affordable units that the applicant expects would be located on the site, based on Census data that indicates a lower rate of vehicle ownership for such units. The Commission also

believes that the proposed retail uses, auto showroom, and school can be adequately served by other modes of transportation and should not be included in the calculation of parking. With these adjustments, applying the as-of-right ratios to the proposed uses would yield approximately 830 spaces.

The Commission therefore believes that the site should accommodate both the 830 vehicles allowed by as-of-right-ratios applied to proposed uses in the project and the 430 vehicles that cannot reasonably be accommodated in existing area garages, for a total amount of public parking on the project site not to exceed 1,260 spaces. With this modification, the Commission believes that the requested special permits are appropriate.

### **Special Permit for a Public Parking Garage (C 100288 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow the applicant's proposed public parking garage, which would be located on the first and second subcellar levels of the development and accessed by means of five entrances and ramps, one in each of the buildings. As proposed at certification, the garage would have a total area of 482,400 square feet and a maximum of 1,800 attended and self-park spaces. As described above, the applicant is also requesting special permits to facilitate an option wherein the public parking in the development would consist of five separate garages with the same cumulative total maximum number of spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public

parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would have five separate entrances to the below-grade public parking. The Commission notes that having multiple access points greatly reduces the intensity and volume of vehicle movements at any one entrance. The garage entrances are widely distributed, with two located on separate blocks of West 59<sup>th</sup> Street, one at the south end of Freedom Place South, and two at the north end of Freedom Place South. The Commission notes that this distribution avoids overly burdening any one part of the streetscape with vehicle movements and allows most of the site's street frontage, including all of the wide street frontage and much of 59<sup>th</sup> Street, to avoid having curb cuts.

The Commission further notes that no garage entrances would be located on the same block as the proposed public school or on West 60<sup>th</sup> Street, which as described above is an important pedestrian corridor between the waterfront and the subway, Central, and Broadway/Columbus Circle to the east. The garage would have a total of 50 reservoir spaces serving each of the entrances and located mostly on the first subcellar level off the ramps. Each of the garage entrances would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. The Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-use neighborhood and notes that with the development of the proposed project, the streets on which the garage entrance would be located would accommodate a range of uses including residential, retail, office, hotel, auto showroom, and community facility uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading "Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)" above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the garage and its entrances would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum size of the garage to 394,000 square feet.

### **Special Permit for a Public Parking Garage (C 100289 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow an attended public parking garage for Building 1, which would be located on the first and second subcellar levels of the building and accessed by an entrance on Freedom Place South. As proposed at certification, the garage would have a total area of 115,722 square feet and a maximum of 460 spaces. The Building 1 garage would be one of five public parking garages in the development, each of which requires its own special permit. As described above, the applicant is also requesting a special permit to facilitate an option where all the public parking in the development would be provided in a single, integrated garage with a maximum of 1,800 spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up 10 FAR and residential

uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would be accessed by means of a 25-foot curb cut and 22-foot-wide entrance and ramp located on the west side of Freedom Place South, approximately 50 feet south of West 61<sup>st</sup> Street. The Commission notes the entrance would be positioned north of the central plaza and would not interfere with pedestrian access to the open space. The garage would have the required 23 reservoir spaces and would be fully attended. The garage entrance would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. For these reasons, the Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-use neighborhood and notes that with the development of the proposed project, the street on which the garage entrance would be located, Freedom Place South, would accommodate a range of uses including residential, retail, hotel, and possibly auto showroom uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the

streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading “Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)” above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the Building 1 garage and its entrance would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum number of spaces in the Building 1 garage to 322 and the maximum size of the garage to 80,404 square feet. With the reduced number of spaces, 16 reservoir spaces would be provided.

#### **Special Permit for a Public Parking Garage (C 100290 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow an attended public parking garage for Building 2, which would be located on the cellar and both subcellar levels of the building and accessed by an entrance on Freedom Place South. As proposed at certification, the garage would have a total area of 78,933 square feet and a maximum of 230 spaces. The Building 2 garage would be one of five public parking garages in the development, each of which requires its own special permit. As described above, the applicant is also requesting a special permit to facilitate an option where all the public parking in the development would be provided in a single, integrated garage with a maximum of 1,800 spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-

rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would be accessed by means of a 25-foot curb cut and 22-foot-wide entrance and ramp located on the east side of Freedom Place South, approximately 50 feet south of West 61<sup>st</sup> Street. The Commission notes the entrance would be positioned north of the central plaza and would not interfere with pedestrian access to the open space. The garage would have the required 12 reservoir spaces and would be fully attended. The garage entrance would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. For these reasons, the Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-use neighborhood and notes that with the development of the proposed project, the street on which the garage entrance would be located, Freedom Place South, would accommodate a range of uses including residential, retail, hotel, and possibly auto showroom uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading "Special permit to modify bulk regulations and

Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)” above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the Building 2 garage and its entrance would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum number of spaces in the Building 2 garage to 161 and the maximum size of the garage to 58,531 square feet. With the reduced number of spaces, 10 reservoir spaces would be provided.

#### **Special Permit for a Public Parking Garage (C 100291 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow an attended public parking garage for Building 3, which would be located on the first and second subcellar levels of the building and accessed by an entrance on West 59<sup>th</sup> Street. As proposed at certification, the garage would have a total area of 75,718 square feet and a maximum of 290 spaces. The Building 3 garage would be one of five public parking garages in the development, each of which requires its own special permit. As described above, the applicant is also requesting a special permit to facilitate an option where all the public parking in the development would be provided in a single, integrated garage with a maximum of 1,800 spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to

the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would be accessed by means of a 25-foot curb cut and 22-foot-wide entrance and ramp located on the north side of West 59<sup>th</sup> Street, at least 50 feet east of Riverside Boulevard and at least \_\_\_ feet west of the driveway for Building 3. The entrance to the garage would be shared with the entrance to the auto service center. The intersection between the parking garage ramp and the turnoff for the service center would be a T intersection, to minimize the risk of vehicle conflicts, and would be clearly marked with signage. The entry door to the service center would be located far enough off the shared ramp to allow, in the event that a vehicle arrives when the service center is closed, space for that vehicle to stop and turn around without obstructing movement on the shared ramp. Movement of vehicles to and from the garage would have priority over vehicles exiting the service center, which would come to a halt at a stop line before turning onto the ramp.

The Commission further notes that the entrance would be located some distance from the expanded open space proposed in the revised application and would not interfere with pedestrian access to the open space. The garage would have the required 15 reservoir spaces and would be fully attended. The garage entrance would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. For these reasons, the Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-

use neighborhood and notes that with the development of the proposed project, the street on which the garage entrance would be located, West 59<sup>th</sup> Street, is occupied on its entire south side by the Power House, an industrial use, and would accommodate a range of uses on its north side including residential, retail, hotel, and community facility uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading "Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)" above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the Building 3 garage and its entrance would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum number of spaces in the Building 3 garage to 203 and the maximum size of the garage to 53,946 square feet. With the reduced number of spaces, 10 reservoir spaces would be provided.

### **Special Permit for a Public Parking Garage (C 100292 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow an attended public parking garage for Building 4, which would be located on the first and second subcellar levels of the building and accessed by an entrance on Freedom Place South. As proposed at certification, the garage would have a total area of 92,231 square feet and a maximum of 370 spaces. The Building 2 garage would be one of five public parking garages in the development, each of which requires its own special permit. As described

above, the applicant is also requesting a special permit to facilitate an option where all the public parking in the development would be provided in a single, integrated garage with a maximum of 1,800 spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would be accessed by means of a 25-foot curb cut and 22-foot-wide entrance and ramp located on the west side of Freedom Place South, approximately 36 feet north of West 59<sup>th</sup> Street. The Commission notes the entrance would be positioned south of the central plaza and public open space along Freedom Place South and would not interfere with pedestrian access to the open space. The garage would have the required 19 reservoir spaces and would be fully attended. The garage entrance would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. For these reasons, the Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-

use neighborhood and notes that with the development of the proposed project, the street on which the garage entrance would be located, Freedom Place South, would accommodate a range of uses including residential, retail, hotel, and possibly auto showroom uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading "Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)" above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the Building 4 garage and its entrance would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum number of spaces in the Building 4 garage to 259 and the maximum size of the garage to 70,107 square feet. With the reduced number of spaces, 13 reservoir spaces would be provided.

### **Special Permit for a Public Parking Garage (C 100293 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The special permit would allow an attended public parking garage for Building 5, which would be located on the first and second subcellar levels of the building and accessed by an entrance on West 59<sup>th</sup> Street. As proposed at certification, the garage would have a total area of 113,476 square feet and a maximum of 450 spaces. The Building 5 garage would be one of five public parking garages in the development, each of which requires its own special permit. As described above, the applicant is also requesting a special permit to facilitate an option where all the public

parking in the development would be provided in a single, integrated garage with a maximum of 1,800 spaces.

The Commission notes that the proposed garage would be located in a C4-7 district, which allows a mix of residential, commercial, and community facility uses up to 10 FAR and residential uses up to 12 FAR with Inclusionary Housing. The area surrounding the project site is characterized by medium- and high-density residential development, including numerous high-rise towers. The area also includes a number of significant commercial and community facility uses, including John Jay College, the BMW office building, the CBS Broadcast Center, and to the east, Roosevelt Hospital and Fordham University. With the development of the proposed project, it is expected that this area will continue to thrive with a dense mix of uses. The Commission also notes that the site is currently occupied by surface and structured public parking with a total of approximately 2,400 spaces, approximately 1,650 of which are utilized at peak hours. The presence of this use has not inhibited the recent growth of the area, including a number of new residential developments.

The proposed garage would be accessed by means of a 25-foot curb cut and 22-foot-wide entrance and ramp located on the north side of West 59<sup>th</sup> Street, at least 50 feet east of Freedom Place South and at least 20 feet west of the curb cut providing access to the truck elevators that in turn access below-grade loading berths. The garage would have the required 23 reservoir spaces and would be fully attended. The garage entrance would have an audible/visible warning device at the entrance to warn pedestrians of exiting vehicles. For these reasons, the Commission believes that the vehicles using the garage would not create or contribute to serious traffic congestion or unduly inhibit traffic and pedestrian flow.

The Commission recognizes that the garage would be located in a zoning district that allows commercial and community facility uses alongside residential uses, with permitted densities up to 12 FAR. The Commission further recognizes that the site is located in a high-density, mixed-use neighborhood and notes that with the development of the proposed project, the street on which the garage entrance would be located, West 59<sup>th</sup> Street, is occupied on its entire south side

by the Power House, an industrial use, and would accommodate a range of uses on its north side including residential, retail, hotel, and community facility uses.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the garage will be adequate to handle traffic resulting from the garage for the reasons set forth under the heading "Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)" above.

As described above, the Commission is modifying the application to reduce the total maximum amount of public parking from 1,800 spaces to 1,260 spaces. This reduction would apply to both of the garage options. The Commission believes that its conclusions with respect to the findings discussed above would not be altered by this modification, since the location of the Building 5 garage and its entrance would not change, and the volume of traffic generated by the garage would be expected to decrease in proportion to the scale of the reduction in the number of spaces. The Commission confirms that this modification reduces the maximum number of spaces in the Building 5 garage to 315 and the maximum size of the garage to 85,998 square feet. With the reduced number of spaces, 16 reservoir spaces would be provided.

### **Special Permit for Development in a Railroad/Transit Right-of-Way or Yard (C 100287 ZSM)**

The Commission believes that the grant of this special permit, as modified, is appropriate. The proposed project would be located in a former rail yard and would also be constructed over the Amtrak right-of-way. Accordingly, the applicant is requesting a special permit to allow development in this former rail yard. The special permit would allow the area of the platform over the Amtrak right-of-way and light rail easement, as well as the entire area formerly devoted to railroad use, to be used to calculate the lot area of the site for zoning calculation purposes and

would also establish the elevation of the platform level (+24 feet) as the reference plane for zoning calculation purposes.

The Commission observes that the creation of a level platform over much of the site would have several beneficial consequences for the site's public realm. The platform would allow much of the public open space, including the central plaza, reflecting pool, and pedestrian path to the park entrance, to be located at the same grade, allowing these spaces to be more integrated and coherent than they otherwise would be. The creation of a consistent grade on a site that would otherwise be sloping simplifies and strengthens the relationship between the ground-floor retail uses in different buildings, particularly around the central plaza and along the pedestrian path. The height of the platform raises the open space so that views to the west along the 60<sup>th</sup> Street axis are less dominated by the Miller Highway viaduct than if the site sloped continuously to the elevation of Riverside Boulevard. The Commission understands that the platform is also the roof of the cellar level and notes that the platform facilitates the below-grade uses, which the Commission recognizes help to support the development.

The Commission has considered the nature of the streets that would provide access to the garage, as well as the results of the project's FSEIS with regard to traffic impacts and mitigations, including unmitigated intersections located on the West Side Highway, and concludes that the streets providing access to the proposed project will be adequate to handle traffic resulting from the project for the reasons set forth under the heading "Special permit to modify bulk regulations and Inclusionary Housing base and maximum floor area ratios and unit distribution requirements (C 100296A ZSM)" above.

The Commission confirms that the proposed site plan would not concentrate bulk or dwelling units in any one part of the site but rather would distribute them throughout the site in five separate buildings. Two of the buildings, 2 and 5, would be surrounded by streets, while the other three buildings would be separated by large areas of open space. The Commission notes that the width of towers would be limited in order to ensure that access to light and air, both within and surrounding the site, would not be obstructed. In keeping with sound planning

practice, the tallest towers would be located on the wide streets while lower towers would be placed in the middle portion of the site.

The Commission believes that the proposed uses in the development will not adversely affect one another. Residential uses would be located above non-residential uses, as required by the Zoning Resolution. Commercial uses that provide little activation of street frontage, such as offices, hotel check-in and ballroom space, and the proposed cinema, would generally be located on upper floors, with ground-floor space limited to entrances and elevator banks. This would allow active retail uses to occupy limited ground-floor space. An exception would be the proposed public school, which would occupy almost all of the West 61<sup>st</sup> Street frontage of Building 2. The Commission notes that this would afford the school an appropriate measure of separation from the other ground-floor uses and also notes that a 12-foot setback along part of 61<sup>st</sup> Street would provide useful circulation space off of the public sidewalk. The public parking and auto service center would be located entirely below grade.

The Commission is aware that the Metropolitan Transportation Authority (MTA) has identified the area around the project site as a desirable location for a new rail station in conjunction with plans to provide Metro-North Railroad service along the West Side of Manhattan to Penn Station via Amtrak's Empire Connection. The Amtrak right-of-way runs through the eastern portion of the site and passes underneath the proposed footprints of two of the project buildings. The Commission notes that the MTA, in a March 2010 letter to the Department of City Planning, stated that Metro-North had evaluated the feasibility of constructing a station on the project site and concluded that because of engineering issues related to the curvature of the tracks and the presence of existing structures, Metro-North is no longer considering the site for a potential station. The Commission further notes that the proposed project would preserve the transitway easement that runs along the western edge of the Amtrak right-of-way, as required by the Riverside South restrictive declaration. The easement would therefore be available for future transportation use.

### **Authorization for a Curb Cut (N 100298 ZAM)**

The Commission believes that the authorization for a curb cut is appropriate. The applicant is requesting an authorization to allow a curb cut on West End Avenue, which is not permitted as-of-right because West End Avenue is a wide street. The Commission notes that this curb cut would be formed by the extension of West 60<sup>th</sup> Street into the project site. Because the 60<sup>th</sup> Street extension would take the form of a public access easement and not a mapped City street, the west side of the intersection would technically be considered a curb cut on West End Avenue. The Commission observes that this “curb cut” is not a curb cut in the generally understood sense of the term; rather, it would be designed to look like and function as a normal intersection of two city streets. As such, it would facilitate the normal movement of pedestrians, vehicles, and bicycles and would not in any way be hazardous to traffic safety. The Commission believes that by fashioning familiar, standard-size Manhattan blocks on the west side of this stretch of West End Avenue, the extension of West 60<sup>th</sup> Street would improve the existing character of the streetscape.

### **Commission Certification for Curb Cuts (N 100286 ZCM)**

The Commission believes that the requested certification is appropriate. The applicant is requesting a certification to allow an additional curb cut on West 61<sup>st</sup> Street, a narrow street. The Commission notes that only one of the two curb cuts on 61<sup>st</sup> Street qualifies as a curb cut in the generally understood sense of the term: The proposed 30-foot wide curb cut in Building 1, which would provide access to two off-street loading berths. The other curb cut would be formed by the extension of Freedom Place South through the project site to West 59<sup>th</sup> Street. The Commission notes the curb cut for the loading berths would be at least 50 feet from Riverside Boulevard and would not be near any entrances to the parking garage. It would also be located a considerable distance from the entrance proposed public school, near the opposite end of 61<sup>st</sup> Street. The Commission acknowledges that the extension of Freedom Place South would benefit circulation and connectivity in the surrounding area and would help link the development to the blocks to the north. The street extension would help facilitate the safe and rational movement of pedestrians, vehicles, and bicycles and would break up what would otherwise be a long,

uninterrupted block between West End Avenue and Riverside Boulevard. The Commission therefore believes that the proposed curb cuts will result in a good overall site plan.

### **Commission Certification for Curb Cuts (N 100299 ZCM)**

The Commission believes that the requested certification is appropriate. The applicant is requesting a certification to allow additional curb cuts on West 59<sup>th</sup> Street, a narrow street, serving (1) the parking garage at Building 3 and auto service center, (2) the Building 3 drop-off, (3) the parking garage at Building 5, and (4) off-street loading berths.

The proposed site plan would locate several of the access points to loading facilities and below-grade levels on West 59<sup>th</sup> Street. The Commission believes that this decision makes sense for several reasons. The entire south side of 59<sup>th</sup> Street is occupied by the Power House, which generates very little traffic. By locating vehicle entrances on 59<sup>th</sup> Street, the applicant is able to avoid placing them on other streets, such as West 61<sup>st</sup> Street near the proposed school, West 60<sup>th</sup> Street, and Freedom Place South along the length of the open space, where they could have a more disruptive effect on pedestrian movement and the quality of the open space. The Commission notes that there would be three well-spaced curb cuts on 800 feet of frontage, not an excessive amount considering the size of the development, and further notes that by locating off-street loading berths below grade and accessed via truck elevators and a single curb cut, the applicant has limited the amount of curb cuts on 59<sup>th</sup> Street and prevented the need for truck movements that might disrupt the pedestrian environment along this street.

A fifth curb cut on West 59<sup>th</sup> Street would be formed by the extension of Freedom Place South through the project site. The Commission acknowledges that the extension of Freedom Place South would benefit circulation and connectivity in the surrounding area and would link the development to the blocks to the north. The street extension would help facilitate the safe and rational movement of pedestrians, vehicles, and bicycles and would break up what would otherwise be a long, uninterrupted block between West End Avenue and Riverside Boulevard.

### **Commission Certification to Modify Streetscape Regulations (N 100300 ZCM)**

The Commission believes the certification to modify streetscape regulations is appropriate. The applicant is requesting a certification to modify the streetscape regulations that apply within high-density commercial districts. The requested modifications relate to provisions governing retail continuity on wide streets, permitted signage height, and ground-floor transparency. Specifically, they would remove the requirement for ground-floor retail for Building 3's Riverside Boulevard frontage and, for several buildings along West 59<sup>th</sup> Street and 61<sup>st</sup> Street, would allow signage at a height greater than 17 feet above adjacent curb level and less than 50 percent ground-floor transparency.

The Commission believes that removing the retail requirement for Building 3's Riverside Boulevard frontage will give the applicant the necessary flexibility to determine what is the most viable use in this location, which is underneath the highway viaduct and may not receive the same levels of foot traffic as other locations where retail is required by zoning or would be required under the proposed site plan. The Commission notes that in all locations but one where modification of the signage height requirement is requested, the proposed signage heights would be only slightly greater than 17 feet above adjacent curb level and are due to high floor-to-ceiling heights in these buildings. On the south and west sides of Building 3, facing West 59<sup>th</sup> Street and Riverside Boulevard, the applicant is proposing a second signage band at a height of approximately 32 feet. The Commission understands that signage at this height will be clearly visible from the adjacent highway and believes that this is appropriate, given that all the signage in the development will be limited in its vertical dimension to two and a half feet and will be subject to the restrictions on signage (e.g., surface area, illumination, limited to uses on the zoning lot) that apply in this zoning district.

The Commission further recognizes that the requested relief from the ground-floor transparency requirement reflects, for Building 2, the presence of the school in this building, which for programmatic reasons may not be able to provide the required level of transparency, and for Buildings 3 and 5, the location of vehicle entrances and access to off-street loading facilities in these buildings. The Commission notes that the buildings would comply with the 50 percent

requirement in other locations along 59<sup>th</sup> and 61<sup>st</sup> streets and would be required under the application to achieve 70 percent transparency along West End Avenue, West 60<sup>th</sup> Street, and portions of the open space.

### **Modification of Riverside South Special Permit and Restrictive Declaration**

#### **(M 920358D ZSM)**

The applicant proposes to modify the original general large-scale development special permit for Riverside South, approved in 1992 and modified three times since, and the associated restrictive declaration. The proposed modification would revise the special permit approval drawings and declaration to reflect the proposed project, including elimination of the originally proposed studio use on Parcel N. Revisions to the drawings would include removing drawings that specify the existing bulk controls for Parcels L/M/N and revising the tables that control permitted floor area and uses in the GLSD. Revisions to the restrictive declaration would include updating the attached drawings; allowing retail use on Parcels G and H; and removing the requirement to map West 60<sup>th</sup> Street through the project site in the event that the studio use is eliminated. The declaration would also be modified to allow for a new, separate restrictive declaration for the project site that would reflect the new land use actions and environmental review and contain other provisions specific to the proposed project. The proposed project would continue to be bound by certain provisions of the Riverside South restrictive declaration, including all of the provisions relating to the development and maintenance of Riverside Park South, the Riverside South Implementation Task Force provisions with respect to the development of the park, and the transitway easement option provision. The sewer hook-up provisions in the original restrictive declaration would no longer apply to Parcels L/M/N, as they were determined by the New York City Department of Environmental Protection (DEP) not to be necessary, based on current data. The Commission believes that these modifications to the original special permit and declaration are appropriate.

The Commission notes that removing the requirement to map West 60<sup>th</sup> Street would allow for applicant's proposed site plan, which would leverage the extension of the grid into the site to create a persuasive and legible framework for the site's public realm. The Commission further

recognizes that a key feature of the proposed site plan, the large amount of coherent, integrated public open space west of Freedom Place South, could not be provided without removing this requirement. The Commission acknowledges that a studio use – a large-scale commercial use that generates little street activity for its frontage – is no longer an appropriate use for a neighborhood in which residences and commercial and community facility uses serving them now predominate. The Commission understands that retail use is currently not allowed on Parcels G and H (Riverside Boulevard between West 66<sup>th</sup> and 64<sup>th</sup> streets) and agrees with the applicant that retail services would be desirable in this location.

### **Extensions of Special Permits and Authorization**

The applicant is requesting that the Commission extend the lifetime of the special permits and authorization (normally four years from the effective date) to 10 years in order to allow for the possibility that unexpected conditions in the real estate and/or financing markets could delay construction of the proposed project. The Commission believes that extending the special permits and authorization is appropriate.

### **FINDINGS**

Based upon the above consideration, the Commission hereby makes the following findings pursuant to Section 74-743 of the Zoning Resolution, as amended pursuant to the related application for a zoning text amendment (N 100294A ZRM):

- 1) The distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the general large-scale development, the neighborhood, and the City as a whole;
- 2) the distribution of floor area and location of buildings will not unduly increase the

- bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
- 3) [Not applicable]
  - 4) considering the size of the proposed general large-scale development, the streets providing access to such general large-scale development will be adequate to handle traffic resulting therefrom;
  - 5) [Not applicable]
  - 6) [Not applicable]
  - 7) the modification of the base and maximum floor area ratios and requirements regarding distribution of affordable housing units will facilitate a desirable mix of uses in the general large-scale development and a plan consistent with the objectives of the Inclusionary Housing Program and those of Section 74-74 (General Large-Scale Development) with respect to better site planning; and
  - 8) a declaration with regard to ownership requirements in paragraph (b) of the general large-scale development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Supplemental Environmental Impact Statement (FSEIS), including Chapter 28 “Modifications to the Proposed Project” thereof, for which a Notice of Completion was issued on October 15, 2010, with respect to this application (CEQR No. 09DCP020M), and the CEQR Technical Memoranda issued on September 10, 2010 and

October 26, 2010, with respect to modifications of this application set forth herein, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulations have been met and that,

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action to be approved, with the modifications set forth and analyzed in the Technical Memorandum dated October 26, 2010, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FSEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration attached as Exhibit B hereto, those project components related to the environment and mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FSEIS and Technical Memoranda, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

**RESOLVED**, 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 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the revised modified application submitted by CRP/Extell Parcel L, LP and CRP/Extell Parcel N, LP, pursuant to Sections 197-c and 201 of the New York City Charter on October 27, 2010, as modified herein , for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to allow:

1. the location of buildings without regard for the applicable court, distance between buildings, height and setback regulations;
2. the modification of the definition of outer courts and the provisions of Section 23-84 (Outer Court Regulations) to include any open area that is bounded on all sides but one by building walls and is not otherwise a yard or an inner court; and
3. for purposes of applying the Inclusionary Housing Program:
  - a. the modification of the base and maximum floor area ratios, not to exceed the maximum floor area ratio permitted, based on a proportionality between affordable floor area and residential floor area in buildings containing multiple uses; and
  - b. the modification of the requirements regarding distribution of affordable housing units specified in Section 23-96(b);

in connection with a proposed mixed-use development on property bounded by West 61<sup>st</sup> Street, West End Avenue, West 59<sup>th</sup> Street, and Riverside Boulevard (Block 1171, Lots 155 and 165) in a C4-7 District, within a general large-scale development generally bounded by West 72<sup>nd</sup> Street, Freedom Place, West End Avenue, West 59<sup>th</sup> Street and Riverside Boulevard, Borough of Manhattan, Community District 7, is approved subject to the following conditions:

1. The development that is the subject of this application (C 100296A ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by Goldstein, Hill & West Architects, LLP, Philip Habib & Associates, and Mathews Nielsen Landscape Architects, filed with this application and incorporated in this resolution, and in accordance with the provisions and procedures set forth in the Restrictive Declaration:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1R	Index of Drawings Zoning Calculations	October 27, 2010
Z-8R	Zoning Compliance & Computations	October 27, 2010
Z-15R	Zoning Lot Plan for Large Scale Plan, Railroad Yard & Right-of-Way Designation	October 26, 2010
Z-100	Roof Plan / Site Plan	October 27, 2010
Z-101	Ground Floor Plan with Building Maximum Envelopes	October 27, 2010
Z-102	Zoning Compliance Tower Lot Coverage Plan	October 26, 2010
Z-103	Zoning Compliance Setback Compliance Plan	October 26, 2010
Z-104	Site Sections 1 of 2	October 26, 2010
Z-105	Site Sections 2 of 2	October 26, 2010
Z-106	Zoning Envelope Building 1	October 26, 2010
Z-107	Zoning Envelope Building 2	October 26, 2010
Z-108	Zoning Envelope Building 3	October 27, 2010
Z-109	Zoning Envelope Building 4	October 26, 2010
Z-110	Zoning Envelope Building 5	October 26, 2010
Z-111	Building Overhang Diagrams Buildings 1 & 2	October 26, 2010
Z-112	Building Overhang Diagrams Buildings 3, 4 & 5	October 26, 2010
Z-113	Outer Court Diagrams	October 26, 2010
Z-114	Inner Court Diagrams	October 26, 2010
Z-115	Minimum Distance Diagrams	October 26, 2010
Z-116	Ground Floor Elevation Streetscape Diagrams Building 1	October 26, 2010
Z-117	Ground Floor Elevation Streetscape Diagrams Building 2	October 26, 2010
Z-118	Ground Floor Elevation Streetscape Diagrams Building 3	October 26, 2010
Z-119	Ground Floor Elevation Streetscape Diagrams Building 4	October 26, 2010
Z-120	Ground Floor Elevation Streetscape Diagrams Building 5	October 27, 2010
Z-121	Tower Top Diagrams	October 27, 2010
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Z-176	Public Space and Access Easements Diagram	October 26, 2010
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Z-180	Parcel 1 Interim Open Space Plan	October 27, 2010
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Z-182	Interim Open Space on Platform	October 26, 2010

2. The development which is the subject of this application shall conform to all applicable laws and regulations relating to their construction, operation and maintenance.
3. Development pursuant to this resolution shall be allowed only after the modification to the original Riverside South restrictive declaration attached hereto as Exhibit A, and the restrictive declaration attached hereto as Exhibit B, with such administrative changes to both documents as are acceptable to Counsel to the Department of City Planning, have been executed and recorded in the Office of the Register, New York County. Such restrictive declarations shall be deemed incorporated herein as conditions of this resolution.
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
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 restrictive declarations 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 restrictive declarations.

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

The above resolution (C 100296A ZSM and M 920358D ZSM), duly adopted by the City Planning Commission on October 27, 2010 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, ESQ., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,**  
**RICHARD W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. McRAE,**  
**KAREN A. PHILLIPS, Commissioners**

**ANNA HAYES LEVIN, Commissioner, Voting No**



# **Report and Resolution**

Of

**Community Board 7/Manhattan**  
**Under the Uniform Land Use Review Procedure**

**Concerning**

## **Riverside Center**

**As proposed by the Extell Development Company**

**July 2010**

Riverside Center Working Group, Ethel Sheffer, Chair  
Community Board 7/Manhattan, Mel Wymore, Chair  
Community Board 7/Manhattan, Penny Ryan, District Manager

## Acknowledgements

This document reflects the research, analysis, hearings, discussions and recommendations of Community Board 7/Manhattan (“MCB7”) regarding the Riverside Center development project proposed by the Extell Development Company, as certified by the New York City Department of City Planning on May 24, 2010. We acknowledge and appreciate the focus and effort of all members of Community Board 7, and in particular, the members of the Riverside Center Working Group\*.

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We thank MCB7 District Manager Penny Ryan and MCB7 staff John Martinez and Jessie Nieves for their unfaltering support.

We thank MCB7 consultants Michael Kwartler, John West, and Georges Jacquemart for their invaluable counsel. We are grateful to the Fund for The City of New York, The New York Community Trust, and New York City Council Member Inez Dickens for their financial support of the consultants’ work, which is of the highest professional standard.

We thank volunteer experts Paul Willen and Dan Gutman for their essential contribution to the site plan, and Paul Elston, Craig Whitaker, Batya Lewton, Olive Freud, and Anne Weisberg for their research, analysis, and informed perspectives.

We appreciate the responsive staffs and resources of Manhattan Borough President Scott M. Stringer, City Council Member Gale A. Brewer, New York State Senator Tom Duane, New York State Assembly Member Linda Rosenthal, U.S. Congress Member Jerrold Nadler, and the Department of City Planning. We also appreciate the willingness of the Extell Development Company to meet and provide information as we studied the Riverside Center application.

Finally, and as always, we appreciate the steadfast engagement and input of countless residents, professionals, organizations, and other stakeholders who share a passion for the environment, quality of life, and future of Manhattan’s Upper West Side.

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## A. Executive Summary

Community Board 7/Manhattan (“MCB7” or the “Board”) welcomes the opportunity to review the application by Extell Development Company (“Extell” or the “Developer”) to develop “Riverside Center” (“RSC” or the “Project”), a general, large-scale development project proposed for approximately 8 acres of land located in the southwestern corner of Manhattan’s Upper West Side, proximate to the Hudson River, and bounded by West 61<sup>st</sup> Street, West 59<sup>th</sup> Street, West End Avenue, and Riverside Boulevard. The application proposes approximately 3 million SF of construction, including 5 high-rise towers, 2,500 residential apartments, space for a public school, a hotel, a cinema, mixed retail, an auto showroom and below-ground auto repair center, 1,800 below-ground parking spots, and approximately 2.75 acres of privately-owned Public Open Space.



Rendering of Extell’s proposed Riverside Center project

MCB7 is amenable to development of this site, which is currently occupied by a ground level, open-air parking lot and indoor parking facility, provided that material concerns expressed in this report are met. The Board appreciates several aspects of the proposal, including the unique design of the proposed towers, the extension of Freedom Place South from West 61<sup>st</sup> to West 59<sup>th</sup> Streets, the extension of West 60<sup>th</sup> Street from West End Avenue to Freedom Place South, the residential programming of the site, and the inclusion of certain provisions for a public school, affordable housing, and public open space. However, after considerable review, analysis, and broad input from community stakeholders, MCB7 has several significant concerns that should be, but have not yet been, addressed by specific and reasonable modifications to the application.

Prior to reviewing the application, MCB7 combined accepted standards of urban design with the input of resident experts, professional consultants, and public testimony to develop a set of principles by which to consider the Project. The Core Principles (which address issues of zoning and density, public open space, connectivity and circulation, transportation and traffic, streetscape,

retail and cultural facilities, housing, public education, and sustainability) were adopted by MCB7 in February 2010, and have been refined in this report.

Having established Core Principles, the Board identified three “Givens” that are of critical importance to the community: the public school, affordable housing, and sustainability.

**Public School:** The application includes a 75,000 SF “core and shell” for a school, to be built at Developer expense, with an option for the Department of Education (“DoE”)/School Construction Authority (“SCA”) to purchase an additional 75,000 SF. Further the DoE/SCA would be required to fund the entire cost of fitting out all of the 151,598 SF of raw space into a usable school. *The application should be modified to include a new 6-section-per-grade pre-K through 8 school of at least 151,598 SF for Community School District #3, built in the first building constructed at the site, and fully funded by the Developer.*

**Affordable Housing:** The application specifies that 12% of the residential units will be affordable for a period of 20 years. *The application should be modified to include 30% mixed-income permanently affordable housing, primarily integrated within the site.*

**Sustainability:** The application specifies a few steps that minimize environmental impacts and carbon footprint. *The application should be modified to incorporate the highest available LEED certification standards and the inclusion of green technologies that pay back within 10 years.*

MCB7 has concluded that the proposed plan fails to meet the Core Principles in several additional and significant ways:

- Density is excessive and out of context, even with respect to recent developments to the north and east of the site. The Developer’s request is significantly greater than the previously approved density for the site and is not justified. Increased population will add significant load to schools, hospitals, parks, sanitation, and transportation systems.
- The privately-owned Public Open Space is elevated on a platform, constricted by narrow access points, and divided by criss-crossing pathways and sculptural elements that further reduce and constrain the usable space. Its design is reflective of a private enclave that is not inviting or engaging to a variety of community users. There are no provisions for active recreation or cultural programming.
- The plan marginalizes West 59<sup>th</sup> Street and Riverside Boulevard, as well as the historic powerhouse, and hampers rather than facilitates pedestrian Connectivity and Circulation to and from Riverside Park South.
- The Streetscapes, especially around the site perimeter, are not engaging from the sidewalk. Retail spaces are often elevated or removed from pedestrian traffic.
- Commercial uses, especially the auto showroom and repair center, are not environmentally responsible, engaging, or useful to the local community. Competition from these uses may also adversely impact the auto district to the south, which the city has sought to preserve.

To address these concerns, MCB7 makes several recommendations. These modifications are further described within this report and specified in the drawings and presentations of MCB7's consultants, Michael Kwartler & Associates and BFJ Planning, which are available at [www.nyc.gov/mcb7](http://www.nyc.gov/mcb7). Recommendations for improving the site plan include:

***Restrict total density to 2.4 Million Zoning Square Feet.***

***Create Additional Public Open Space by Removing Building 4 to improve public open space for the entire neighborhood, reduce density, increase light and air, reduce shadow and wind, provide a contextual relationship with the nearby historic powerhouse, and provide for active recreation (thereby addressing some of the adverse impacts identified in the DSEIS).***

***Bring the Site to Grade (eliminate the platform) to enhance the West 59<sup>th</sup> Street corridor to and from Riverside Park South, connect the site to the historic powerhouse, and increase mutual visibility between the Public Open Space and the West 59<sup>th</sup> Street and Riverside Boulevard sidewalks, making them more inviting, safer, and less isolated.***

***Surround Public Open Space with Publicly Accessible Streets or Broad Pathways, either for pedestrian or limited vehicular use — including the extension of West 60<sup>th</sup> Street to Riverside Boulevard — to delineate public from private space, encourage pedestrian circulation to and within public spaces, and enable building lobbies to open onto public ways.***



Rendering of Extell's plan with MCB7 modifications

Recommendations for the programming of the site plan include:

***Eliminate the Auto Showroom and Repair Center** and replace it with useful, relevant, and vibrant retail that attracts customers and visitors and serves the local community.*

***Limit underground parking to 1000 spaces, centralized in a single garage** that serves the entire site, to optimize underground loading/unloading, minimize surface traffic, and deter growth in automobile ownership and traffic.*

***Include a public playground** that could be used by the public school.*

Because the Project will generate a significant influx of population and load on the common assets of the Upper West Side, **MCB7 recommends that the Developer contribute significantly to the local community and infrastructure, including to the completion of Riverside Park South.**

In conclusion, MCB7 welcomes development at this site and seeks to strike a balance between private incentives and public needs, local concerns and city growth, short-term advantages and long-term impacts, and most of all, between what is viable and what is truly visionary. While not insignificant, the recommendations offered by MCB7 are reasonable, respectful of the application, and designed to benefit the city, the Upper West Side community, the future residents and customers of the proposed site, and of course, the Developer. MCB7 looks forward to continued discussions and deliberations as ULURP continues through Fall 2010.

This report was adopted by the Full Board on July 22, 2010, by a vote of 36-2-0-0.

Recommendations made throughout this report are summarized in Appendix A. Resolutions on each of the specific discretionary actions requested by the Developer are contained in Appendix B. Reference materials, presentations, consultant reports, meeting minutes, and other related documents can be found in the “projects” section at [www.nyc.gov/mcb7](http://www.nyc.gov/mcb7).

## B. Jurisdiction and Required Actions

MCB7 submits this Report and Resolution in fulfillment of its ULURP obligations pursuant to New York City Charter § 197-c.

Extell is applying for discretionary actions and modifications to develop the southernmost portion of Riverside South (parcels L, M, and N), which are different from those originally approved in 1992. Extell's proposed project was certified by the Department of City Planning to begin ULURP on May 24, 2010. MCB7's review period of 60 days began on June 2, 2010 and ends on August 2, 2010. MCB7 has, both prior to and during ULURP, conducted a series of presentations, review sessions, and public hearings on the Project.

This report summarizes MCB7's findings, concerns, positions and recommendations in response to Extell's application, including the Developer's requests to modify certain provisions of the 1992 Restrictive Declaration and the approvals it contains. Recommendations, including specific modifications to the proposal, are summarized in Appendix A. Resolutions on each of the specific discretionary actions requested by the Developer are contained in Appendix B.

As part of the overall ULURP review, MCB7 has taken a position on each of the 16 applications for discretionary approval, irrespective of whether the application is technically subject to ULURP. MCB7 resolutions responding to specific land use actions, fully detailed in Appendix B, are summarized below:

- MCB7 **adopts and approves** this report and all recommendations herein.
- MCB7 supports creative architectural design, and **approves application #N 100294 ZRM** to allow any open area surrounded on three sides by building walls to be treated as an "outer court."
- MCB7 believes the proposed automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor likely to contribute to a lively streetscape in any way, and **disapproves application #N 100295 ZRM** for a text amendment to permit automotive sales and service establishments (UG 16) within a "general large-scale development."
- MCB7 believes the urban design of the Riverside Center proposal would be significantly improved by eliminating Building 4 (and modifying the footprint of Building 5), and **disapproves application #C 100296 ZSM**, *unless the Project is modified in accordance with this report and the drawings of MCB7's consultants, Michael Kwartler & Associates and BFJ Planning.*
- MCB7 believes the proposed automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor to contribute to a lively streetscape in any way, and **disapproves application #C 100297 ZSM** for a special permit (pursuant to the text amendment sought in #N 100295 ZRM) to allow automobile sales and services.
- MCB7 supports physical construction on the Riverside Center site and would approve an application to allow that portion of a railroad or transit right-of-way to be completely covered

over by a permanent platform to be included in the “lot area” for the Development, but MCB7 also believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, and so **disapproves application #C 100287 ZSM** to establish elevation + 24 above Manhattan Datum instead of “curb level” as the reference plane for the Development plus additional curb levels for streetscape purposes (26-00 and 37-30).

- MCB7 recognizes the need for public parking on this large, mixed-use site, but recommends that parking should be limited to 1000 spaces, and that only one below-ground garage should be constructed to serve the entire site. Therefore, MCB7 **disapproves application #C 100288 ZSM** to permit a “public parking garage” with a maximum of 1,800 public parking spaces and 5 access points, *but would approve a single, below-ground public parking garage, with 1000 spaces and up to 4 access points.*
- MCB7 believes multiple garages with multiple points of access will increase traffic and congestion, and **disapproves applications #C 100289 ZSM, #C 100290 ZSM #C 100291 ZSM, #C 100292 ZSM, #C 100293 ZSM** that would permit public parking garages to be located beneath each of the five buildings proposed in the application.
- MCB7 supports the extension of West 60<sup>th</sup> Street, and **approves application # N 100298 ZAM** to permit a curb cut on West End Avenue (a wide street) to facilitate the extension of West 60<sup>th</sup> Street westward through a portion of the project site as a public access easement.
- MCB7 believes the site plan over-burdens West 59<sup>th</sup> Street with services, and **disapproves application # N 100299 ZCM** to allow four additional curb cuts on West 59<sup>th</sup> Street (a narrow street), *but would approve an application to allow two additional curb cuts on West 59<sup>th</sup> Street.*
- MCB7 **approves application # N 100286 ZCM** to allow one additional curb cut on West 61<sup>st</sup> Street (a narrow street).
- MCB7 would approve an application to modify requirements for commercial uses, signage, and street-wall transparency for **Building 2**, as the proposed home for the preK-8 school, but **disapproves application # N 100300 ZCM** for such modifications for **Building 3 and Building 5**.
- MCB7 **disapproves application #M 920358 D ZSM** for the Fourth Modification of a previously approved “general large-scale development” special permit and restrictive declaration to reflect the current proposal, *but would approve an application modified in accordance with this report and the drawings of MCB7’s consultants, Michael Kwartler & Associates and BFJ Planning.*

## C. Background and History

Eighteen years ago — almost to the day (July 27, 1992) — MCB7 issued its report and disapproval resolution (vote: 35-1-1-2), pursuant to ULURP, on the proposal for Riverside South, a project to redevelop the former Penn Central railroad yards along the Hudson River from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street. That ULURP culminated in December 1992, when the City Council approved Riverside South with modifications.

MCB7's planning for the development of the defunct rail yards had started a decade earlier. In 1982, before the advent of the current land-use approval process, MCB7 reviewed an application for the rezoning of the site from industrial/manufacturing to residential and commercial uses, thus beginning the transformation of this railroad and waterfront area. Approved by the Board of Estimate, the 7.3 million-square-foot Lincoln West project — which proposed development of 4,300 residential units, along with retail, hotel, and office uses — was never built.

Following the Lincoln West failure, MCB7 engaged in a major planning effort covering all of Manhattan Community District 7, culminating in the *West Side Futures* study. In the late 1980s, *West Side Futures'* analysis called for a total floor area of slightly less than 6 million square feet for the entire rail yards site.

The Trump Organization acquired the rail yards in 1990, and in 1991 joined with a group of civic organizations (Municipal Art Society, Regional Plan Association, The Parks Council, the Riverside Park Fund, Westpride, Natural Resources Defense Council, and the New York League of Conservation Voters) to form the Riverside South Planning Corporation (“RSPC”) to develop criteria for the development of the site. They proposed a public waterfront park to be built at developer expense, a mixed-use development of 8.3 million SF, and a plan to relocate the elevated highway inland and underground. RSPC was to oversee the implementation of design guidelines for all the buildings as agreed to by the developer and to advocate for funding the relocation of the highway. This agreement was to become a formal application subject to the full public ULURP and environmental review process.

MCB7 welcomed many aspects of the voluntary agreement plan between Trump and the civic organizations, but also had significant reservations. With the support of the Manhattan Borough President and the New York Chapter of the American Institute of Architects, MCB7 hosted a four-day charrette where architects, planners, and economic experts from around the country joined members of the community to critique this new plan. The charrette yielded recommendations for a maximum density of 6.9 million SF, a mixture of market-rate and affordable housing, mapped streets, and plans for a waterfront park both with and without the removal of the Miller Highway.

The charrette strongly informed MCB7's ultimate resolution and report on the 1992 ULURP. Key points were:

- 6.9 million SF for the entire site, including 5.5 million SF residential
- 20% affordable housing
- Mapped public streets
- 25-acre mapped public park, including provision for active recreation uses
- Partial developer funding for the West 72<sup>nd</sup> Street and West 66<sup>th</sup> Street IRT subway stations as mitigation for transit impacts
- Disapproval of any superblock on the site between West 59<sup>th</sup> and West 61<sup>st</sup> Streets
- Disapproval of the then-proposed TV studio use and any potential large-scale retail mall on the site between West 59<sup>th</sup> and West 61<sup>st</sup> Streets
- 3,500 parking spaces for the entire site, primarily for residents
- Need for a public school
- Variety of concerns expressed about infrastructure and impacts of the project
- General support for the relocation of the highway, but "only to the extent that the 80% Federal and 20% New York State shares do not diminish funds for other transportation projects, both highway and mass transit, planned for New York City."

The City Council's ultimate approval of Riverside South included these major elements, memorialized in the Riverside South Restrictive Declaration:

- General Large Scale District, including 15 development parcels (Parcels A-O) with a maximum of 7,899,951 SF (vs. 8.3 million requested in the application and 6.9 million recommended by MCB7), including a mix of residential, community facility, office, cinema, retail and studio uses
- Maximum 5,700 residential units for the entire site
- A minimum of 12% of the housing units to be built by the developer as affordable, with provision for efforts to be made to meet the desired goal of 20% affordable units of the total number of units, if government programs were available
- Developer to construct Riverside Boulevard from West 72<sup>nd</sup> to West 59<sup>th</sup> Streets
- Mapped public waterfront park of 21.5 acres, with another 4 acres of accessible open space inland
- Two alternatives for the waterfront park (i.e., with the Miller Highway in place and with the Miller Highway relocated below grade)
- Developer funding for part of the costs for the rehabilitation of the West 72<sup>nd</sup> Street and West 66<sup>th</sup> Street IRT subway stations
- Maximum 3,500 parking spaces for the entire site
- Space to be set aside for a public school, but no specific provisions for design or funding
- Additional contributions to services for seniors and young people in the community.

In the 1992 approval, the southernmost sites (L, M, N) were to be limited to the following:

- Maximum 1,690,600 SF for studio use
- 19,400 SF professional office space
- 35,000 SF retail
- 54,700 SF community facility space
- 572,192 SF residential
- 743 below-ground parking spaces.

*The Riverside South approval included a provision that any proposed change to the approved uses for sites L, M, and N would be deemed a major modification and subject to its own subsequent ULURP. This provision occasioned the current review under ULURP of the Riverside Center Project.*

Riverside South is now mostly built. Portions of the waterfront park are close to completion. Major characteristics of Riverside South between West 72<sup>nd</sup> Street and West 61<sup>st</sup> Street:

- 6,691,505 SF total development
- 4,492 residential units (projection includes Building K) of the 5,700 maximum originally approved
- 583 affordable units (i.e. 13% of units so far)
- 2,611 parking spaces (including Building K)
- Mainly unsuccessful retail and office space
- Riverside Boulevard completed from West 72<sup>nd</sup> to West 63<sup>rd</sup> Streets
- Riverside Park South: Phases 1-4 complete, Phase 5 started, Phases 6-7 planned
- No new school; however families in Riverside South have contributed to the overcrowding of existing neighborhood public schools.

## D. Project Review

In 2006, upon Extell's purchase of the yet-to-be-developed parcels of Riverside South, MCB7 formed the Riverside South Working Group, later called the Riverside Center Working Group (the "Working Group"). The Working Group is composed of Chairs of relevant standing committees and other members of the Board. Given MCB7's long history with Riverside South, and the size and scope of the last remaining vacant land in MCB7, it was essential to establish an interdisciplinary task force to monitor the project and address community concerns.

In April 2008, MCB7 wrote to the Developer and to the Director of City Planning to express concerns about density, site plan, below-ground uses, affordable housing, and the pressing need for a public school on the site. The Developer responded in a September 2008 letter, stating his willingness to continue discussion on these topics, while also repeating his unwillingness to discuss "floor area and dwelling unit count" since the applicant's requests were needed "to support the high cost of construction."

The Developer completed a proposed scope for a Draft Supplemental Environmental Impact Statement (DSEIS) in late 2008. MCB7 and the public presented detailed written and oral comments on that scope in January 2009. (Comments available at [www.nyc.gov/mcb7](http://www.nyc.gov/mcb7), and response to comments available at [www.nyc.gov/dcp/env\\_review/riverside/riverside\\_draft\\_scope\\_comments.pdf](http://www.nyc.gov/dcp/env_review/riverside/riverside_draft_scope_comments.pdf).)

In June 2009, MCB7 (with the generous support of Fund for the City of New York, The New York Community Trust, and New York City Council Member Inez Dickens) retained two planning and architectural firms, BFJ Planning and Michael Kwartler & Associates, to provide expert technical assistance to the Board with regard to site planning, density, open space, pedestrian circulation and amenities, parking, traffic and other issues.

In the past year, MCB7's expert volunteers and consultants have developed a critique and a series of recommendations and approaches, within the framework of the Developer's proposal, to improve the Project and achieve a suitable balance between the interests of the Developer, the community, and the city. These analyses have been presented to the public and to the Developer at multiple public meetings and hearings.

Since certification, MCB7 has held public hearings and meetings on the application on May 24, June 3, June 15, June 29, July 6, and July 22, 2010. MCB7 has also made presentations and received testimony from various community groups, including the District 3 Community Education Council, District 3 Presidents' Council, Riverside South Resident Associations, Amsterdam Houses Tenants Association, Lincoln Towers Residents Associations, Landmark West!, West Side Street Renaissance, Transportation Alternatives, Coalition for a Livable West Side, Committee for Environmentally Sound Development, Riverside South Planning Corporation, and New Yorkers 4 Parks, among others.

In the past two months, MCB7 has received either written or oral input from more than 500 residents and stakeholders, and over 1300 signatures on petitions (many relating to the proposed public school). The recommendations included in this report reflect the vast majority of this input.

## 1. Project Description

The present Extell application for Parcels L, M, and N includes the following major features:

- Five buildings, ranging in height from 393 feet to 535 feet
- Constructed on a platform, providing foundation for all structures, at approx. elevation of West End Avenue
- 2,471,590 SF residential use (= approx. 2,500 units)
- 12% of number of residential units as affordable housing, within the five buildings
- Approximate 151,598 SF for a public elementary and intermediate school in Building 2 (memorandum of agreement between SCA and Extell, and described in DSEIS)
- 104,432 SF office space
- 249,240 SF hotel use (possibly to be replaced by residential, yielding RSC-wide unit total of approximate 3,000)
- 140,168 SF above-ground retail, including approximately 36,701 SF of cinema use, and 20,183 SF of automotive showroom use associated with the below-ground automotive service use
- Approximate 181,677 to 276,000 SF below-ground automotive service use
- Approximate 1,800 below-ground parking spaces
- 2.7 acres of privately-owned, publicly accessible open space within the 8-acre site
- Extension of West 60<sup>th</sup> Street west to Freedom Place South
- Creation of superblock between the extension of Freedom Place South to the east, West 59<sup>th</sup> Street to the south, West 61<sup>st</sup> Street to the north, and Riverside Boulevard to the west.

Fundamentally, the application proposes significant changes in density and use for the site, thereby substantially increasing its value to the Developer. The table below compares the essential elements of the proposal with those approved in 1992.

<b>Approved Plan 1992:</b> Restrictive Declaration	<b>Extell Proposal 2010:</b> Increase Density, Change Use, Increase Value
Approx. 2.5 million SF, studio/retail	Approx. 3 million SF, 5 high-rise buildings
577 residential units	2,500 residential units
2 Million SF television studios	250K SF hotel (250 rooms)
37K SF retail	208K SF retail/office/auto showroom
100K SF below-ground cinema/retail	37K SF cinema
Below-ground parking (743 spaces)	182K SF below-ground auto service center
Requires West 60 <sup>th</sup> Street extension if use of L, M, N is modified	Below-ground parking (1800 spaces)
	75K to 150K SF shell for K-8 school

# Proposed Extell Site Plan



## 2. Core Principles

The Working Group drafted a set of Core Principles by which to evaluate the current proposed Project. These Principles were presented at various community meetings, discussed, redrafted, approved by MCB7 in February 2010, and are further revised and approved through this report.

**Zoning and Density:** Provide for zoning and built density that is appropriate to the context and infrastructure, and is reflective of superior urban design.

**Public Open Space:** Create clearly defined open space that facilitates and encourages public use, activities and access, serving a broad spectrum of residents, neighbors and visitors. Delineate clearly between public and private spaces to discourage the perception of private enclaves. Ensure minimum impact of wind and shadows on all public and common areas by careful placement and shaping of buildings.

**Connectivity and Circulation:** Create connectivity between the Project and its surrounding neighborhood and the waterfront (and within the Project itself), respecting the city grid. Promote access and circulation for pedestrians by means of public streets and generous pathways. Promote public and alternative modes of transportation. Minimize the use and impact of autos and trucks.

**Transportation and Traffic:** Design streets and pathways to ensure public safety, optimize travel for all modes of transportation, promote access and use of public transportation, minimize congestion, and reduce pollution.

**Streetscape:** Promote excellent and animated streetscape design and landscaping that emulates the best of traditional Upper West Side parks and public spaces, together with innovative 21<sup>st</sup> century examples of new green spaces that will work and welcome everyone.

**Retail/Cultural Facilities:** Create vibrant, innovative, and attractive retail at street level, and cultural facilities that serve local residents and can attract visitors from around the city. Develop cultural, educational, and community facilities and uses above ground and below ground that will create a public benefit and enhance life on the Upper West Side and in New York.

**Housing:** Promote social and economic diversity in housing type and income. Provide housing that is attractive and affordable.

**Public Education:** Increase public school capacity necessary to serve the current and future needs of the community (Community School District 3).

**Sustainability:** Promote the highest standard of environmentally responsible practices, integrated into every aspect of design, architecture, and infrastructure. Design for clean and efficient energy production/distribution, waste management, sanitation, and integration with mass transit.

### 3. Key Project Elements – “The Givens”

Having established Core Principles, MCB7 identified three aspects of the proposal that are of critical importance to the community: the public school, affordable housing, and sustainability.

#### a. Public School

The application proposes that the Developer provide the exterior walls and floors of raw space (“core and shell”) for a public school of 75,000 SF. Build-out of that raw space, and associated costs, would be the responsibility of the SCA. The application also provides that the Developer will reserve an additional 75,000 SF of space for purchase and build-out by DoE/SCA if the DoE/SCA chooses to exercise that option.

Unfortunately, the proposal falls short of reasonable expectations for this location. The Project is located within Community School District 3 (“CSD3”), which is already critically overcrowded. Kindergarten enrollment at PS 199 (nine blocks away) doubled in less than five years after the buildings in the northern part of the Riverside South complex were occupied. Demand for public school seats throughout CSD3 is increasing rapidly. DoE views this trend toward ever-increasing use of the public schools as permanent and not a temporary or cyclical anomaly. PS 191, the public school zoned to include the Project, is too small to accommodate its predicted increase in enrollment, let alone the other new units expected by the time Riverside Center is completed.

According to the DSEIS, by 2018, the schools within a ½ mile radius of the Project will be over capacity, unless the 151,598 SF school is built. Public elementary schools will be at 140% capacity and middle schools at 162% capacity. Even if the FAR permitted by the 1992 Restrictive Declaration – the lower-density alternative examined in the DSEIS – were to be built, a school would be needed to mitigate the effects of the Project. It is therefore essential that a school be built to meet the needs of CSD3 and not just of this Project.

MCB7’s research into fitting out the 151,598 SF school as a state-of-the-art green facility with the latest technology and connectivity, including Smart-boards, WiFi and networking, and the equipment needed for a rich curriculum that includes science, art, and music, is estimated to cost \$350-450 per square foot (= approx. \$53-68 million), based on historical DoE/SCA costs. The Developer could reduce costs considerably with its economies of scale and buying power. It should be noted that the raw 75,000 SF space, as well as the additional 75,000 SF available for purchase by DoE/SCA, would be built in any case, and would therefore impose no additional cost to the Developer.

In November 2006, after the enrollment from the first Riverside South buildings began to overwhelm the existing neighborhood public school, DoE/SCA declined to purchase land for the construction of a public school at another parcel of the Riverside South complex. SCA’s 2010-14 Capital Plan includes *no funding* for new seats in CSD3, making it unreasonable to expect that DoE/SCA will exercise the option necessary to meet community needs.

The outdoor play space reserved by Extell for the school is also inadequate. This space would be situated on building setbacks at the fourth floor of Building 2, and would comprise approximately 8,400 SF. Outdoor play space of this size may be suitable for a school of under 500 students (i.e., the school proposed by Extell), but is inadequate to meet the needs of the 151,598 SF school needed by the community.

*MCB7 disapproves the proposed Project without a school that meets the community's needs. MCB7 recommends that Riverside Center include a public school fully funded by the Developer with the following features:*

- *Serves grades K-8, with room for a pre-K*
- *Houses 6 sections per grade (a minimum of 1,332 students)*
- *Constructed in the first building built at the Project site*
- *Includes all necessary program spaces and state-of-the-art equipment*
  - *Large or multiple cafeterias (ensuring reasonable timing of lunch)*
  - *Multiple or dividable gyms (providing weekly access for all students)*
  - *Separate, age-appropriate outdoor play spaces, preferably at grade*
  - *Dedicated space for art, music, science labs, and student services*
  - *Wide hallways with lockers for upper-grade students*
  - *Flexible auditorium space*
  - *Green features (e.g. green roof, vegetable garden)*
- *Includes 151,598 SF of space that meets all DOE/SCA requirements*
- *Outdoor space sufficient to accommodate 1,332 students.*

The complete analysis of the MCB7 Youth, Education & Libraries Committee is in Appendix C.

### **b. Affordable Housing**

The city's affordable housing programs recognize the strength and stability brought to our communities through economic diversity. Prescribing a portion of a proposed development as affordable housing is also necessary to provide for an unmet need. On the Upper West Side, affordable housing is already scarce – and decreases each year, due to renovations and conversions to market-rate units, transient accommodations and other uses.

Moreover, one of the attributes sought for public schools in the city is a diverse student body, which can be fostered by including a mix of housing and residents on the site and in the community. It is good public policy to capture for the public benefit a portion of the increase in land value resulting from zoning changes that allow more profitable uses or that increase density.

MCB7 strongly believes that no project of the size and residential density proposed for this site should be approved with less than 30% affordable housing. The percentage of affordable housing should be calculated based on floor area, not based on number of units (as was approved for Riverside South). Since the market-rate units to be included in the Project are expected to be high-end luxury dwellings, MCB7's goals would be best served by taking advantage of the provisions of the city's inclusionary housing programs to serve multiple economic levels, i.e., low-, moderate-, and middle-income households.

Affordable units should be permanent for the life of the Development, and should be located on site and distributed throughout all the buildings. MCB7 consultant, BFJ Planning, emphasizes that the social good generated by including affordable units is best achieved when affordable units are integrated among market-rate units.

The Developer is now proposing 12% affordable housing as a percentage of the proposed number of units with such units to remain affordable for only 20 years. The Developer's proposal follows the minimum provision for affordable housing contained in the 1992 Restrictive Declaration. Both

the need for affordable housing in the community, and the nature of inclusionary housing programs, have changed in the 18 years since the City Council's adoption of the Restrictive Declaration. The Developer's requests for a substantial change in use and density offers an appropriate opportunity to revisit the minimum acceptable affordable housing to be included at the site.

*MCB7 disapproves the plan for affordable housing as proposed by the Developer and recommends 30% permanently affordable housing, primarily integrated within the site.*

### **c. Sustainability**

Achieving sustainability is one of the most critical issues facing the city. Tremendous effort at all levels of government has been put into making New York City truly sustainable. PlaNYC has led this effort by setting the goal of reducing carbon emissions by 30% by the year 2030 in addition to improving the amount and accessibility of open space, remediating brownfields, improving water quality, supporting alternative forms of transportation, and addressing air quality issues. MCB7 has identified sustainability as one of its primary goals.

The proposed Riverside Center plan incorporates a few steps to minimize the environmental impacts of the Development. However, the Project should serve as a *model* for innovation in sustainable design and should be guided by the principles set forth in PlaNYC.

*MCB7 recommends strict adherence to sustainable practices in design/construction and a commitment to energy efficient operations and maintenance (O&M) in perpetuity. At a minimum, sustainable design, construction, and operations should:*

- *Require the Developer to do all in its power to secure Leadership in Energy and Environmental Design (LEED) Platinum certification, or the highest LEED rating available at the start of construction, from the United States Green Building Council and the United States Building Certification Institute.*
- *Adopt the best available technologies to reduce energy and water consumption that provide a 10-year or shorter payback on investment. These include, but are not limited to, cogeneration and other technologies that generate electricity or other forms of energy on site, or improve the energy efficiency of any building system, such as the building envelope, lighting, heating, ventilation (including window function), or air conditioning.*
- *Install the best available energy management system and implement a comprehensive O&M protocol, which includes continuous commissioning.*
- *Require the Developer immediately to retain a LEED-accredited professional to join the design and construction team (or to identify the entity/person on its present team with this capacity).*

#### 4. Site Plan Review

MCB7 worked with community groups and consultants to conduct an in-depth review of the proposed site plan as it relates to MCB7's Core Principles.

##### a. Density

The Project would increase the amount of floor area from the 2.4 million SF approved in the 1992 Restrictive Declaration to more than 2.9 million SF. This increase in floor area is connected to a request for a change in uses from the TV studio (and some residential and commercial uses) to a mix of residential and commercial/retail uses. It should be noted that the application and supporting documents sometimes describe density in different ways. *MCB7 requests clarification of all density measurements (ZSF, GSF, FAR) during the ULURP process.*

The burden of proof for this requested increase in density lies with the Developer. The 1992 Restrictive Declaration limited the total floor area for all of Riverside South to 7,899,951 SF. Riverside South, when completed, will contain approximately 5.5 million SF. Adding the proposed almost 2.9 million SF to that total, would make for a grand total of approximately 8.4 million SF compared to the 1992 approved density of 7.9 million SF.

MCB7 understands that FAR is not the only determinant of density. Number of dwelling units, urban design, usability and viability of public open spaces, height, setback, and massing of buildings all contribute to the resulting density. The proposal includes 2,500 residential units (with a possibility of as many as 3,000 units). Adding 2,500 would result in an increase of 1,292 residential units over the approved 5,700 units for the entire Riverside South. MCB7 does not believe that this increase is needed or justified. As stated below, the defects in the site plan and some of the urban design shortcomings, together with the increased FAR, all contribute to an inappropriate density for the site.

Additionally, while the massing and form of the buildings is unique and interesting, the buildings are noticeably larger than the buildings to the north and east. Especially along West 61<sup>st</sup> Street, structures have long, uninterrupted frontages. A more contextual base plan of masonry, glass and steel, topped by a variety of rectilinear and then two- or three-faceted towers would help offset the perception of bulk and integrate the Development with the rest of the neighborhood while not diminishing its unique architectural design.

*MCB7 recommends that total density on the site be restricted to 2.4 Million SF to meet 1992 approvals and achieve MCB7's Lower Density Build Alternative.*

*MCB7 recommends removing Building 4 (399,361 SF) to reduce density, increase light and air, create improved community space for future residents, and provide an engaging relationship with the historic powerhouse building on the south side of West 59<sup>th</sup> Street. Removal of Building 4 would achieve 2/3 of the overall Project density reduction MCB7 is seeking.*

*MCB7 recommends including breaks in the faceted façade of the buildings to reflect traditional setbacks and minimize the canyon-like effect on West 61<sup>st</sup> Street, a narrow residential way.*

*MCB7 recommends requiring that changes or departures from the approved schematic design of the buildings or deviations from the footprint, shape, contour, size, height, bulk, massing, or relationship*

*between the buildings be considered a major modification and be returned to the Board and City Planning for approval.*

## **b. Public Open Space**

Among the most exciting possibilities for this site is the opportunity to create a truly extraordinary destination for visitors from throughout the city. Riverside Center could capitalize on its proximity to the Hudson River, Riverside Park South, and the historic powerhouse building by creating an integrative Open Space that is inviting, accessible from all directions, engaging, and accommodating to a variety of active and passive uses.

Given its planted slopes, meandering pathways, and central water scrim, the privately-owned Public Open Space proposed for the site appears sophisticated. However, many of the design choices serve to limit access from outside of the Development, and even limit the activity within the space itself. Unfortunately, the proposed configuration and design of the Project's open space falls well short of its potential.

### **1. Elevation**

The majority of the Project's open space is situated on a superblock west of the extension of Freedom Place South. Importantly, most of the space is elevated above sidewalk level along West 59<sup>th</sup> Street and along Riverside Boulevard. Although West 59<sup>th</sup> Street is the main east-west pedestrian corridor to and from Riverside Park South, the Public Open Space is designed to float above the sidewalk, making it mostly invisible and/or inaccessible to passers-by. From this sidewalk, which provides primary access from West End Avenue and Columbus Circle to Riverside Park South, the pedestrian will see building walls, service doors, garage entrances, and loading docks.

*MCB7 recommends bringing the site to grade (eliminating the platform) to make the Public Open Space visible and accessible from West 59<sup>th</sup> Street and from Riverside Boulevard, enhance the West 59<sup>th</sup> Street corridor to and from Riverside Park South, connect the site to the historic powerhouse, and increase mutual visibility between Public Open Space and sidewalks, making them more inviting, safer, and less isolated.*

### **2. Points of Access**

The main access points to the proposed Public Open Space, located at West 60<sup>th</sup> Street & Freedom Place and West 61<sup>st</sup> Street and Riverside Boulevard, have narrowed entrances that give the impression that the space is private, not public. In general, the site is not designed to engage passing foot traffic and draw people into the site.

*MCB7 recommends extending West 60<sup>th</sup> Street to Riverside Boulevard, at least as a broad public pathway, angled along the front of Building 1, to expand Public Open Space and attract pedestrian traffic.*

### **3. Size and Use Limitations**

As MCB7's consultants point out, the open space proposed by the Developer consists mainly of sitting lawns, visual landscape elements, and the water feature. The open space is fragmented,

complicated by a network of narrow pathways that would hamper the possibility of community gatherings or free play. Very little of the open space would support any type of active recreation.

*MCB7 recommends removing Building 4 to dramatically expand useful Public Open Space, provide for active recreation, reduce shadow and wind, provide a central open area for the Development, and open connections to the historic powerhouse to the south.*

*MCB7 recommends “straightening” Freedom Place South to expand the Public Open Space, reinforce the city grid, and provide visual perspectives of the historic powerhouse.*

*MCB7 recommends modifying the footprint of Building 5 to accommodate the “straightening” of Freedom Place South to expand Public Open Space, further reduce density, reinforce the city grid, and provide visual perspectives of the historic powerhouse.*

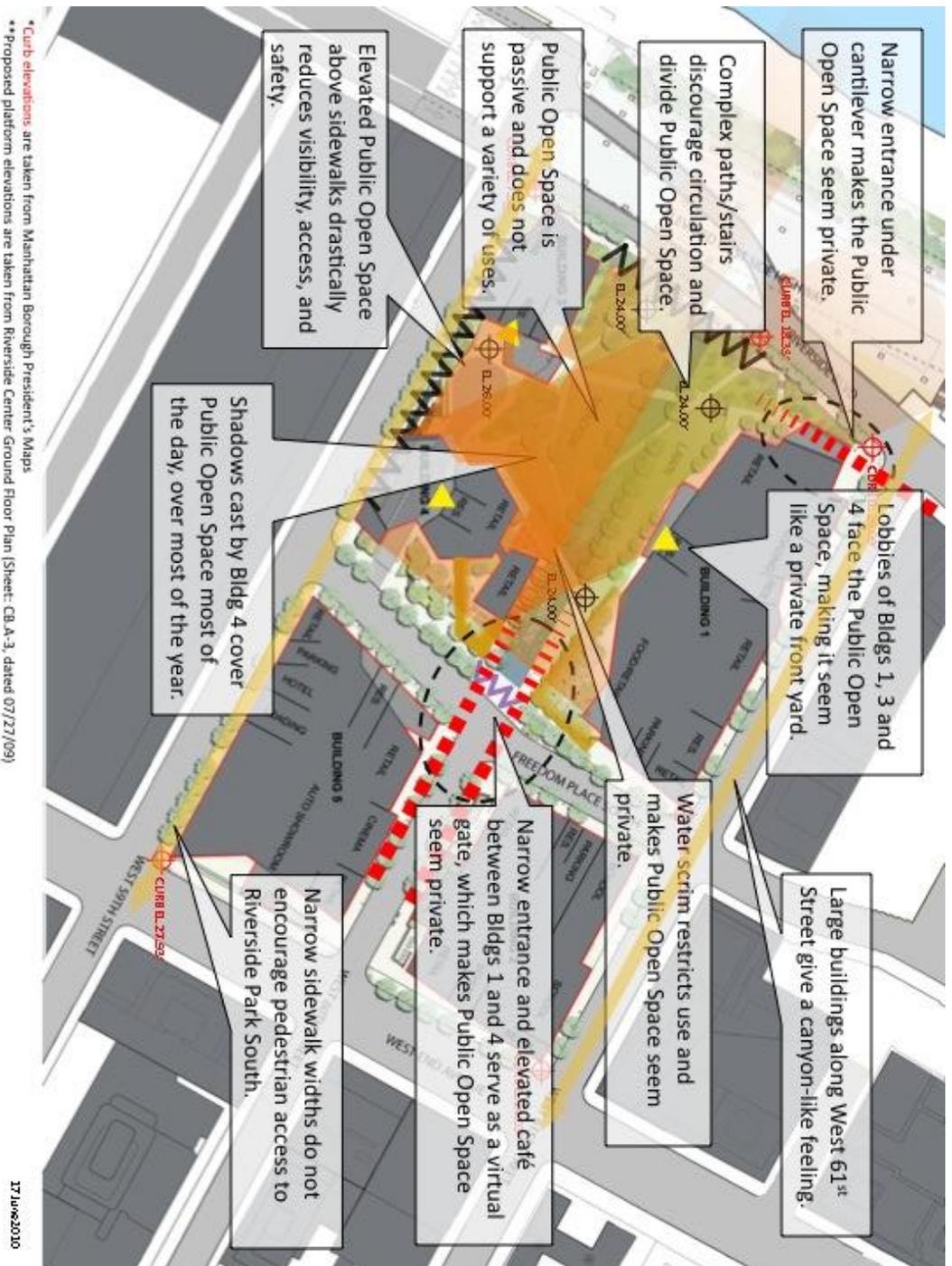
*MCB7 recommends eliminating the private driveway that serves Building 3 to expand Public Open Space and reinforce the city grid.*

#### 4. Public/Private Delineation

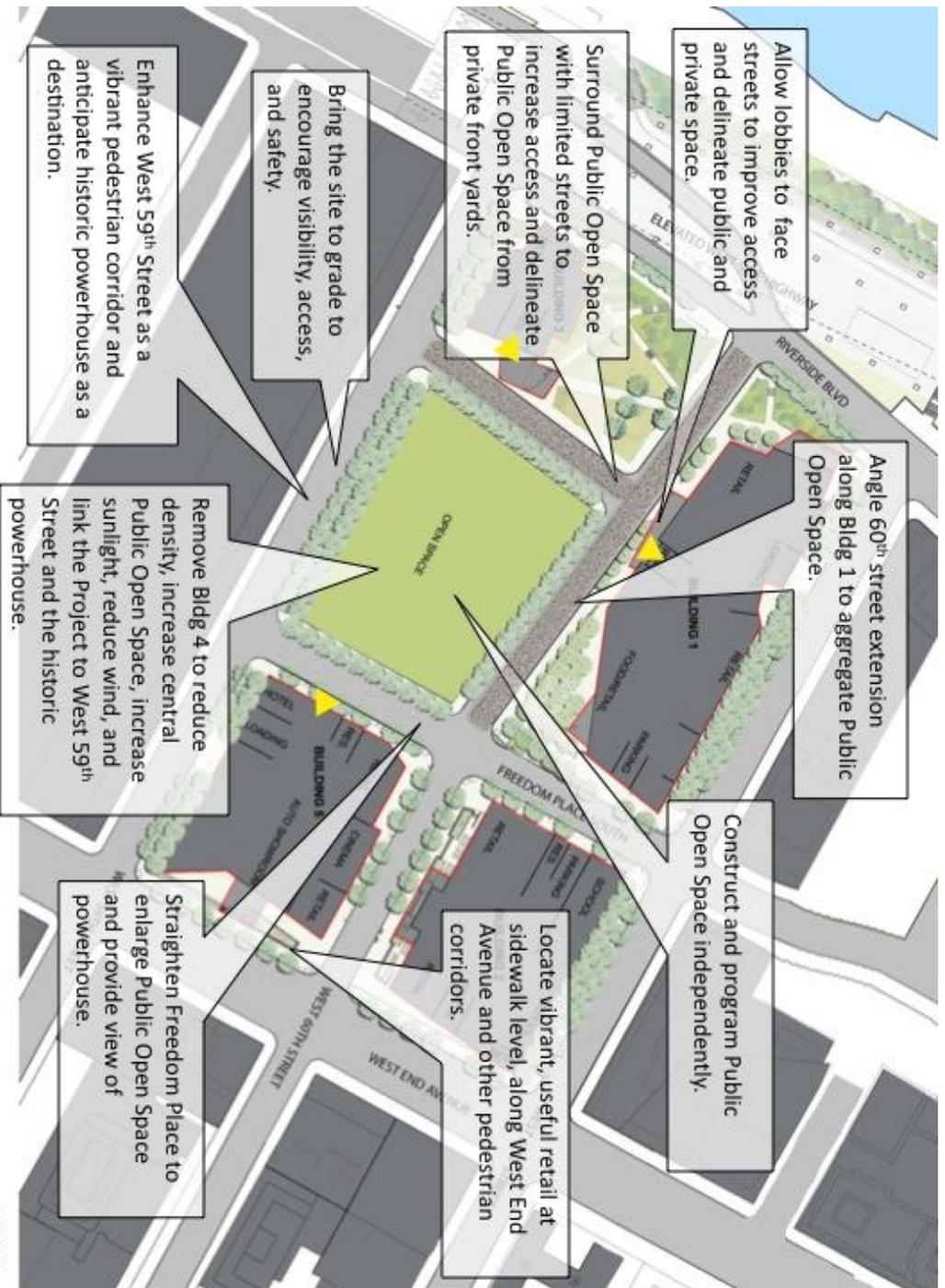
The proposed Public Open Space is poorly delineated and feels more like a private front yard than a space for public enjoyment. As MCB7’s consultant, Michael Kwartler & Associates, points out, the absence of pathways separating the open space from the individual buildings renders it “ambiguous as to what is public and what is private.” The perception that the open space is private and not public “is reinforced by the superblock’s open space functionally ending in a dead end [at the western edge of the site] where it is elevated above Riverside [Boulevard].”

*MCB7 recommends surrounding the Public Open Space with publically accessible streets or broad pathways, either for pedestrian or limited vehicular use, to delineate public from private space, drive pedestrian traffic to public spaces, improve circulation, and enable building lobbies to open onto public ways.*

## MCB7 Critique of Proposed Site Plan



## MCB7 Recommended Modifications



### **c. Connectivity and Circulation**

The Project includes a superblock between Freedom Place South, Riverside Boulevard, West 61<sup>st</sup> Street, and West 59<sup>th</sup> Street, which separates the site from the city grid and hampers circulation through and within the site. The grid system has several advantages: 1) it allows more flexibility and more dispersion for vehicular traffic thus reducing the traffic loads at the average intersection, and 2) it improves conditions for pedestrian and bicycle circulation by allowing greater accessibility throughout the neighborhood.

#### **1. Internal Circulation**

MCB7 endorses the Developer's proposed extension of West 60<sup>th</sup> Street to Freedom Place South, which will improve access into site, especially for vehicles. However, the Developer's proposed abrupt narrowing of West 60<sup>th</sup> Street to a sidewalk – to accommodate the proposed water scrim – will limit access into the site from the outside.

As proposed, Building 3's vehicular access is via a private driveway that extends beneath Building 4 from Freedom Place South. Such a cul-de-sac is extremely anti-urban and inefficient for traffic circulation. All buildings should have lobby access from a public street. The driveway also disrupts the open space. MCB7's recommendation to eliminate Building 4 would help address this problem, as the open space issues would be clearer. In addition, MCB7 recommends adding a public street or broad pathway (see drawings by MCB7's consultants, Michael Kwartler & Associates and BFJ Planning) that connects West 59<sup>th</sup> Street to West 60<sup>th</sup> Street, along Building 3.

*MCB7 recommends extending West 60<sup>th</sup> Street to Riverside Boulevard, at least as a broad public pathway, angled along the front of Building 1, to expand the Public Open Space, break up the superblock, draw in pedestrian traffic, provide a street front for the Building 1 lobby, and facilitate circulation within and through the site.*

*MCB7 recommends eliminating the private driveway that serves Building 3, and adding a public street or broad pathway (per consultant drawings) that connects West 59<sup>th</sup> Street to West 60<sup>th</sup> Street along Building 3.*

#### **2. West 59<sup>th</sup> Street**

The proposed Project resembles a city within a city, separating its own circulation from that of its surroundings. The perimeter of the site is not porous and limits visual and physical connections to and from nearby streets, parks, landmarks, cultural facilities, and buildings.

In particular, the Project has no relationship to West 59<sup>th</sup> Street, using it only for service entries, loading docks, and garage entrances that exacerbate the unsafe and unsightly conditions that exist today. However, West 59<sup>th</sup> Street may be the most important westbound thoroughfare in the southern portion of the district, and is the only viable link in the district south of West 72<sup>nd</sup> Street for cyclists accessing the Hudson River bike path. As the area surrounding the Project continues to grow, West 59<sup>th</sup> Street receives an ever-increasing amount of pedestrian and bicycle traffic, despite its current poor condition. Indeed, residents of buildings to the north, east, and south have testified that they access Riverside Park South via West 59<sup>th</sup> Street, even when it feels unsafe. With the

addition of Riverside Center, West 59<sup>th</sup> Street will carry substantially more traffic (pedestrian, bicycle, and vehicular) to and from the site and the park.

West 59<sup>th</sup> is the only street with the potential to integrate Riverside Center with its extraordinary context: commerce to the east, historic powerhouse to the south, and Riverside Park South to the west. The Project as planned squanders the enormous opportunity to transform West 59<sup>th</sup> Street into a thriving corridor for visitors from throughout the city attracted by cultural, recreational, and commercial amenities in and near Riverside Center.

*MCB7 recommends the Developer incorporate specific plans to accommodate and manage a substantial influx of vehicular, bicycle, and pedestrian traffic along West 59<sup>th</sup> Street.*

*MCB7 recommends the Project incorporate the integrative potential of West 59<sup>th</sup> Street, rather than exacerbating its use as a service corridor, by maximizing its ability to connect Riverside Center with St. Luke's-Roosevelt Hospital, John Jay College, the historic powerhouse, and Riverside Park South.*

### 3. Street Rationalization

The DSEIS recommends that West 59<sup>th</sup> Street become a westbound street to allow drivers to access the site from the east. The 1992 Restrictive Declaration required that West 61<sup>st</sup> Street become a westbound street, but NYC Department of Transportation (NYC DOT) is not considering this.

Additionally, NYC DOT has decided to install a pedestrian refuge island at West 61<sup>st</sup> Street and West End Avenue and prohibit left turns into Riverside Center from northbound West End Avenue. This means the only access onto West 61<sup>st</sup> Street between West End Avenue and Riverside Boulevard will be from the north. Given that West 61<sup>st</sup> Street will be a primary roadway into the site, and the 8-year construction plan calls for trucks to be allowed to make this left turn, MCB7 believes the island should be moved to West 62<sup>nd</sup> Street.

*MCB7 recommends that the NYC DOT and MCB7 together study the traffic directions of roads surrounding the site, including West End Avenue, West 59<sup>th</sup>, 60<sup>th</sup>, and 61<sup>st</sup> Streets, Riverside Boulevard, and Freedom Place South.*

*MCB7 recommends that the pedestrian refuge planned for West 61<sup>st</sup> street and West End Avenue be moved to West 62<sup>nd</sup> Street and West End Avenue.*



## **d. Transportation and Traffic**

### **1. Traffic Management**

Vehicular and pedestrian traffic will increase significantly on all streets and intersections in and around the Project. Riverside Boulevard, Freedom Place South, West 59<sup>th</sup>, 60<sup>th</sup>, and West 61<sup>st</sup> Streets must be designed to account for safe and efficient management of a variety of traffic types.

Some of the traffic impacts identified in the DSEIS appear to be based on data from a West 57<sup>th</sup> Street rezoning of 2001 – thus predating many new developments in the area. Mitigations rely mostly on adjusting traffic signals, but MCB7 found little information on turning movement counts, delay studies, saturation flow rates, or a likely influx of pedestrian traffic.

In addition, residents of the Riverside South buildings immediately north of the site have experienced unsafe conditions and other difficulties with the design and operation of Riverside Boulevard.

*MCB7 recommends that the Developer and the NYC DOT take immediate steps to address the traffic safety concerns of residents of Riverside South along Riverside Boulevard and Freedom Place by completing the roadway work and turning the streets over to the city.*

*MCB7 recommends that the Developer and the NYC DOT analyze traffic impacts with updated data that reflects recent growth in the area surrounding the Project, including a technical analysis of 59<sup>th</sup> Street.*

*MCB7 recommends that the Project be modified to include traffic safety designs (such as curb extensions, midblock chicanes, planted areas with seating, highly visible crosswalks, and signals with leading pedestrian intervals) rather than relying on signage or signals alone.*

*MCB7 recommends that the Developer construct Riverside Boulevard first, completing the connection from West 72<sup>nd</sup> Street to West 59<sup>th</sup> Street.*

*MCB7 recommends that the Developer make substantial investments in local infrastructure (See Section 7, below) to offset the significant influx in traffic to be generated by above-ground and below-ground uses of the site.*

## 2. Transit

Riverside Center will add considerable load to both bus and subway services near the site. In particular, the DSEIS indicates that the M104, M11, M66, M57, and M31 bus routes and the Columbus Circle station for the A, B, C, D, and #1 subway lines will get significant use by visitors and residents of the site.

The M57 bus runs along West End Avenue, the eastern border of the site. The M31 bus, running along West 57<sup>th</sup> Street, passes close to the site, on its way to its terminus at 11th Avenue and West 54<sup>th</sup> Street. MCB7 believes that this terminus should be changed to West 59<sup>th</sup> Street, the southern border of Riverside Center. This will bring many more passengers to the western end of this long bus route, and give residents of Riverside Center direct transit access to Midtown, as well as to the hospitals along York Avenue on the Upper East Side. The M66 Bus, which currently has its western terminus at West 66<sup>th</sup> Street and West End Avenue, should be extended into the site. The M72, which has part of its route on Riverside Boulevard, should have its route extended southward into Riverside Center.

Additionally, there has been discussion of a Metro-North commuter rail station within the Riverside Center site. It appears that the only place near Riverside Center with the room and clearances necessary for a station is near West 56<sup>th</sup> Street, close enough to serve the site, but not actually within it.

Every effort should be made to utilize the 15-foot light rail easement and provide light-rail service to and from the site, with an eye toward serving various Midtown destinations.

*MCB7 recommends that the Developer request adding capacity to the M57, M31, M66, and M72 bus lines, and adjusting bus routes to better serve the site.*

*MCB7 recommends that the Developer contribute to the development of a light rail system that would serve the site.*

### **e. Streetscape**

#### 1. Sidewalks and Perimeter Treatment

The presence of several schools, public institutions, new residential buildings, and destination retail will likely generate a dramatic increase in pedestrian traffic around the site. The Project perimeter, however, is largely monolithic and impermeable, flanked by long fortress-like building walls with lobbies that open inward, toward the central open space, rather than outward, toward the public streets. This exaggerates the impression of a private enclave. The positioning of the school and the auto showroom effectively bar more engaging uses along West End Avenue, where many Upper West Side visitors will walk. Altogether, there is little reason for people to interact with the site.

The main east-west pedestrian corridors along West 59<sup>th</sup> Street and West 61<sup>st</sup> Street are especially bleak. On West 61<sup>st</sup> Street, tall street walls will rise directly along side streets, casting deep shadows for much of the day and overwhelming pedestrians walking the floor of a canyon. Since the street's proposed programming is not engaging, what could be a vibrant corridor is rendered largely

unattractive to potential visitors. Student congestion and limited streetscape may end up discouraging use of West 61<sup>st</sup> Street as a viable corridor to and from Riverside Park South.

Finally, the sidewalk along Riverside Boulevard is isolated from the site by virtue of the proposed platform. Pedestrians will not feel safe or comfortable without clear sight lines to and from the site.

*MCB7 recommends that the Developer widen the sidewalks along West 59<sup>th</sup>, West 60<sup>th</sup>, and West 61<sup>st</sup> Streets, plant double rows of trees, and develop street designs that encourage pedestrian and bicycle access to the Public Open Space and to Riverside Park South, and include bicycle parking to encourage cyclists to visit and shop.*

*MCB7 recommends making the site perimeter more porous and accessible by removing Building 4 and making the site level with sidewalks on all sides.*

*MCB7 recommends positioning retail and other destination uses along the site perimeter to invite pedestrian traffic.*

## 2. Street Front Retail

A good portion of Riverside Center's proposed retail uses are located inside the superblock, around the privately-owned open space. The goal should be a diversity of retail uses that are part of the public life of the community.

*MCB7 recommends that much of the retail use be located on West End Avenue, and also be incorporated onto West 59<sup>th</sup>, West 60<sup>th</sup> and West 61<sup>st</sup> Streets, and that these uses serve the surrounding community as well as the residents in the proposed Development.*

*MCB7 recommends that retail uses should be on, or close to, the street line, at the same elevation as the sidewalk to encourage a direct connection between pedestrians and the stores.*

*MCB7 recommends that the Developer limit the size of retail spaces to attract small businesses that serve the local community.*

## 3. Connection to Historic Powerhouse

The arrangement of buildings, curb cuts and service needs for the Project renders West 59<sup>th</sup> Street a service corridor that ignores the architectural significance of the historic powerhouse occupying the south side of West 59<sup>th</sup> Street from West End Avenue to the West Side Highway. An application is now before the Landmarks Preservation Commission (LPC) to designate the powerhouse – designed by the renowned architecture firm McKim Mead & White and built a century ago to power the original IRT subway – as an individual landmark.

Similar worthy buildings in New York and elsewhere have been the subject of creative adaptive reuses that add to the vibrancy of neighborhoods. At present, only a fraction of the interior space of the powerhouse is used by Con Ed for power generation (burning #6 oil – known to be detrimental to the environment and perhaps soon to be outlawed – to produce steam). Whether or not the powerhouse is adaptively reused, its façade will be all but obscured from the north by the Project. Rather than celebrate this anchoring presence, the Project turns its back on it.

*MCB7 recommends eliminating Building 4, creating open space that gently slopes to meet the sidewalk at West 59<sup>th</sup> Street, and widening the sidewalks on West 59<sup>th</sup> Street, to place the historic powerhouse in an appropriate context for passive enjoyment and support future changes to its use.*

## **5. Site Program – Above Ground Uses**

### **a. Residential Units**

The Project proposes to build 2,500 to 3,000 residential units, which will likely attract 5,000 to 6,000 new Upper West Side residents, or approximately 3% of the existing population. This increase in population will impact the schools, parks, hospitals, transportation systems, sanitation/sewage systems, cultural centers, and other economic and infrastructural assets of the community. Although many concerns are discussed in this report, MCB7 recommends that *all* systems be carefully monitored in order to anticipate and accommodate the inevitable stresses on local infrastructure.

Already identified in the DSEIS is an impact on affordable childcare. When the Project is expected to be completed, residents eligible for publicly funded child care will compete for slots at centers already well beyond full capacity. Most of those slots are a considerable distance from the site, with many located more than a mile away and in the opposite direction of many workers' commutes. The expected condition is expected to be more severe than disclosed in the DSEIS since it is based on a low-end estimate of 12% affordable housing, as compared to the greater amount needed by the community and recommended by MCB7. The Project as proposed provides no mitigation for exacerbating the scarcity of publicly funded child care and Head Start slots near the site.

The Developer proposes only to study actual demand when the future condition comes to fruition, and to "work with the Administration for Children's Services to develop appropriate measures to provide additional capacity, if needed," but only to the extent "required by the Restrictive Declaration."

*MCB7 recommends that the Developer include specific provisions for affordable day care facilities on site.*

### **b. Retail**

The proposed Project would include approximately 140,168 SF of retail uses, of which approximately 36,701 SF is to be a cinema. The DSEIS states that retail uses are currently lacking in the neighborhood and that the goal is to integrate commercial and retail development throughout the Project for residents, neighbors, and visitors.

MCB7, Councilmember Gale Brewer, and the Lincoln Square BID recently conducted an informal survey of over 500 businesses between West 54<sup>th</sup> and West 70<sup>th</sup> Streets, west of the Broadway/Columbus Avenue corridor. The survey demonstrated a lack of local service businesses in the area south of West 70<sup>th</sup> Street, including community services, and local stores such as clothing stores and grocery markets. The most common uses are restaurants and coffee shops (25%) and retail (25%). The survey also showed the trend toward chain stores, even in smaller commercial spaces, as well as major retailers (e.g., Apple, Best Buy) in the Lincoln Square area.

Riverside Center has the potential to bring much needed vitality and activity to the entire area west of Amsterdam Avenue by providing retail uses that include a diverse mix of local services and destination venues. The Project can also encourage the development of small businesses by creating some smaller retail spaces, or shared spaces that can house several small businesses.

*MCB7 recommends that the Project accommodate a broad variety of engaging and useful retail that serves the local community.*

*MCB7 recommends that the Developer work with the Department of Small Business Services to create designs and incentives that attract viable small businesses to the site.*

### **c. Auto Showroom/Dealership**

An auto dealership at Riverside Center is not consistent with the stated goals of the Project, the fabric of the Upper West Side community, or New York City's policies to discourage automobile ownership, decrease traffic congestion, and promote environmentally friendly modes of transportation. Not only is an auto showroom an inappropriate use for the site, it would likely exacerbate adverse impacts related to trip generation and loading/unloading of large trucks.

Auto dealerships are clustered along 11<sup>th</sup> Avenue between West 40<sup>th</sup> and West 57<sup>th</sup> Streets, to the south of the Project site, along a largely commercial strip. Having an auto dealership in a mixed-use, predominantly residential complex would be an unwelcome departure from ground-level retail in residential buildings of the Upper West Side.

Cars are infrequent purchases, especially for urban dwellers. An auto dealership (and its companion below-ground service center) is a retail use not designed to serve the immediate residential community. Rather, it would attract a very occasional population unlikely to form a sustained relationship with the other retail and commercial features of the Project site. An auto dealership (and service center) would fail to meet the Developer's stated goal of providing "commercial uses that are complementary to the proposed neighborhood development" and which would "serve both the tenants of the new buildings and community residents." Moreover, ancillary businesses attracted by the dealership – for example, businesses offering auto accessories, sound systems, spare parts, detailing and other auto amenities – would further erode the pedestrian-friendly residential feel.

The retail space in Building 5 will be among the first stores encountered by those approaching from the south, where 11<sup>th</sup> Avenue becomes West End Avenue. At this first opportunity north of Midtown, the retail *should* serve the local community.

*MCB7 disapproves the intrusion of an auto showroom/dealership into a residential neighborhood, and recommends it be replaced with retail appropriate to the character and needs of the Upper West Side.*

## 6. Site Program – Below Ground Uses

The Developer proposes two below-ground uses: an auto service center (181,677 to 276,011 SF), and an 1800-space parking garage (482,400 SF), totaling 664,077 SF of revenue-generating below-ground space (not included in FAR calculations).

### a. Parking

MCB7's consultant, BFJ Planning, summarized current trends by observing that it "is good public policy to discourage automobile trips in urban areas." This policy finds expression in the Zoning Resolution, which limits parking in and near Midtown Manhattan in order to improve air quality and to provide for a pedestrian-friendly street environment.

The proposed development allocates space for a garage area of 482,400 SF (including all ramps). The application requests 1,800 spaces, 1,200 of which would be for residents and approximately 600 for transients. The proposal includes two garage configurations: 1) a single garage that serves all buildings across the entire site (Parking Option "A"), and 2) 5 separate garages, each serving a separate building (Parking Option "B"). *MCB7 prefers a single garage to maximize below-ground circulation and minimize above-ground loading/unloading.*

The Developer's request assumes approximately 50% car ownership for its residents. A survey of auto ownership among residents of Manhattan Community Boards 4, 5 and 6 associated with the approvals for Hudson Yards found that 31% to 36% owned cars. Rezoning for the large Hudson Yards project included 0.30 spaces per dwelling unit for luxury housing and 0.08 spaces for affordable units (Section 93-821 of the Zoning Resolution). When approving these parking limits, the City Planning Commission asserted that capping parking is "consistent with the objective of creating an area with a transit- and pedestrian-oriented neighborhood character."

By any measure, the 1,800 spaces proposed by the Developer (with 1,200 accessory to residential units and other uses on the site) and 600 to replace parking currently serving drivers otherwise unrelated to the site, exceeds the metrics approved at other locations. For example, MCB7's consultants, BFJ Planning, calculated that the 1,200 spaces proposed for on-site use, less 15% of the number of hotel rooms (38 spaces, per section 13-131 of the Zoning Resolution), and minus 77 spaces for retail and school users (1 space per 4,000 square feet, per section 13-133), means that 1,085 spaces would be dedicated to 2,500 residential units in the proposed project – a ratio of 43%.

As MCB7's consultants correctly observed, "[i]f more parking spaces are provided than are actually needed ... the additional spaces are likely to be used by outsiders, attracting traffic that would not be generated by the uses that are on site." Considerations of efficiency, traffic congestion, and air quality thus inform the decision on the number of parking spaces appropriate at the site.

The City Planning Commission is currently considering a zoning text amendment to facilitate car-sharing. The proposed text amendment embraces the approach that easily accessible car-sharing programs can lead to a reduction of car ownership and usage, thus reducing the need for parking infrastructure in new developments. MCB7 has endorsed this zoning text amendment.

Along with car-sharing, MCB7 urges parking-space sharing. Parking should be used as efficiently as possible, accommodating residential users overnight and transients during the day. Employing this approach would eliminate the need to dedicate additional spaces to replace the parking capacity displaced from the current condition.

Finally, to promote the use of alternative fuels and lower-pollution vehicles, the garage should include plug-in connections to recharge electric cars.

*MCB7 recommends approval of one garage that serves the entire site.*

*MCB7 recommends that the garage include approximately 1,000 spaces, a generous number, reasonably consistent with several established approaches to calculating parking.*

*MCB7 recommends that the site include a car-sharing facility.*

*MCB7 recommends that the site include a below-ground car-rental facility that serves the community and supports residents that do not own cars.*

*MCB7 recommends that the garage include plug-in connections to recharge electric cars.*

### **b. Auto Repair Center**

The proposed 181,677 SF auto service center would be located on the highest below-ground level (just under the platform), and accessed by a 30-foot curb cut adjacent to Building 3. It would provide auto servicing, parking and auto storage, parts storage, parts loading area, a delivery bay, and a large service queuing area. The Developer has included the option to increase the size of the center to 276,000 SF. The auto dealership could represent a number of auto companies or lines and is designed to offer certified pre-owned vehicles, which require a greater amount of on-site vehicle storage. This use is not permitted under the Project's current zoning and would require a text amendment and special permit.

In the "Worst Case Scenario" in the DSEIS, the 276,000 SF center could generate 724 trips on a weekday and 458 on a Saturday. The 181,677 SF center could generate 478 and 301 trips, respectively. These are in addition to the trips related to the parking entrances from Buildings 3 and 5, the truck elevator entrance, showroom car delivery trucks, tow trucks, Department of Sanitation vehicles, and general traffic on West 59th street. This traffic will conflict with pedestrians, who are expected to concentrate at 59<sup>th</sup> Street and West End Avenue and will be using the north sidewalk of West 59<sup>th</sup> Street to enter the site at various locations and to access the completed Riverside Park South.

The text amendment that would permit the auto service center requires a City Planning Commission finding that: "Such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic or adversely affect pedestrian movement." MCB7 believes this case cannot be made.

Under the special permit, "the City Planning Commission will have the authority to impose conditions on its construction and operation that are needed to insure that its impacts on other uses are minimized." This assumes there will be impacts such as exhaust fumes and the storage, use and disposal of a variety of toxic substances. Oil, grease, and other lubrication compounds, antifreeze, engine-cleaning solvents, battery acid, and various heavy metals found in auto electronic systems are all toxic if not properly contained and create unpleasant odors, even if well handled.

MCB7 believes the proposed below-ground auto facility to be neither green in ethos, nor neighborhood-oriented, nor attractive nor safe for pedestrians and passers-by, nor contributing to a lively streetscape in any way.

*MCB7 disapproves the request for an auto repair facility below ground and recommends elimination of the auto service center and removal of the 30-foot curb cut for the ramp that would serve it.*

## **7. Mitigations and Community Investments**

In light of the substantial size of the Project, its inevitable long-term impact on the local environment and infrastructure, and the considerable value to be gained by providing for new uses of the site, MCB7 encourages the Developer to contribute significantly to the local economy and infrastructure.

### **a. Active Open Space**

The DSEIS compiled by the Developer identified a direct and significant impact on the ratio of active open space available to local residents.

“Given the size of the decrease (6.1 percent) in the active open space ratio and the already high utilization of many of the active open space resources that would be available to the users in the future with the proposed project, both within and without the study area, the proposed project has the potential to result in significant adverse open space impact ... the proposed project would have to include an additional 0.88 acres of active open space on the project site or in the ½ mile residential study area in 2018 so that the active open space ratio would remain unchanged.”

In at least partial mitigation of the decrease to the active open space ratio in the study area that would result from the Project,

*MCB7 recommends that the Developer be required to create additional Public Open Space by removing Building 4, and create significant active recreation facilities in the additional open space, including a playground for children.*

### **b. Riverside Park South**

The original Riverside South project got a certain amount of civic support based on the promise that a park would be built above a buried highway. A 1991 letter from MCB7 to City Planning states that Riverside South (as it was later approved in that ULURP process) “makes no sense whatsoever [w]ithout the removal of the [elevated Miller] highway.”

The New York State Department of Transportation (“NYSDOT”) issued a final EIS concerning burying the highway in 2000, and recommended a Preferred Alternative route for the relocated highway. In 2001 NYSDOT obtained approval of the relocation project from the Federal Highway Administration (“FHWA”).

Meanwhile, as required by the 1992 Restrictive Declaration, in 2005 the city required the developer to begin constructing portions of the northbound highway tunnel. Four blocks of that tunnel will soon be completed. However, in the years since 1992, no significant additional public or other

financing has been available to complete the other tunnel sections required for burying the highway.

Park concerns in the 1992 Restrictive Declaration go well beyond questions of highway relocation. Other provisions relate to the construction and maintenance of Riverside Park South.

The developer was required to construct the park in seven phases, each triggered by the completion of buildings containing successive amounts of aggregate floor area. Each section of the park was to be deeded to New York City as public parkland upon its completion. The Restrictive Declaration provided alternative designs for Phases 5 to 7, the inland sections of the park. The versions of those sections with the highway still in place were termed “Interim”; the versions with the highway buried were termed “Permanent.”

So far, Phases 1 to 4 of Riverside Park South (the sections along the river) have been completed and deeded over to New York City. Phases 5 to 7 are still in the planning stages, with some construction begun on Phase 5.

The 1992 Restrictive Declaration also required the developer to provide maintenance funds for the completed sections of the park, based on an annual budget to be approved by the Department of Parks and Recreation (DPR).

Riverside Park South is extremely popular and already very crowded, as is the original Riverside Park to the north. Many residential buildings have been built in the immediate vicinity of the Riverside Center, on parcels that were not contemplated for large-scale residential development at the time of the original ULURP. Because of these developments, along with the explosion in school-age population and the success of the Hudson River Greenway, Riverside Park South is crucially lacking in recreational space, particularly space for active recreation.

Thus, regardless of how many residential units of new housing are approved in the 2010 ULURP process, and regardless of the amount and configuration of other floor area at Riverside Center, the increased demands on an already overtaxed park will be, as the Developer has acknowledged, very substantial.

The park construction budget specified in the 1992 Restrictive Declaration is not adequate to build the remaining phases of Riverside Park South to today’s design standards and needs. Certain federal and city funds are available in connection with park construction and related park uses, but their allocation has not yet been determined.

Moreover, the 1992 Restrictive Declaration did not address deteriorating conditions in Riverside Park South that developed, or continued, after the park sections were deeded to the city. Remediation of these conditions is not clearly identified as “maintenance” obligations of the developer. (For instance, the need to replace benches or to address masonry stairs or paths that have settled.) Numerous such conditions have developed and more may develop. Remediation of these conditions is expensive, may need in some cases to be done repeatedly, and cannot reasonably be expected to be funded under the city capital or expense budgets.

DPR has studied a number of measures that could help to mitigate the proposed Project’s impact on Riverside Park South. These measures include certain capital work – such as restoration of the West 69<sup>th</sup> Street railroad “transfer bridge” (or gantry) and the removal of the now-abandoned West 72<sup>nd</sup> Street highway off-ramp – that would enhance the park experience and to some extent

increase the usable open space.

DPR has also studied opportunities for active recreational facilities that could be created by requiring the Developer to construct the southbound tunnel sections necessary to bury the highway between West 61<sup>st</sup> and West 69<sup>th</sup> Streets. Constructing these tunnel sections would yield a flat “roof” on which to locate several ball fields along with a small but badly needed park maintenance facility.

*CB7 recommends that, as a condition to and in connection with any amendment of the 1992 Restrictive Declaration, the Developer be required to contribute substantially toward fully funding the permanent completion of Riverside Park South, and toward the maintenance, remediation of deteriorated conditions, capital improvements and other park needs. Any new Restrictive Declaration should include updated provisions for maintenance and capital contributions and for MCB7 to participate in the planning process for each element of the park.*

### **c. Construction**

MCB7 welcomes the Construction Program presented in the DSEIS, the proposed mitigations, and the studies. The Board has a long history of construction coordination, which began with the construction of the first buildings at Riverside South. MCB7 has organized over 20 construction coordinating groups that brought together developers, construction companies, city and state agencies, (especially DOB, DOT and DEP), community leaders, and stakeholders to address construction impacts and to provide essential information about the implementation of the Construction Program and the on-going construction work.

A major construction impact is always noise. Although the city’s noise code was recently strengthened, it recognizes that noise generated by many construction machines cannot be safely mitigated. MCB7 encourages the Developer to utilize soundproofing materials around the perimeter of the site, as discussed in the Construction Program.

The DSEIS identifies significant adverse construction noise impacts at 18 locations during the anticipated eight years of construction. Of these, the Amsterdam Houses building on the northeast corner of West 61<sup>st</sup> Street and West End Avenue and the Beacon School on West 61<sup>st</sup> Street need mitigation. The Developer will provide air conditioning units and storm windows (whichever are not currently provided). Between the DSEIS and the FSEIS, options will be explored to implement additional measures, and a window/wall survey will be conducted at the two buildings. *MCB7 asks to be briefed on these options and studies.*

The Construction Plan also outlines measures related to archaeological and historic resources. The 1992 FEIS and the DSEIS recognize the potential for finding archaeological resources on the site. Before any work is started, these should be explored through test pits. There may already be some reports testifying to the significance of the area. Such reports should be located and studied. Established procedures should be followed under the direction of a qualified archaeologist, with the Landmark Preservation Commission (LPC) as the lead agency for monitoring the site and determining how to handle any artifacts that might be retrieved. Recent discoveries at other city construction sites testify that these precautions are not merely academic, but are necessary lest important keys to our past be lost.

It is imperative that a plan to protect historic resources (such as the powerhouse) be in place before any demolition or heavy construction begins. Existing guidelines for construction sites proximate

to historic resources call for monitoring to detect any movement of the historic structure or any cracks in its walls. The guidelines also provide for photographing the historic building to create a baseline for comparison and as a further means of detection.

*MCB7 recommends that the Developer make periodic reports to Landmarks Preservation Commission staff, with vigilant oversight by the Department of Buildings.*

*MCB7 recommends that establishment of a Construction Coordinating Group, under the auspices of the Board, be added to the General Construction Plan and included in the Restrictive Declaration.*

#### **d. Public School**

In response to the disclosure in the DSEIS of a substantial unmitigated adverse impact on the community from increased public school enrollment, the mitigation required for this Project should include a new school at the site. To the extent that this is considered mitigation, reference is made to the discussion of the proposed school and its relationship to the needs of the community as set forth in Section D.3.a of this report and in support documents found on [www.nyc.gov/mcb7](http://www.nyc.gov/mcb7).

*MCB7 recommends that the Developer build and outfit a new 151,598 SF public school on the site.*

#### **e. Light Rail**

*MCB7 recommends that the Developer investigate the opportunity to access the light rail easement on the site to make mass transit more accessible to local residents.*

#### **f. Job Training and Employment**

*MCB7 recommends that the Developer provide a job-training program for local residents.*

*MCB7 recommends that the Developer ensure that residents of Community District 7 fill at least 20% of all jobs related to construction and operation of the site.*

#### **g. Community Meeting Space**

*MCB7 recommends that the Developer construct and make available in perpetuity a meeting space, outfitted with state-of-the-art audiovisual equipment and seating for up to 200 people, for use by organizations of the Upper West Side at no cost.*

## Appendix A – Summary of MCB7 Recommendations

### 1. Givens

**Public School:** The application should be modified to include a new 6-section-per-grade pre-K through 8 school of at least 151,598 SF fully fitted out, built in the first building constructed at the site, and fully funded by the Developer.

**Affordable Housing:** The application should be modified to include 30% mixed-income permanently affordable housing, primarily integrated within the site.

**Sustainability:** The application should be modified to incorporate the highest available LEED certification standards and the inclusion of green technologies that pay back within 10 years. The Developer should immediately retain a LEED-accredited professional to join the design and construction team.

### 2. Site Plan Modifications

**Restrict total density to 2.4 Million SF** to meet 1992 approvals and achieve MCB7's Lower Density Build Alternative. Clarify density measurements during the ULURP process.

**Remove Building 4** to reduce density, expand useful Public Open Space, provide for active recreation, increase light and air, reduce shadow and wind, and provide an engaging relationship with West 59<sup>th</sup> Street and the historic powerhouse. Removal of Building 4 would achieve approximately 2/3 of the density reduction recommended by MCB7.

**Bring the Site to Grade** (eliminate the platform) to make the Public Open Space visible and accessible from West 59<sup>th</sup> Street and from Riverside Boulevard, enhance the West 59<sup>th</sup> Street corridor to and from Riverside Park South, connect the site to the historic powerhouse, and increase mutual visibility between Public Open Space and sidewalks, making them more inviting, safer, and less isolated.

**Extend 60<sup>th</sup> Street to Riverside Boulevard**, either as a pedestrian or limited vehicular way, angled along the front of Building 1, to expand Public Open Space, break up the superblock, draw in pedestrian traffic, provide a street front for the Building 1 lobby, and facilitate circulation within and through the site.

**Surround the Public Open Space with publicly accessible streets or broad pathways**, either for pedestrian or limited vehicular use, to improve circulation, delineate public from private space, drive pedestrian traffic to public spaces, and enable building lobbies to open onto public ways.

**“Straighten” Freedom Place South** to expand the Public Open Space, reinforce the city grid, and provide visual perspectives of the historic powerhouse.

**Modify the Footprint of Building 5** to accommodate the “straightening” of Freedom Place South, expand the Public Open Space, further reduce density, reinforce the city grid, and provide visual perspectives of the historic powerhouse.

**Eliminate the Private Driveway** that serves Building 3 to expand Public Open Space and reinforce the city grid.

**Remove the 30-foot curb cut** for the ramp to the lower level designed to serve the auto service center.

**Widen sidewalks along West 59<sup>th</sup>, 60<sup>th</sup> and 61<sup>st</sup> Streets** to invite pedestrian traffic and signal access to the Public Open Space and to Riverside Park South, include bicycle parking to encourage cyclists to visit and shop.

**Position and Configure Retail Spaces and Destination Uses** along the site perimeter, particularly along West End Avenue and West 59<sup>th</sup> Street, close to the street line and at sidewalk elevation, varying sizes of stores to invite pedestrian traffic and support a mixture of large destination retail and small business retail that best serves the community.

**Include breaks in the faceted façade of the buildings** to reflect traditional set-backs and minimize the canyon-like effect on West 61<sup>st</sup> Street, a narrow residential way.

**Require further MCB7 and City Planning review and approval** once a general massing and specific design for these buildings is set and before the NYC Department of Buildings issues permits, if there are any significant departures from the approved schematic design of the buildings or deviations from the footprint, shape, contour, size, height, bulk, massing, or relationship between the buildings.

### **3. Site Program Recommendations**

**Eliminate the above-ground auto showroom and replace** with relevant and vibrant retail that attracts customers and visitors.

**Eliminate the below-ground repair center and replace** with relevant and vibrant retail that attracts customers and visitors.

**Include facilities for affordable childcare** to address the impact of new families joining the neighborhood.

**Include a playground for children** that could also be used by the public school.

**Accommodate a broad variety of engaging and useful retail** that serves the local community.

**Work with the Department of Small Business Services** to create designs and incentives that attract viable small businesses to the site.

## Proposed Extell Site Plan



## Proposed Site Plan with CB7 Modifications



#### 4. Circulation and Transportation

**Incorporate specific plans to accommodate and manage a substantial influx of vehicular, bicycle, and pedestrian traffic along West 59<sup>th</sup> Street.**

**Incorporate the integrative potential of West 59<sup>th</sup> Street**, rather than exacerbating its use as a service corridor.

**Construct Riverside Boulevard first**, completing the connection from West 72<sup>nd</sup> Street to West 59<sup>th</sup> Street.

**Analyze traffic impacts with updated data** that reflect recent explosive growth in the area surrounding the Project.

**Include pedestrian, cyclist and vehicular traffic safety designs both inside and outside the site** (including curb extensions, midblock chicanes, planted areas with seating, highly visible crosswalks, signals with leading pedestrian intervals, and bike lanes) **rather than relying on signage or signals alone.**

**Study (in conjunction with MCB7 and NYC DOT) the traffic directions of roads surrounding the site**, including West End Avenue, West 59<sup>th</sup>, West 60<sup>th</sup>, West 61<sup>st</sup> Streets, Riverside Boulevard, and Freedom Place South.

**Move the pedestrian refuge planned for West 61<sup>st</sup> street and West End Avenue to West 62<sup>nd</sup> street and West End Avenue.**

**Take immediate steps to address traffic safety concerns of residents** in Riverside South buildings along Riverside Boulevard and Freedom Place.

**Optimize loading/unloading and circulation below-ground** to minimize curb cuts and surface truck traffic.

**Limit underground parking to 1000 spaces** in a **single garage** that serves the entire site, to optimize underground loading/unloading and minimize surface traffic.

**Include car-sharing facility below-ground on the site.**

**Include a car rental facility below-ground on the site** that serves the community and supports local residents who don't own cars.

**Include plug-in connections for electric cars.**

**Request added capacities and routing adjustments for the M57, M31, M66 and M72 buses,** to better serve the site.

**Make substantial investments in local infrastructure** to offset the significant influx in traffic to be generated by above-ground and below-ground uses of the site.

## 5. Mitigations and Community Investments

### a. Active Open Space

**Create Additional Public Open Space**, by **Removing Building 4**. Create significant active recreation facilities in the additional open space, including a playground for children.

### b. Riverside Park South

**Contribute significantly toward completion of the permanent Riverside Park South**, and toward the maintenance, remediation of deteriorated conditions, capital improvements and other park needs. As with the existing Restrictive Declaration, there should be provision for MCB7 to participate in the planning process for each element of the Park.

### c. Construction Coordination

**Make periodic reports to the Landmarks Preservation Commission** staff, and provide for vigilant oversight by the Department of Buildings.

**Establish a Construction Coordinating Group**, under the auspices of MCB7, and add this requirement to the General Construction Plans and the Restrictive Declaration.

### d. Public School

**Build and outfit a 151,598 SF public school.**

### e. Light Rail

**Investigate the opportunity to access the light rail easement on the site** to make mass transit more accessible to local residents.

### f. Job Training and Employment

**Provide a job training program for local residents.**

**Ensure that residents of Community District 7 fill at least 20% of all jobs related to construction and operation of the site.**

### g. Community Meeting Space

**Construct and make available in perpetuity a meeting space**, outfitted with state-of-the-art audiovisual equipment and seating for up to 200 people, for use by organizations of the Upper West Side **at no cost**.

## Appendix B – MCB7 Responses to Land Use Actions

### Resolutions of Community Board 7 / Manhattan (MCB7) with regard to the application for “Riverside Center” by Extell Development Company

1. BE IT RESOLVED that Community Board 7 / Manhattan (MCB7) **adopts and approves its report** of July 2010 regarding the application for development of “Riverside Center” on the “L-M-N” site of Riverside South, i.e. the site bounded by West End Avenue (east), Riverside Boulevard (west), West 61<sup>st</sup> Street (north), and West 59<sup>th</sup> Street (south).
2. WHEREAS, MCB7 applauds creative architectural design;  
THEREFORE, BE IT RESOLVED that MCB7 **approves application #N 100294 ZRM** to amend Section 74-743 of the Zoning Resolution to allow the City Planning Commission to permit, within a general large-scale development, modification of Section 12-10 (Court, outer) to allow any open area surrounded on three sides by building walls to be treated as an “outer court.”
3. WHEREAS, MCB7 strongly believes that the Riverside Center development should set a high standard for environmental sustainability and responsibility, as well as architectural and urban design; and  
WHEREAS, MCB7 desires a mix of street-enlivening, neighborhood-oriented and more broadly attractive retail uses; and  
WHEREAS, an automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor to contribute to a lively streetscape in any way;  
THEREFORE, BE IT RESOLVED that MCB7 **disapproves application #N 100295 ZRM** to amend Section 74-744(a) of the Zoning Resolution to allow the City Planning Commission to permit automotive sales and service establishments (UG 16) within a “general large-scale development” in a C4 District in Manhattan Community District 7 provided certain findings are met.
4. WHEREAS, MCB7 applauds creative architectural design, but believes the urban design of the Riverside Center proposal would be significantly improved by the elimination of Building 4 and the modification of Building 5, as discussed in MCB7’s *July 2010 Report on Riverside Center* and documented in the drawings of MCB7’s consultants, Michael Kwartler & Associates and BFJ Planning;  
THEREFORE, BE IT RESOLVED that MCB7 **disapproves application #C 100296 ZSM** for a Special Permit from the City Planning Commission, within a “general, large-scale development,” pursuant to Sections:
  - A. 74-743(a)(2) to permit location of buildings without regard for applicable
    - “court” regulations found in ZR Section 23-84 and 23-851, to modify the minimum dimensions and areas of outer courts and inner courts and allow up to 5% of an inner court to be covered;

- distance between “buildings” regulations found in ZR Sections 23-711 to permit less than the required distance; and
  - height and setback (including tower) regulations found in ZR Sections 23-634, 33-433, and 33-451 to allow the location of buildings without regard to street wall location requirements, maximum street wall height, initial setback distance and tower regulations; and
- B. 74-743(a)(7), as amended, to modify Section 12-10 (Court, outer) to allow the open areas surrounded on three sides by building walls as designated on Drawing Z-113 to be treated as “outer courts.”

**... unless Building 4 is eliminated from the project and the footprint of Building 5 is modified in accordance with the drawings of MCB7’s consultants Michael Kwartler & Associates and BFJ Planning, and the proposal for the Project is modified in accordance with MCB7’s July 2010 Report on Riverside Center.**

5. WHEREAS, MCB7 strongly believes that the Riverside Center development should set a high standard for environmental sustainability and responsibility, as well as architectural and urban design; and  
 WHEREAS, MCB7 desires a mix of street-enlivening, neighborhood-oriented and more broadly attractive retail uses; and  
 WHEREAS, an automotive showroom and service center is neither green in ethos, nor neighborhood-oriented, nor likely to attract pedestrians and passers-by, nor to contribute to a lively streetscape in any way; and  
 WHEREAS, MCB7 disapproves the proposed Zoning Text Amendment [re: #N 100295 ZRM to amend Section 74-744(a)(2)] that would enable an applicant to seek a Special Permit to allow an automotive showroom and service center within a “general large-scale development” such as the Riverside Center site;  
 THEREFORE, BE IT RESOLVED that MCB7 **disapproves application #C 100297 ZSM** for such Special Permit from the City Planning Commission to allow automobile sales and service uses (Use Group 16B) without regard for the Use provision found in 32-00.
6. WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s July 2010 Report on Riverside Center;  
 THEREFORE, BE IT RESOLVED THAT MCB7 **disapproves application #C 100287 ZSM** for a Special Permit from the City Planning Commission, within a “general large-scale development,” **pursuant to Sections:**
- a. **74-681(a)(1)** to allow that portion of a railroad or transit right-of-way to be completely covered over by a permanent platform to be included in the “lot area” for the development; and
  - b. **74-681(a)(2)** to allow the portion of the yard where railroad use has been permanently dislocated to be included in the “lot area” for the development; and
  - c. **11-42(c)** to provide that the Special Permit pursuant to Sections 74-681(a)(1) and 74-681(a)(2) will not lapse if, within 10 years from the effective date of the special permit, substantial construction of at least one building has been completed; and
  - d. **74-681(c)(4)** to establish elevation + 24 above Manhattan Datum instead of “curb level” as the reference plane for the development plus additional curb levels for streetscape purposes (26-00 and 37-30).

**But would approve the application if Section 74-681(c)(4) were deleted and the project reference plane established at “curb level.”**

7. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, the applicant is proposing an 1800-space garage to serve the entire Riverside Center site (Parking Option “A”) with 5 access points (i.e., one at each proposed building) on two levels (Subcellar #1 and Subcellar #2, both beneath the cellar level proposed for an automotive service center, which use MCB7 disapproves – see relevant resolutions); and  
WHEREAS, MCB7 prefers Parking Option “A” to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center); and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Blvd. & West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for this site; and  
WHEREAS, MCB7 disagrees with the applicant’s DSEIS analysis that 600 spaces are required to accommodate those who park in the garages and lots currently on the site; and  
WHEREAS, MCB7 finds the accessory ratios used by the applicant in the DSEIS to be excessively high (i.e. approximately .5 spaces for each residential unit vs. .3 spaces per market-rate residential unit and .08 spaces per affordable unit on the Hudson Yards site);  
THEREFORE, BE IT RESOLVED that MCB7 **disapproves application #C 100288 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a “public parking garage” with a maximum of 1,800 public parking spaces, **but would approve a single, below-ground public parking garage, with 1000 spaces.**
  
8. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);  
THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves application #C 100289 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a “public parking garage” to be located beneath Parcel 1 with a maximum of 460 public parking spaces.

9. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
 WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
 WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
 WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
 WHEREAS, MCB7 prefers Parking Option "A" (i.e., a single garage serving the entire Riverside Center site) to Parking Option "B" (i.e., separate garages for each of the five buildings proposed for Riverside Center);  
 THEREFORE, BE IT RESOLVED that MCB7 **disapproves application #C 100290 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a "public parking garage" to be located beneath Parcel 2 with a maximum of 230 public parking spaces.
10. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
 WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
 WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
 WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and  
 WHEREAS, MCB7 prefers Parking Option "A" (i.e., a single garage serving the entire Riverside Center site) to Parking Option "B" (i.e., separate garages for each of the five buildings proposed for Riverside Center);  
 THEREFORE, BE IT RESOLVED THAT MCB7 **disapproves application #C 100291 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a "public parking garage" to be located beneath Parcel 3 with a maximum of 290 public parking spaces.
11. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and  
 WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7's *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and  
 WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and  
 WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and

WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

WHEREAS, MCB7 disapproves the entire Riverside Center proposal unless Building 4 is eliminated (along with other provisos, documented in MCB7’s *July 2010 Report on Riverside Center*);

THEREFORE, BE IT RESOLVED THAT MCB7 **disapproves application #C 100292 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a “public parking garage” to be located beneath Parcel 4 with a maximum of 370 public parking spaces.

12. WHEREAS, MCB7 recognizes the need for public parking on this large, mixed-use site; and WHEREAS, MCB7 believes strongly in the urban design principle that open space should meet the perimeter sidewalks at grade, as discussed in MCB7’s *July 2010 Report on Riverside Center*, and thus urges the applicant to limit below-ground construction to what can be developed beneath a slope to sidewalk grade (elevation approx. + 7.6) at Riverside Boulevard and West 59<sup>th</sup> Street; and

WHEREAS, the 1992 Riverside South Restrictive Declaration allowed for a 743-space garage on the L-M-N site; and

WHEREAS, the history of parking-garage development in Riverside South and the future trends for car ownership and use indicate that 1800 spaces is excessively large for the Riverside Center site overall; and

WHEREAS, MCB7 prefers Parking Option “A” (i.e., a single garage serving the entire Riverside Center site) to Parking Option “B” (i.e., separate garages for each of the five buildings proposed for Riverside Center);

THEREFORE, BE IT RESOLVED THAT MCB7 **disapproves application #C 100293 ZSM** for a Special Permit, pursuant to Sections 13-562 and 74-52, from the City Planning Commission to permit a “public parking garage” to be located beneath Parcel 5 with a maximum of 450 public parking spaces.

13. MCB7 **approves application # N 100298 ZAM** for an Authorization, pursuant to Section 13-553, from the City Planning Commission, to permit a curb cut on West End Avenue (a wide street) to facilitate the extension of West 60<sup>th</sup> Street westward through a portion of the project site as a public access easement.

14. WHEREAS, one curb cut is allowed as of right on West 59<sup>th</sup> Street as a narrow street; and WHEREAS, the applicant proposes 5 curb cuts for West 59<sup>th</sup> Street, specifically

- Intersection with Freedom Place South, which MCB7 endorses
- Loading bay for Building 5, which MCB7 accepts
- Garage entrance at/for Building 3, which MCB7 accepts
- Garage entrance at/for Building 5, which MCB7 disapproves
- Automotive service entrance at Building 3, which MCB7 deplors and disapproves;

THEREFORE, BE IT RESOLVED that MCB7 **disapproves application # N 100299 ZCM** for a Certification, pursuant to Section 26-15, from the City Planning Commission to allow [4] additional curb cuts, in excess of one for each “narrow street” frontage, for “zoning lots” in excess of 30,000 square feet of “lot area,” to allow more than one curb cut on West 59<sup>th</sup> Street (a narrow street), **but would approve an application to allow 2 additional curb cuts on West 59<sup>th</sup> Street.**

15. BE IT RESOLVED that MCB7 **approves application # N 100286 ZCM** for a Certification, pursuant to Section 26-15, from the City Planning Commission to allow [1] additional curb cut, in excess of one for each “narrow street” frontage, for “zoning lots” in excess of 30,000 square feet of “lot area,” to allow more than one curb cut on West 61<sup>st</sup> Street (a narrow street).
16. BE IT RESOLVED THAT MCB7 **disapproves application # N 100300 ZCM** for a Certification, **pursuant to Section 26-17**, from the City Planning Commission to modify the provision of 37-35 requiring that 50 percent of a front building wall fronting on a wide street shall be occupied by commercial uses, and to modify the provisions of 37-36 to permit signs to be located in a horizontal band not higher than three feet, the base of which is located not higher than 17 feet above curb level (established level), and to modify the provisions of 37-37 to permit less than 50 percent of the total surface area of any building wall of a “development” between curb level (established level) and 12 feet above curb level or ground floor ceiling height to be transparent for **Building 2**, **unless application # N 100300 ZCM with regard to Building 3 and Building 5 is withdrawn.**
17. BE IT RESOLVED that MCB7 **disapproves application #M 920358 D ZSM** for the Fourth Modification of previously approved “general large-scale development” special permit and restrictive declaration to reflect the current proposal, but would approve an application modified in accordance with the foregoing report and the drawings of MCB7’s consultants, Michael Kwartler & Associates and BFJ Planning.

## Appendix C – Public School Analysis

The proposed Riverside Center project (the "Project") fails to satisfy the Core Principles because it fails to provide a new, fully programmed 6-section per grade pre-K through 8 school of at least 151,598 GSF for the District, built in the first building constructed at the site, and fully funded by the Developer.

Instead, the Developer proposes to fund only the exterior walls and floors of raw space of a school half the size needed for the community, leaving the cost of the conversion of that raw space to the School Construction Authority ("SCA"). It also seeks to transfer to the SCA the total cost (exterior walls, floors and fit-out) for the balance of the school needed by the community.

### The Proposed School Fails to Meet the Community's Needs.

The building of a new school has been the first priority identified in CB7's Charter-mandated statement of budget priorities for the City's Capital Budget for fiscal years 2009 and 2010.

#### A. Schools in the District Are Overcrowded.

##### 1. Current Overcrowding.

The Project is located within Community School District 3. By any rational measure, the elementary schools in the southern portion of District 3 are already critically overcrowded. The kindergarten enrollment at PS 199 (9 blocks away) doubled in less than five years after the buildings in the northern part of the Riverside South complex became occupied. PS 199 remains above its target capacity despite changes to its zone lines and the relocation of another school with which it shared space until Fall 2009.

In addition, due to the strength of the educational opportunities offered in the District, demand for public school seats is accelerating rapidly. At PS 87, another school proximate to the Project site, 111 K families were placed on an in-zone waiting list for September 2010 (one of the largest waiting lists in the City), a four-fold increase in zone enrollment in four years. The Department of Education has stated that it views this trend toward ever-increasing use of the public schools as permanent and not a temporary or cyclical anomaly.

While PS 191, in whose catchment zone the Project site is located, is not currently overcrowded, the school facility is of modest size compared to its neighboring schools and could not withstand the cataclysm of over-enrollment visited on PS 199 in the last five years. Moreover, the Department of Education has identified PS 191 as one of the overflow schools to which in-zone families that PS 199 cannot accommodate will receive alternate offers. Simply put, there is less margin for error with over-enrollment at PS 191 than at PS 199. Moreover, with significant additions to residential capacity in the PS 191 zone coming on line in the near future, the anticipated expansion of its zone in 2010-11, and even more residential units expected from the Fordham redevelopment, PS 191 is expected to be at or above its capacity shortly even without the Project.

2. The DSEIS Confirms Future Overcrowding.

According to the DSEIS, by 2018, the schools within a ½ mile radius of the project will be over capacity unless the 151,598 GSF school is built. Public elementary schools will be at 140% capacity and middle schools at 162% capacity. Even if the FAR permitted by the 1992 Restrictive Declaration – the lower-density alternative examined in the DSEIS – were to be built, a school would be needed to mitigate the effects of the Project.

It is therefore essential that a school be constructed as part of the Project that meets the needs of the District and not just this development.

3. The SCA Declined a Previous Option.

The 1992 Restrictive Declaration governing the Riverside South complex required the Developer of those sites to extend an option to the City of New York to allow it to purchase land on which to construct a public school upon the occurrence of certain conditions. Extell succeeded to the obligation in the 1992 Restrictive Declaration, and offered the land to the Department of Education.

The Department of Education, through the SCA, declined the option in November 2006, despite growing evidence that the Riverside South buildings were already taxing the capacity of PS 199, and despite efforts by the community and elected officials to urge the SCA to take a longer-term view of the District's needs.

B. The School that the Community Needs.

CB7 convened a public meeting on May 24, 2010, the date the Project was certified by the City Planning Commission, the focus of which was the need for a school at the Project site. The meeting was co-sponsored by the District 3 Community Education Council and the District 3 Presidents' Council. The meeting was attended by over 240 parents and community members. In addition, at the meeting, over 1,300 signatures were presented in connection with a petition calling for a school to be built at the Project site big enough to serve the entire District.

That meeting followed discussions at CEC and Presidents' Council meetings during 2009-10, as well as at meetings on overcrowding and space utilization in District 3 convened by the Manhattan Borough President in 2009 and 2010, all of which acknowledged the critical need for the creation of new seats in the District. These discussions echoed testimony from parents, educators and elected officials at CB7 full Board, Working Group and committee meetings during 2009 and 2010 all to the same effect.

CB7 recommends that Riverside Center includes a public school with the following features:

- Serve grades K-8, with room for a pre-K;
- House 6 sections per grade (a minimum of 1,332 students);
- Be built in the first building constructed at the Project site;
- Offer all necessary program spaces and state-of-the-art equipment, including:
  - large or multiple cafeterias (ensuring reasonable timing of lunch);
  - multiple or dividable gyms (providing weekly access for all students);
  - separate, age-appropriate outdoor play spaces, preferably at grade;
  - dedicated space for art, music, science labs, and student services;
  - wide hallways with lockers for upper grade students;
  - flexible auditorium space; and
  - green features (e.g. green roof, vegetable garden)

- 151,598 GSF of space that meets DOE/SCA requirements
- Open space sufficient to accommodate 1400 students

If designed and built with care and attention to detail, CB7's research indicates that an effective school that addresses the community's needs could be built in a space of 151,598 GSF.

C. The Proposed School Does Not Meet the Community's Needs.

1. Extell Is Not Funding a School that Meets the District's Needs.

The DSEIS reveals that while the Developer has reserved a total of 151,598 GSF for a school, it is proposing to pay for a fraction of the cost of constructing an approximately 75,000 GSF school. The Developer estimates that a school of that size would be sufficient to accommodate the enrollment that is expected under applicable CEQR regulations to be generated solely by the Project itself.

The school is not expected to accommodate the enrollment from any of the buildings built or to be built by affiliates of the Developer on other parcels of Riverside South, nor from buildings constructed by predecessors in interest to Developer (e.g. the "Trump" buildings). The school certainly would not accommodate enrollment projected from the proposed development at Fordham or other buildings in the vicinity expected to come on line in the near future. And it pays no heed whatsoever to the growing trend identified by the DoE for increased use of the public schools overall, a trend that DoE has characterized as not temporary.

The outdoor space reserved by Extell for the school also appears inadequate. The outdoor play space envisioned by the Developer would be situated on building setbacks at the fourth floor of Building 2, and would comprise approximately 8,400 GSF. Outdoor play space of this size would potentially be suitable for a school of under 500 students (e.g. the school proposed by Extell), but is inadequate to meet the needs of the school needed by the community. CB7's proposal to create truly public open space by removing proposed Building 4 and reconfiguring the open space to accommodate both active and passive use could include the creation of appropriate outdoor space to be used by the school during the school day, while making it available to the general public after hours and on weekends.

Moreover, Extell has shifted the lion's share of the cost of even the school needed to meet the demand it is creating to the SCA and the City and State taxpayers.

2. The MOU Shifts the Cost of the School from Extell to the SCA.

The Developer entered into a memorandum of understanding ("MOU") with the SCA in May 2010. In the MOU, the Developer agreed to build and pay for the "core and shell" of a 75,000 GSF school. In this context, the "core and shell" includes the construction of the exterior walls and internal floors of a building, but does not include fitting out that raw space into classrooms, hallways, gyms and other spaces needed for a functioning school, nor does it include mechanicals. The cost of fitting out the raw space was left to the SCA.

Since Extell will build the exterior walls of its 40+-story building regardless of whether a school occupies any of the floors, the Developer's share of the cost of the school it proposes is de minimis. Indeed, the added value of residential units that will be located on higher floors based on locating the school on the lower floors of its buildings will cover much if not all of the incremental cost of the "core and shell" proposed by the Developer in the MOU.

The MOU also granted the SCA an option to require the Developer to build an additional approximately 75,000 GSF for the school. That option, which the SCA would be required to exercise, if at all, at an undefined interval prior to the commencement of construction of the

building in which it would sit, would be entirely at SCA's cost (i.e. the MOU allocates to the SCA the cost of the core and shell and of fitting out the raw space).

Thus, virtually all of the cost of building half of the school, and literally all of the balance of the school needed by the community, is being left to the public. This represents a monumental unmitigated impact of the proposed development.

While the cost of the exterior walls and floors is de minimis to Extell, it would not be to the SCA. Extell must build the core so that it will not only house the school, but support a building that will rise more than 500 feet above it. Were SCA to build a stand-alone school, the design specifications would be vastly different. In addition, the site selected by the Developer for the school sits above the Amtrak/Metro North right of way, requiring the construction of a platform sufficient to support the 500+ foot tall tower. Assigning to SCA any share of the costs associated with erecting a building that meets the Developer's needs for a tower above or platform below would be manifestly unfair, and require constant parsing of expenses and monitoring of construction to ensure that public money is being used only for the incremental cost of adding the school.

CB7's research into the cost to fit out the school reveals that estimates mentioned in public hearings that the school would cost hundreds of millions of dollars are grossly exaggerated. Fitting out the 151,598 GSF school as a state-of-the-art green facility with the latest technology and connectivity, including Smart-boards, WiFi and networking, and the equipment needed for a rich curriculum that includes science, art, and music, is estimated to cost between \$350-450 per square foot, or between \$53-68 million. These estimates are of SCA's costs – the Developer likely can trim these costs considerably with its economies of scale and buying power.

As noted above, when the Developer's need to build the walls that form the "core and shell" anyway, and the increase in value to its apartments above by placing them on higher floors, is considered, the effect of the MOU is shift virtually the entirety of the real cost of the school to the SCA.

### 3. SCA Is Unlikely to Exercise the Option.

The SCA's 2010-14 Capital Plan contains no funding whatsoever for the creation of additional seats in District 3. Similarly, neither the 2005-09 Capital Plan nor any of its annual amendments had any funds for new seats in the District. As noted, the SCA has already declined to exercise an option to build a school at the contiguously adjacent Riverside South complex.

The confluence of SCA's lack of funding and the MOU's requirement that SCA pay for nearly all of the total cost of construction of an inadequately-sized school, and all of the cost of the balance of the school needed by the community, creates an unacceptably high likelihood that the full school needed by the community will not be built, and leaves palpable doubt as to whether even the small scale school will be timely built.

### 4. Extell Should Fund the Entire School Needed by the Community.

It is fair to require Extell to fund the entire cost of the school needed by the District and not just RSC. Extell, in other sections of Riverside South, created a significant portion of the over-enrollment that has plagued our public schools in the last five years. It succeeds to the development rights that similarly have swamped the adjacent public schools. That those buildings were constructed based on an outdated assessment of community needs does nothing to abate the resources consumed already and projected to be consumed going forward.

Extell should take the entire community in which it seeks to build as it finds it. That should include the steady and recognized trend in the neighborhood in which it seeks to site its development to use public schools in greater numbers than contemplated by the 1992 Restrictive Declaration, let alone the applicable provisions of the zoning resolution.

The full school needed by the community is too important to leave to the uncertainties of the option contained in the MOU. The option would in turn require the creation of an open and transparent process by which the community, included elected officials, the Community Board, and the CEC and Presidents' Council, could assess the Project as actually built, enrollment and projections, and the DoE's and SCA's responses. Such a process would interfere with the swift completion of the Project and any school, and in any event would be difficult to enshrine in an appropriate amended restrictive declaration.

In addition, Extell is consuming for RSC the entirety of the largest undeveloped site within our District. It is the first viable open space on which to locate a new school facility in our area in decades, and may well be the last such parcel available into the foreseeable future. The opportunity cost of allowing the Project to be built without the construction of the full school needed by the community is staggering, and its effects will be felt for generations.

Building a state-of-the-art school facility at this site will benefit the Developer. For the prospective purchasers of its luxury units, private school could be an option to avoid the current uncertainties of in-zone waiting lists and alternate offers to schools other than the zoned school. Having a viable public school on site could save its purchasers the cost of private school tuition, currently over \$30,000 per year, enabling the Developer to seek to capture a portion of that savings through purchase prices. It also adds to the good will associated with the Project, and enables Extell to include the school in its marketing (in much the way that real estate ads on the Upper West Side included the zoned school until the recent waiting list/overcrowding crisis erupted). When those positives are added to the increase in value of the units placed on higher floors when the school occupies the lower floors, Extell's shouldering the cost of the entire school is still a win-win, and must be a requirement of this Project.

Conclusion. The absence of a firm commitment by the Developer to build and fully fund the creation of the entire school needed by the community means that the Project fails to satisfy the first "given" identified as flowing from CB7's Core Principles. For these reasons, CB7 should disapprove Extell's application in its entirety.



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

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

August 31, 2010

**Recommendation on  
Riverside Center**

**Application Nos. M 920358 D ZSM, N 100286 ZCM, C 100287 ZSM, C 100288 ZSM,  
C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM,  
N 100294 ZRM, N 100295 ZRM, C 100296 ZSM, C 100297 ZSM,  
N 100298 ZAM, N 100299 ZCM, and N 100300 ZCM  
by CRP/Extell Parcel, L, LP and CRP/Extell Parcel, N, LP**

**PROPOSED ACTIONS**

CRP/Extell Parcel, L, LP and CRP/Extell Parcel, N, LP (herein together “Extell” or “applicant”)<sup>1</sup> seek to modify a restrictive declaration associated with a previously approved special permit; two zoning text amendments; three special permits associated with a large-scale development special permit; six special permits for public parking garages; two City Planning Commission (“CPC”) certifications for curb cuts on narrow streets; a CPC authorization to allow a curb cut on a wide street; and a CPC certification to modify transparency, retail continuity and signage requirements to facilitate the development of five mixed-use buildings,<sup>2</sup> known as “Riverside Center,” located in Manhattan Community District 7 on a tract of land bounded by West 59<sup>th</sup> and 61<sup>st</sup> streets between Riverside Boulevard and West End Avenue. The development site consists of the final phase of “Riverside South,” a large-scale development spanning from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street.

Specifically, Extell seeks the **fourth modification of a restrictive declaration associated with a previously approved special permit for the Riverside South large-scale development (M 920458 D ZSM)** to remove restrictions on the development site, including limitations on the number of parking spaces, total density, and number of dwelling units. Additionally, the applicant seeks to modify the permitted building forms on the site and to remove a requirement to map West 60<sup>th</sup> Street as a City street.

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<sup>1</sup> CRP/Extell Parcel, L, LP and CRP/Extell Parcel are development companies, which are primarily represented by Extell Development Company.

<sup>2</sup> The buildings are herein referenced as Building 1, Building 2, Building 3, Building 4, and Building 5.

Extell also seeks approval of a **Zoning Text Amendment (N 100294 ZRM) to create Section 74-743(a)(7) (General Large-Scale Development, Bulk modification) of the New York City Zoning Resolution (“ZR”) to allow the CPC to modify ZR § 12-10 (Court, outer)**. The proposed text amendment would allow the CPC to consider any open area surrounded on three sides by building walls to be treated as an “outer court” for a general large-scale development special permit.

Extell seeks a related **special permit (C 100296 ZSM) pursuant to ZR §§ 74-743(a)(2) and 74-743(a)(7) (as amended) to modify the provisions of ZR §§ 23-84 and 23-851 (court regulations); 23-711 (minimum distance between buildings); 23-634, 33-433, and 33-451 (height and setback regulations); and 12-10 (court, outer)**. The CPC may grant the proposed bulk waivers provided that the modifications satisfy certain findings set forth in ZR § 74-743(b), including that the modifications will result in a better site plan and a better relationship between the development and the surrounding area than would otherwise be possible, and will thus benefit the occupants of the development, neighborhood, and the City; that the modifications will not obstruct light and air; that the streets are adequate to handle resulting traffic flow; and that a plan for any required additional public facilities has been provided.

Extell additionally seeks a **Zoning Text Amendment (N 100295 ZRM) to ZR § 74-744(a) (General Large-Scale Development, use modification) to allow the CPC to permit automobile showroom and service establishments (Use Group 16) in C4 Districts in Manhattan Community District 7 and a related special permit (C 100287 ZSM) pursuant to ZR § 74-744(a)(as amended) to allow an automobile showroom and service establishment**. The CPC may grant the proposed use modification provided that the portion of the establishment used for the servicing and preparation of automobiles is located entirely on the cellar level; sufficient indoor space for storage of vehicles for sale or service has been provided; and such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic or adversely affect pedestrian movement.

Extell also seeks a **special permit (C 100287 ZSM) pursuant to ZR § 74-681 to allow the large-scale development site to use a railroad or transit right-of-way in the “lot area” of the development; to allow a portion where the railroad has been permanently discontinued to be included in the “lot area” of the development; and to establish an appropriate grade to serve instead of the curb level for streetscape purposes (ZR §§ 26-00 and 37-30)**. In order to grant this special permit, the CPC must find that the streets providing access are adequate to handle resulting traffic; that the distribution of floor area and the number of dwelling units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development or enlargement, including any portion located beyond the boundaries of such railroad or transit right-of-way or yard; that all uses, developments or enlargements located on the zoning lot or below a platform do not adversely affect one another; and that if such railroad or transit right-of-way or yard is deemed appropriate for future transportation use, the site plan and structural design of the development does not preclude future use of, or improvements to, the right-of-way for such transportation use.

Extell additionally seeks **six special permits (C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, and C 100293 ZSM) pursuant to ZR §§ 13-562 and 74-52**

**to allow either one of two public parking garage schemes at the site.** Scenario A (C 100288 ZSM) would allow a single public parking garage of 1,800 spaces. Scenario B (C 100289 ZSM through C 100293 ZSM) would allow for five separate parking garages with a total of 1,800 spaces; the applicant proposes to have 460 spaces under Building 1; 230 spaces under Building 2; 290 spaces under Building 3; 370 spaces under Building 4; and 450 spaces under Building 5. In order for the special permits to be granted, the CPC must find that the garage(s) will not adversely impact or affect the growth or development of other uses in the area; will not create or contribute to serious traffic congestion or pedestrian flow; will not draw traffic through areas which are primarily residential; contains adequate reservoir space; is surrounded by streets that are adequate for generated traffic; and, where rooftop parking is permitted, is so located as not to impair the essential character, future use or development of adjacent areas.

Extell further seeks **two CPC certifications (N 100299 ZCM and N 100286 ZCM) pursuant to ZR § 26-15 to allow more than one curb cut on both West 59<sup>th</sup> Street and on West 61<sup>st</sup> Street.** In order to grant the certifications, the CPC must find that the curb cuts will not result in conflict between pedestrian and vehicular circulation and will result in a good overall site plan.

Extell also seeks a **CPC authorization (N 100298 ZAM) pursuant to ZR § 13-553 to permit a curb cut on West End Avenue to facilitate the extension of West 60<sup>th</sup> Street westward through a portion of the development site as a public access easement.** In order to grant the authorization, the CPC must find that the curb cut is not hazardous to traffic safety; will not create or contribute to serious traffic congestion or unduly inhibit vehicular movements; will not adversely affect pedestrian movement; will not interfere with the efficient function of bus lanes, specifically designated streets and public transit facilities; and will not be inconsistent with the character of the existing streetscape.

Extell also seeks a **CPC certification (N 100300 ZCM) pursuant to ZR § 26-17 to modify ZR §§ 37-35 (retail continuity), 37-36 (sign regulations) and 37-37 (street wall articulation).** In order to grant the certification, the CPC must find that such modifications will enhance the design quality of the proposed development.

Finally, on August 20, 2010, the applicant submitted an **alterative text amendment (N 100294(A) ZRM),** which would additionally **modify ZR § 23-144 (In designated areas where the Inclusionary Housing Program is Applicable) and Appendix F (Inclusionary Housing Designated Areas); ZR §§ 23-954 (Additional requirements for compensated developments) and 74-743 (General Large-Scale Special Permit) to allow the CPC to modify ZR §§ 23-952 (Floor area compensation in Inclusionary Housing designated areas) and 23-96(b) (Requirements for Generating Sites) as part of a large-scale special permit.** Generally these modifications would designate the site as eligible to participate in the City's Inclusionary Housing Program; allow C4-7 district tower regulations to apply to large-scale development sites utilizing the inclusionary bonus within C4-7 districts in Community District 7; allow the CPC to modify (pursuant to the large-scale special permit) the base and maximum permitted floor area ratio ("FAR") for the site; and allow the CPC to modify the distribution requirements for affordable housing units within C4-7 districts in Community District 7. The applicant also filed an **alternative large-scale development special permit (C 100296(A)) to modify the base and**

**maximum FAR and the distribution of inclusionary housing units** along with the waivers described above.

## **PROJECT DESCRIPTION**

The proposed actions would facilitate the construction of a large-scale development, known as “Riverside Center,” at a site (Block 1171, Lots 155 and 165) bounded by West 59<sup>th</sup> Street, West 61<sup>st</sup> Street, West End Avenue, and Riverside Boulevard.<sup>3</sup> The site is located in the southwest corner of Community District 7 and is the last development site to be planned of the larger Riverside South development. The Riverside Center development would consist of five towers with a maximum of 3,000 dwelling units, 1,800 public parking spaces, an elementary/middle school, 135,000 SF of ground-floor retail, and an automobile showroom and service center.

The area surrounding the development site consists of primarily residential uses to the north and east, which include a large-scale planned community owned by the New York City Housing Authority, known as Amsterdam Houses, and the balance of the Riverside South development. The area directly south of the site includes a mix of residential, commercial and industrial uses, including a Con Edison steam facility and Department of Sanitation facilities. To the west of the site are the elevated Miller Highway, Riverside Park, Hudson River Park, and a sanitation pier currently anticipated to be used by the Department of Sanitation for recycling.

### **History of the Site**

In 1992, the City Council approved a large-scale development plan for Riverside South, which included the development site subject to this application. The plan governed the redevelopment of former rail yards, which extended from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street between West End Avenue and Riverside Boulevard. Riverside Boulevard is a mapped street that is being constructed as part of the Riverside South development plan. It currently extends from West 72<sup>nd</sup> Street to West 63<sup>rd</sup> Street and will eventually extend to West 59<sup>th</sup> Street. The plan allowed for a total of 7,899,951 SF of development with mixed residential and commercial uses on 15 separate parcels (Development Site A through O). Additionally, the Riverside South development was limited to 5,700 residential units and 3,500 parking spaces. These restrictions were codified in a restrictive declaration. As part of the original plan the developer was required to provide a minimum of 12 percent of the total residential units as affordable housing units; construct Riverside Boulevard from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street; build 21.5 acres of waterfront park; create 4 acres of accessible open space inland; pay for the cost of rehabilitating the West 66<sup>th</sup> Street and West 72<sup>nd</sup> Street subway stations; provide space for, but not fund, a public school; construct a “box” in which a portion of the raised Miller Highway could be relocated underground in the future; and make contributions to programs serving senior and youth populations in the community.

To date, 6,691,505 SF of the Riverside South development have been constructed, which includes 4,492 residential units (583 of which are affordable housing units) and 2,611 parking spaces. Development Site J, located two blocks north of the Riverside Center development site, is currently under construction, and Development Site K, located one block north of the site, has

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<sup>3</sup> Riverside Boulevard would be constructed as part of the proposed Riverside Center development.

approved plans based on the requirements of the restrictive declaration. Additionally, Riverside Boulevard has been constructed from West 63<sup>rd</sup> Street to West 72<sup>nd</sup> Street, and 12.93 acres of the waterfront parkland have been developed with the balance of the required park space either under construction or planned. No school has been constructed, as the Department of Education did not choose to exercise its option to site a school at Riverside South.

Three sites of the original Riverside South development remain undeveloped – Development Site L, M, and N – and comprise Riverside Center. The Riverside Center development site was restricted to a total of 2,372,192 SF, with 1,690,600 SF for television studio uses; 19,400 SF for professional office space; 35,000 SF of community facility space; and 572,192 SF of residential use. Additionally, the site was restricted to 743 below-ground parking spaces and 577 residential units. Further, development of the site included a provision that West 60<sup>th</sup> Street must be mapped if the site were to be developed for any use other than for television studios. Absent approval of the proposed actions and modifications to the existing restrictive declaration, the applicant would be restricted to develop the Riverside Center site under the above-mentioned parameters.

### **Proposed Development**

The proposed development is in a C4-7 zoning district. Absent any other restrictions on the development site, the underlying zoning would permit a maximum density of 3,562,820 SF (10 FAR) for commercial, community facility, and residential uses on the site. Approximately 525,989 SF (1.48 FAR) were transferred off site to other development sites within the Riverside South development as part of the original large-scale development plan. The proposed Riverside Center plan, which utilizes the majority of the remaining available development rights, consists of a total of 3,014,829 SF (8.46 FAR) of development. Of the total permitted development square footage, an allocation of approximately 150,000 SF for an on-site public school exists. If a public school is not constructed on the site, the development would be restricted to a total of 2,882,829 SF (FAR of 8.09).

As proposed, the site would include five buildings and a maximum of 2,884,907 SF of residential uses, 980,000 SF of commercial uses, and 332,000 SF of community facility uses (including 132,000 SF for a public school). The proposed development program also includes the possibility that 712,000 SF may be used for either hotel or residential purposes and that 200,000 SF may be used for either commercial or community facility uses, but in no case can the on-site maximum permitted density be greater than 3,014,829 SF.

The applicant originally proposed to provide 12 percent of total residential units as affordable housing (consistent with the original approvals); the applicant, however, submitted an alternative application on August 20, 2010 that would make the proposed project comply with the City's Inclusionary Housing Program. This program requires the applicant provide 20 percent of the total residential density as permanently affordable housing.

Further the applicant proposes to fund the core and shell of a 75,000-SF new public school on the site. In addition to the proposed uses that comprise zoning floor area, the applicant proposes to

use 181,677 SF in the cellar for an automobile service facility and showroom and 482,400 SF on two sub-cellar floors for a public parking garage with a maximum of 1,800 spaces.

The proposed development would additionally include up to 2.75 acres of privately-owned publicly accessible open space, including public easements for the extension of West 60<sup>th</sup> Street, Freedom Place South, and the widening of West 59<sup>th</sup> Street and West 61<sup>st</sup> Street. The buildings are oriented around the open space, which features a water scrim, active lawns, and planted meadows. The open space would include thick plantings along Riverside Boulevard in order to mitigate wind conditions.

The proposed land use actions would restrict development on the site, including specifying uses, building forms and densities for the five proposed buildings to be consistent with the plan as proposed by the applicant.

Building 1 is located at the northwest corner of the site. It is proposed to be 463 feet tall (38 stories) at its highest point and have a maximum density of 1,047,354 SF. The current development scenario anticipates 918,733 SF of development with 774,196 SF of residential uses, 101,390 SF of office uses, and 41,003 SF of retail uses. The building would have a residential entrance on West 61<sup>st</sup> Street and on the proposed open space, and an entrance for the proposed office space would be located on West 61<sup>st</sup> Street. The ground floor, with the exception of access space for the residential and commercial office uses, would contain retail uses.



Source: Riverside Center DSEIS (CEQR 09DCP020M), Figure S-11,

Building 2 is located at the northeast corner of the site. It is proposed to be 369 feet tall (31 stories) at its highest point and have a maximum density of 698,149 SF. The current development scenario anticipates 628,623 SF of development with 479,237 SF of residential uses, 132,000 SF of public school space (a community facility use), and 15,180 SF of retail uses. The residential lobby would be accessed from the Freedom Place South extension, and the access point to the school would be located on West 61<sup>st</sup> Street. Retail would be located on the building's West End Avenue, West 60<sup>th</sup> Street and Freedom Place South frontages.

Building 3 is located at the southwest corner of the site. It is proposed to be 433 feet tall (34 stories) at its highest point and have a maximum density of 420,793 SF. The current development scenario anticipates 369,417 SF of development with 362,669 SF of residential uses and 6,748 SF of retail uses. The residential lobby and the retail space would be accessed via a

private driveway over which Building 4 is cantilevered. The entrance to the below-grade automobile service center would also be located at Building 3 on West 59<sup>th</sup> Street.

Building 4 is located at the southern section of the site between Building 3 and 5. It is proposed to be 369 feet tall (31 stories) at its highest point and have a maximum density of 412,549 SF. The current development scenario anticipates 361,884 SF of development with 348,518 SF of residential uses and 13,369 SF of retail uses. The residential lobby would be accessed via a private driveway (over which it is cantilevered) that is also used by Building 3. The retail uses would be located along the site's open space.

Building 5 is located at the southwestern corner of the site. It is proposed to be 511 feet tall (44 stories) at its highest point and have a maximum density of 839,237 SF. The current development scenario anticipates 736,173 SF of development, with 435,170 SF of residential uses, 239,678 SF for a transient hotel, 35,632 SF for a cinema, 4,559 SF of retail uses, and 19,595 SF for an automobile showroom. Retail uses would be accessed on West End Avenue, Freedom Place South, and West 60<sup>th</sup> Street. The residential lobby and hotel lobby would be accessed separately via Freedom Place South. West 59<sup>th</sup> Street would be primarily used for service entrances, loading berths, and parking ramps.

## **Proposed Actions**

### *Pursuant to the Large-Scale Development Plan*

Outer Courts: ZR § 23-84 requires that if an outer court is less than 30 feet in width, its width must be 1.33 times the depth. If the outer court is greater than 30 feet in width, the depth must be equal to the width (but no greater than 60 feet). Further, the outer court recess (the portion of the building surrounding the court) must be twice the width of the depth of the court. Due to the irregular shapes of the proposed buildings, all five buildings will not comply with these regulations. The proposed waivers will not affect the required light and air (a minimum of 30 feet) for legally required windows. A proposed text amendment is necessary to grant this waiver.

Inner Courts: ZR § 23-851 requires that any inner court be at least 1,200 SF and has a minimum dimension of 30 feet. Due to the irregular shapes of the buildings, Building 1, 2, and 5 require waivers of these inner court regulations. The proposed waivers will not affect the required light and air for legally required windows.

Minimum Distance Between Buildings: ZR §§ 23-71 and 23-82 require that buildings with a height of over 50 feet have a minimum distance of 40 feet between walls, a minimum distance of 50 feet between walls and windows, and a minimum distance of 60 feet between windows. These required distances apply not only to buildings but also building segments. The buildings, as a whole, are proposed to comply with these provisions as they relate to each other. However, each individual building has multiple building segments that are set too close to each other, thereby creating non-compliance with the zoning. The non-compliance with the required minimum distances between buildings is due to the architectural design of the buildings' upper floors.

**Height and Setback:** Since the proposed buildings’ lot coverage is 39.6 percent, below the 40 percent requirement, the development is able to use “tower” regulations; therefore, portions of the proposed buildings are permitted to penetrate the sky exposure plane. ZR § 33-45 requires that any building utilizing tower regulations set back 10 feet from a wide street and 15 feet from a narrow street. It further requires that the tower portion of a building not encroach more than 1,600 SF within 40 feet of a wide street and 1,875 SF within 50 feet of a narrow street. Finally, ZR §§ 23-634 and 33-433 require that buildings in R10-equivalent districts in Community District 7 have a street wall height between 125 feet and 150 feet along wide streets within 50 feet of a wide street.

All five buildings encroach within 50 feet of the narrow streets along which they front by more than the permitted amount. Building 1 and 2 encroach upon West 61<sup>st</sup> Street by 19,030 SF, and Building 3, 4, and 5 encroach upon West 59<sup>th</sup> Street by 17,706 SF.

Further, the proposed buildings encroach upon required setback areas. Due to the irregular shapes of the buildings, these encroachments are for different depths at varying heights:

Building	Maximum setback encroachment depth on a wide street	Maximum setback encroachment height on a wide street	Maximum setback encroachment depth on a narrow street	Maximum setback encroachment height on a narrow street
1	8 feet	318.29 feet	13 feet	338.34 feet
2	10 feet	309.01 feet	13 feet	401.22 feet
3	8 feet	285.74 feet	7 feet	276.16 feet
4	N/A	N/A	7 feet	276.16 feet
5	10 Feet	167.33 Feet	7 feet	384.02 feet

**Inclusionary Housing Program:** Pursuant to ZR § 23-952, the Inclusionary Housing Program provides developments with a base residential FAR and permits a 33 percent floor area bonus in exchange for providing 20 percent of the total residential density as permanent affordable housing. In the C4-7 zoning district with an inclusionary housing bonus, the base residential FAR would be 9 and a maximum permitted FAR would be 12. Further, pursuant to ZR § 23-96(b) these affordable housing units must be distributed on not less than 65 percent of all the floors in a residential building, and no more than one-third of the total number of affordable units can be concentrated on any one floor. The applicant proposes to modify these zoning provisions of the Inclusionary Housing Program as it relates to the subject development site. The first modification would allow the CPC to lower the base FAR to 6.36 or a density of approximately 2,300,000 SF. Consequently, the applicant would only be able to achieve the maximum density of 3,014,829 SF by utilizing the inclusionary housing bonus. Additionally, the applicant seeks to modify the distribution of affordable units in individual buildings. Since several of the proposed buildings may be developed as condominiums, the applicant is seeking flexibility in the distribution of units; the exact plan for distribution, however, has not been decided at this time.

**Automobile Showroom and Service Center:** The applicant proposes an automobile showroom and service center on the cellar level of the entire development site (including under the proposed open space). An automobile showroom is an as-of-right use on the development site provided that there is no service or preparation of vehicles for delivery at the site. In order to

include the service center, the applicant requires an approval of a special permit (created by a zoning text amendment proposed by the applicant).

Development over a railroad or transit right-of-way: In order to develop over the transit right-of-way crossing through the site, the applicant requires a special permit. Amtrak currently has a below-grade easement that runs at an angle through the eastern portion of the site from the corner of West End Avenue and West 59<sup>th</sup> Street to West 61<sup>st</sup> Street between Freedom Place South and West End Avenue. Absent the special permit, the applicant would be required to set the buildings back from West End Avenue.

Alternative reference point instead of “curb level” reference: In order to minimize the slope of the proposed development, the applicant proposes to construct the majority of the open space at a height of 24 feet above sea level. The site would be at grade with West 61<sup>st</sup> Street and West End Avenue and begin to rise above the street grade at West 59<sup>th</sup> Street west of Freedom Place South and at Riverside Boulevard south of West 61<sup>st</sup> Street. In order to establish a new reference point, the applicant requires approval of a special permit. The new level is proposed to minimize the impact of the development on western views of the Miller Highway, to enable the operation of the scrim, and to create more passive and active recreation space on the site.

#### *Public Parking Garages and Curb Cuts*

The applicant proposes two public parking schemes, each with a maximum of 1,800 public parking spaces. Scenario A is comprised of a single public parking garage with 1,800 spaces: 1,100 attended spaces on the first sub-cellar and 600 self-parking spaces on the second sub-cellar. Scenario B consists of five separate public parking garages within the sub-cellar floors. There would be 460 spaces beneath Building 1, 230 spaces beneath Building 2, 290 spaces beneath Building 3, 370 spaces beneath Building 4, and 450 spaces beneath Building 5. In both scenarios, the garages would be accessed via 25-foot curb cuts and 22-foot ramps on Freedom Place South for Building 1 and 2 and on West 59<sup>th</sup> Street for Buildings 3 and 5. Building 4 would have an additional 25-foot curb cut for its private driveway, from which vehicles could access a 12-foot wide ramp to the garage. Public parking garages are not permitted as-of-right.

To achieve the proposed parking garage scenarios, the applicant requires approval for multiple curb cuts. The development site is permitted only one curb cut on West 59<sup>th</sup> Street and West 61<sup>st</sup> Street, which are narrow streets. The applicant requires additional curb cuts for the two parking ramps, a hotel loading berth, the entrance to the automobile service center, and the intersection of Freedom Place South and West 59<sup>th</sup> Street. On West 61<sup>st</sup> Street, the applicant requires curb cuts for a loading berth for Building 1 and for the intersection of Freedom Place South and West 61<sup>st</sup> Street. Finally, the applicant requires a curb cut on West End Avenue for the extension of West 60<sup>th</sup> Street, which is not permitted as West End Avenue is a wide street.

#### *Streetscape Waivers*

Retail Continuity: ZR § 37-35 requires that 50 percent of a building’s frontage on a wide street be occupied by commercial uses. Building 3 does not comply with this requirement along Riverside Boulevard since its retail is proposed to front the central open space.

Signage Waivers: ZR § 37-36 requires that signs be located on a 3-foot high band no higher than 12 feet above the curb level. Signage is proposed to be placed at varying heights for Building 2, 3, and 5 above the permitted limit. Waiver of this provision is needed due to the site's grade constraints and the buildings' high floor-to-ceiling heights.

Ground Floor Transparency: ZR § 37-37 requires that 50 percent of a building's street frontage be transparent. Every building, except Building 1, does not comply with transparency requirements on the narrow streets (West 59<sup>th</sup> and West 61<sup>st</sup> streets). Building 2 and 5 compensate with additional transparency (70 percent) on West End Avenue. Building 3 complies on Riverside Boulevard. Additionally the applicant has chosen to place retail frontage along the base of the buildings fronting West 60<sup>th</sup> Street, Freedom Place South, and the proposed central open area.

### **Anticipated Development under the Reasonable Worst Case Scenario Development**

The Draft Supplemental Environmental Impact Statement ("DSEIS") indicates that under a Reasonable Worst Case Scenario Development, the proposed actions would result in significant negative adverse impacts. The proposed project would result in significant negative impacts for several categories including:

- Public Schools: The proposed actions would result in an increase in the school district's total enrollment of over 5 percent. The applicant proposes to mitigate the impact by constructing the core and shell of 75,000 SF of a public school, which would absorb the students expect to be generated by the project. The proposed mitigation, however, neglects to account for the overcrowded conditions caused by the approval of Riverside South, which remain unmitigated since 1992;
- Child Care Centers: The proposed actions would result in an increased demand for child care services by 9 percent. No mitigation is proposed for this impact;
- Open Space: The proposed actions would result in a decrease in the open space ratio for active recreational open space by 6 percent. No mitigation is proposed for this impact;
- Urban Design: The development site's design would encourage wind conditions at two locations, which exceed recommended safety conditions. The applicant proposes to mitigate the majority of the site's dangerous wind conditions with a specific landscaping plan;
- Traffic: The proposed actions would contribute to traffic congestion by significantly decreasing the level of service at 24 intersections. All but three of these impacted intersections are proposed to be mitigated;
- Transit: The proposed actions would impact bus service by creating a capacity short-fall for three cross-town bus routes (M11, M31 and M57). No mitigation is proposed for this impact;
- Pedestrians: The proposed actions would impact intersections on West 60<sup>th</sup> Street by decreasing the level of service at Amsterdam and Columbus Avenues. Amsterdam Avenue intersection can be mitigated, but no mitigation is proposed for the Columbus

Avenue Impact; and

- Construction: The development would result in a multitude of construction related impacts. With the exception of noise impacts on residential and educational buildings in the neighborhood, these impacts can be mitigated.

## COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on July 22, 2010, Community Board 7 ("CB7") voted to:

1. **disapprove application M 920358 D ZSM** (modification of the 1992 restrictive declaration) unless the action is modified to meet the conditions of its report (discussed below) by a vote of 36 in favor and 2 against;
2. **disapprove application C 100297 ZSM** for a special permit for the automobile showroom and service center by a vote of 36 in favor, 2 against, and 1 abstention;
3. **disapprove application C 100296 ZSM** for a large-scale development special permit unless Building 4 is eliminated and Building 5 is modified in accordance with CB7's report by a vote of 34 in favor, 3 against, and 1 abstention;
4. **disapprove with conditions application C 100288 ZSM** for a single parking facility under the site unless the garage is limited to 1,000 spaces by a vote of 35 in favor, 2 against, and 1 abstention;
5. **disapprove applications C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, C 100293 ZSM** for special permits for individual parking garages underneath each building as CB7 prefers the single garage option by a vote of 36 in favor, 1 against, and 1 abstention;
6. **disapprove with conditions application C 100287 ZSM** for a special permit for construction over a railroad right-of-way unless the application is redrawn to establish an at-grade curb level by a vote of 35 in favor, 2 against, and 1 abstention;
7. **approve application N 100286 ZCM** for an additional curb cut on West 61<sup>st</sup> Street by a vote of 36 in favor and 1 against;
8. **approve application N 100294 ZRM** for a text amendment allowing modification of outer courtyard regulations by a vote of 36 in favor, 2 against, and 1 abstention;
9. **disapprove application N 100295 ZRM** for a text amendment to create a special permit to allow an automobile service center in large-scale developments by a vote of 36 in favor and 1 abstention;
10. **approve application N 100298 ZAM** to allow a curb cut on West End Avenue to allow the extension of West 60<sup>th</sup> Street by a vote of 37 in favor and 1 abstention;
11. **disapprove application N 100299 ZCM** to allow multiple curb cuts on West 59<sup>th</sup> Street, though CB7 noted it would approve an application to allow two additional curb cuts on the street by a vote of 32 in favor, 1 against, and 4 abstentions;
12. **disapprove application N 100300 ZCM** for a certification to allow a waiver of signage, transparency and retail continuity requirements unless the requested waivers for Building 3 and 5 are withdrawn by a vote of 35 in favor and 3 abstentions.

Additionally, CB7 voted to adopt a detailed report on the proposed development site by a vote of 35 in favor and 3 against. In the report, CB7 expressed that the developer should provide full build-out of 150,000 SF for a public school, provide 30 percent of the residential units as affordable housing, and that the development should achieve the highest level LEED rating possible. Further, CB7 indicated that the project generally fails to meet its core principles by: placing excess density on the site; creating a perception of exclusivity for the open space; hampering pedestrian circulation by marginalizing West 59<sup>th</sup> Street and Riverside Boulevard; failing to engage the streetscapes with retail spaces; and providing commercial uses that are not environmentally responsible.

The community board suggested an alternative development scenario that would increase the total amount of open space, reduce the total density, surround the new open space with publicly accessible streets or broad pathways, remove the automobile showroom and service center, limit the total number of parking spaces, and include a public playground. The proposed changes are achieved, in part, by removing Building 4 and replacing its footprint with open space.



Source: Riverside Center Report by CB7 (Page 42)

Further, CB7 requests that there be mitigation of the impacts resulting from the site’s development and that public amenities, such as Riverside Boulevard and a public school, be provided in the first phase of the development.

## **BOROUGH PRESIDENT’S COMMENTS**

### **General Comments**

Development of the Riverside Center site is, in general, appropriate. Its current use as a two-block open-air public parking lot provides limited beneficial activity in the neighborhood and does little to promote pedestrian activity around the site. The site’s current state imposes a dark, vacant character on surrounding streets, which discourages residents from fully utilizing this part of their neighborhood. Further, large undeveloped sites tend to impair development in surrounding areas and often lead to problems in the greater community by creating zones of inactivity or, “dead zones,” in which illegal and illicit activities may take place.

The site’s redevelopment has the potential to provide significant benefits to the neighborhood. The residential and ground-floor retail uses at Riverside Center would assist in enlivening the area by creating new activity and uses that are more compatible with the surrounding neighborhood than the existing uses and contribute to enhancing the public realm. These types of uses, which benefit the community by activating the streets and creating safer conditions, should be encouraged. Further, redevelopment of the site would have a positive economic

impact. During the construction period, the site is estimated to create 8,159 full-time equivalent jobs and provide \$314 million in tax revenue. Post-construction, the site is anticipated to directly and indirectly create 2,549 full-time equivalent, permanent jobs in New York State. In recognition of these important benefits, community members have rightly spoken in favor of seeing responsible development of the site move forward.

Riverside Center, however, is the last development site of the Riverside South large-scale development. As such, it is the last opportunity to remedy the impacts and shortcomings of the original development plan. When Riverside South was approved in 1992, the developer failed to reach a broad consensus. The buildings forms are monolithic. The retail is relatively unused. The Riverside South buildings feel separate from the rest of the neighborhood, and several of the impacts of the approved development remain unmitigated. Many of the neighborhood's negative conditions, such as local school overcrowding and traffic conditions on West End Avenue, can be attributed directly to the Riverside South large-scale development.

To replicate the same shortcomings and negative impacts associated with the Riverside South development for the Riverside Center development is unacceptable. Although the site's development may be generally welcomed, that development must not overwhelm the surrounding neighborhood. It is important to critically examine the proposed uses, built form, and contributions to the neighborhood in order to ensure that the development is integrated into the larger community.

Over the past two years, CB7 has held monthly public meetings and numerous public hearings on the proposed Riverside Center development. Prior to certification of the land use applications, the applicant made changes to its development proposal in order to respond to community concerns and environmental considerations. Changes included reducing the heights of the tallest buildings; eliminating proposed big-box retail uses; reducing the proposed density; reducing the number of parking spaces from 2,300 to 1,800; and widening the sidewalks around the project to a minimum of 15 feet.

Despite these changes, CB7, after extensive public outreach and consideration of the proposed actions, has retained concerns about the development's configuration and proposed uses. Overall, the community board's proposed modifications aim to enhance the proposed public benefits, mitigate the identified negative impacts, and improve the project's contribution to the well-being of the overall community.

### **Environmental and Site Planning Concerns**

The Manhattan Borough President's Office recommends several modifications to the proposed development in order to address impacts identified in the DSEIS, as well as to address general concerns about the project's proposed uses, site planning, and public policy considerations.

#### *Density*

The site's proposed density is over 600,000 SF greater than was originally set in the 1992 restrictive declaration. Approximately 480,000 SF of this additional density is directly related to status of West 60<sup>th</sup> Street as an unmapped City street. Until 1907, all of the streets associated

with Riverside South, including West 60<sup>th</sup> Street, were mapped as public streets. As a result of a Corporation Counsel ruling, these streets were demapped to accommodate rail yards for the New York Central Railroad (which eventually merged with Pennsylvania Railroad). The 1992 Riverside South approvals remapped public streets throughout the development, but did not map West 60<sup>th</sup> Street in order to accommodate the large footprint necessary for anticipated television studios.

The restrictive declaration for Riverside South, however, requires that this street be mapped as a City street if the site does not include television studios. The applicant proposes to eliminate this requirement and utilize density on the site that would otherwise be publicly owned if West 60<sup>th</sup> Street were mapped as a public street. Based on the site's density restrictions and the explicit street mapping requirement set forth in the existing restrictive declaration, it is clear that the public never contemplated that additional density would be available on site in the future for more private residential development.

A condition of the proposed large-scale development special permits (pursuant to ZR §§ 74-743 and 74-681) is that streets providing access to a general large-scale development are adequate to handle the resulting traffic considering the development's size. According to the DSEIS, the proposed project will result in unmitigatable traffic impacts associated with the project's density. Consequently, this finding cannot be met unless there is a reduction in proposed on-site density. The reduction should reflect an amount that is, at minimum, equivalent to the density gained from not mapping West 60<sup>th</sup> Street – approximately 480,000 SF.

Currently, Riverside Center results in several other unmitigated adverse impacts on open space, mass transit, pedestrian flow, and community facilities. These impacts are attributable, in part, to the requested increase in density and cannot be mitigated without a significant density reduction or a reconfiguration of the site. Any additional density should only be granted if the applicant can demonstrate that the development's proposed density does not create or contribute to additional adverse impacts that cannot be mitigated. It is not sound public policy to encourage development with unmitigated impacts that strain existing infrastructure and reduce the quality of life of all residents in the neighborhood. Consequently, the density increase remains unwarranted.

A reduction in density would lessen, though not eliminate, the overall strain on surrounding infrastructure and would make the proposed development better meet the findings of the large-scale development special permits as they relate to traffic impacts.

### *Public Schools*

Over the last several years, the Upper West Side has experienced significant overcrowding in its local public elementary and middle schools. According to the DSEIS, the local elementary and intermediate schools within a one-half mile of the project site are currently at 104 percent utilization.<sup>4</sup> The existing overcrowded school conditions have resulted in neighborhood children being placed on long waiting lists, leaving them uncertain about where they will be attending

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<sup>4</sup> To derive overall utilization of these school, the enrollment and capacity figures in Table 4-3 (Public Elementary Schools Serving the Study Area) and 4-4 (Public Intermediate Schools Serving the Study Area), respectively, were combined, and the ratio of total enrollment to total capacity was determined.

school. Available seats at local public schools are part of the fundamental infrastructure needed for healthy neighborhoods. By 2018, the build year for this project, the nearest schools will be at 145 percent capacity.<sup>5</sup> This condition will exist even with the applicant’s proposed mitigation.

Much of the condition of the area’s public schools is related to the unmitigated impact associated with the original Riverside South large-scale development plan. In the original restrictive declaration, the developer for Riverside South agreed to provide a site to the City, at fair market value, that would be sufficient for a 600-seat school on Development Site I, J, or K. The City did not exercise its option to purchase this property, and the original Riverside South impact on schools remains unmitigated. The current applicant now seeks to alter aspects of the original development plan by adding significant density to the Riverside South large-scale development plan, which was not anticipated during the original public review of the Riverside South development plan, impacts, and related mitigations.

Riverside Center is inextricably linked to the original large-scale development and the related environmental impacts, because it modifies the original actions and the conditions analyzed in the original Environmental Impact Statement (“EIS”). By ignoring the impacts of the original project and failing to adequately mitigate those impacts, the applicant is effectively segmenting the environmental review process, which is contrary to the intent of the State Environmental Quality Review Act.<sup>6</sup> The stakeholders present during the original Riverside South public review process were not aware that 3,000 additional residential units might be added to the site, and they were denied the opportunity to consider the cumulative impacts of Riverside Center and Riverside South. Consequently, they were denied the opportunity to properly consider the breadth of mitigations needed.

The proposed plan currently dedicates up to 150,000 SF for a public school. The provision of a 150,000-SF school would significantly contribute to relieving overcrowding in the community’s schools, which is partly a result of the Riverside South large-scale development. However, the applicant intends to fund only 75,000 SF of school development and, given the current fiscal climate, it is unlikely that the School Construction Authority will be able to fund the remaining 75,000 SF of school space. Therefore, the original impacts will remain unmitigated and the public school system will likely remain overcapacity.

The applicant should work to mitigate the cumulative impact of the Riverside South development by constructing as large of a public school as possible. This would not only meet neighborhood needs, but also addresses a longstanding issue associated with the larger Riverside South development. Further, the addition of a larger public school would represent superior site planning for both the proposed Riverside Center and the modified Riverside South large-scale

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<sup>5</sup> Utilization was derived by adding the enrollments and capacities, respectively, in Table 4-9 (Estimated Public Elementary School Enrollment, Capacity and Utilization: 2018 Future with the Proposed Project) and 4-10 (Estimated Public Intermediate and High School Enrollment, Capacity and Utilization: 2018 Future with the Proposed Project). Enrollment was then divided by capacity to determine utilization. The capacity and enrollment assumes that the applicant mitigates the impact of the proposed development by constructing a public school for 480 elementary and intermediate students.

<sup>6</sup> “Considering only part or segment of an action is contrary to the intent of SEQRA.” State Environmental Quality Review Act 617.3 General Rules

plans. Failure to do otherwise would perpetuate a negative consequence of the original Riverside South development, which continues to negatively impact the community.

*Open Space (Configuration, Quality, and Accessibility)*

The applicant proposes to provide approximately 50 percent of the site as dedicated open space accessible to the public.<sup>7</sup> The entirety of the open space is primarily located on the private streets and the central open space. A portion of the proposed open space, however, is actually along the perimeters of each of the buildings. Much of this perimeter “open space” would be relatively unusable as traditional open space and would instead be accessory to the proposed uses fronting the public or private streets within or adjacent to the site. Further, much of the proposed open space, even the central open space, would be unusable due to the site’s steep grade and its design as viewing gardens. Despite the proposed provision of open space on site, the development would still have an unmitigated impact on open space.

In addition, the proposed open space is created by orienting the majority of the bulk along the southern and northern edges of the site. This proposed configuration casts the open space in shadow most of the year thereby obstructing light and air and reducing the open space’s quality, visibility, and general usability. The buildings along the southern edge of the site, in particular, are primarily responsible for these shadow conditions. Further, the proposed open space narrows along its easternmost edge (between Building 1 and Building 4), which obscures the open space from pedestrians passing along the surrounding streets.

In order to meet the findings of the large-scale development special permit, the applicant must produce a site plan that results in a better relationship among buildings and open space to public streets. The applicant must also demonstrate that the location of buildings will not unduly obstruct access of light and air to uses on the development site.

The applicant should reconsider the site plan in order to increase the total amount of active open space and reconfigure the site to reduce the visual obstructions to the open space. Increasing the open space would allow the applicant to at least partially mitigate the development’s impact on active recreational space in the area. In considering the type of active recreational space, the community has expressed a preference for a playground on the site. Further, by reconfiguring the site to remove visual obstructions around the proposed open space, the site plan would have a better relationship among buildings and open areas to surrounding streets and would not unduly obstruct light and air to the detriment of users on the block, thereby meeting the findings of the large-scale development special permit.

Additionally, the development’s proposed grade change results in a less than optimal open space configuration. Due to grade constraints, the applicant proposes to use a portion of the open space for a private driveway that runs parallel to West 59<sup>th</sup> Street. The driveway limits access along the southwestern corner of the site, and entry points from the street that lead to the driveway rather than to the open space can reinforce a perception that the open space is private space not public. The applicant intends to raise the open space in order to separate the space from heavily-

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<sup>7</sup> 34 percent of the site would be open space and 16 percent of the site would public easements for street extensions and sidewalk widenings.

trafficked streets, create view corridors, and to mitigate wind conditions by placing dense plantings along the western edge of the site.

However, the proposed configuration leaves the southwestern corner inaccessible to many individuals, including those with disabilities, because the only means of access are staircases. This condition is a particular concern because the access point at West 59<sup>th</sup> Street and Riverside Boulevard serves as the last at-grade connection to Riverside Park and the Hudson River Greenway (the most heavily utilized bikeway in the United States) until West 72<sup>nd</sup> Street. Therefore, this site serves as an important crossing for individuals who need to exit the park at grade such as people with disabilities, bicycles or strollers. Those individuals utilizing this major park connection and who are unable to use the site's steep stairs would have to travel to West 60<sup>th</sup> Street or to the Freedom Place South extension in order to access the Riverside Center at grade.

The inaccessibility of the site due to the grade change is unacceptable. It results in a development that does not relate to the surrounding streets and makes a significant portion of the site inaccessible for many individuals. The applicant should ensure that the access point to the open space at the intersection of Riverside Boulevard and West 59<sup>th</sup> Street is ADA-accessible.

Although the grade change is primarily necessary to mitigate wind conditions, the grade differential should be reduced along West 59<sup>th</sup> Street to soften the site's edges and increase the site's permeability along public thoroughfares. Even if the grade at West 59<sup>th</sup> Street were reduced or eliminated, the current site plan has the West 59<sup>th</sup> Street access point leading directly to a private driveway. This design creates the impression that the entry is not public because it leads to a private driveway and not directly to the open space. The private driveway should be reduced or removed in order to bring plantings to the edge of the site and promote a sense that the entry serves as public access to public space. Therefore, the West 59<sup>th</sup> Street access point should be redesigned to create an at-grade, direct connection to the public open space.

Further, it is possible that this publicly accessible privately-owned open space has the potential of being perceived as private over time if there is no clear indication that it is open to the public. Therefore, the open space should be clearly marked with appropriate signage to ensure that the public is aware that the space is publicly accessible. Such signage should be in or as near in compliance with public plaza regulations as possible.

#### *Treatment of West 59<sup>th</sup> Street*

The current plan proposes to place no active uses along West 59<sup>th</sup> Street. Instead, the development plan places service entrances and curb cuts along the street. This creates a significant zone of inactivity along West 59<sup>th</sup> Street, which will be exacerbated by the existing lack of active uses to the south of the site where the block-long Con Edison steam plant is located. The proposed design re-creates a dead zone similar to other places in the immediate area, such as the Fordham University campus prior to its efforts to redevelop its campus and near Lincoln Center.

The proposed dead zone is not simply a result of permitted development under the existing zoning, but rather created by the requested zoning actions to increase the number of curb cuts,

reduce the ground-floor transparency of the buildings, and re-grade the site (most affecting West 59<sup>th</sup> Street). The applicant should modify its development proposal to provide greater connectivity to the open space from West 59<sup>th</sup> Street, create new active uses, and reduce the number of curb cuts and service entrances along the street.

Improving the conditions on West 59<sup>th</sup> Street prevents the re-creation of dormant streetscapes and zones of inactivity existing in other parts of the community. Further, by increasing connectivity of and active uses on West 59<sup>th</sup> Street, the applicant will better meet the findings associated with the bulk waivers sought through the large-scale development special permit and the certification to modify streetscape requirements. Finally, by improving West 59<sup>th</sup> Street, the applicant will encourage a greater number of pedestrians to utilize West 59<sup>th</sup> Street and reduce the number of residents using West 60<sup>th</sup> Street to access the Columbus Circle subway station. By redirecting pedestrians onto another thoroughfare, the total impact on the West 60<sup>th</sup> Street intersections will be diminished, including the unmitigated intersection.

#### *Public Parking and Automobile Showroom and Service Center*

The proposed automobile showroom and service center is not environmentally friendly, will increase traffic congestion, and is an inactive commercial use that does not contribute to the neighborhood. Further, the proposed public parking garage – to be one of the largest in Manhattan – will increase traffic congestion and negatively impact surrounding infrastructure. Additionally, the lowest level of the development site will be a two-block self-parking garage. A self-parking garage of this size is unusual and may create an unsafe condition if not adequately monitored. Additionally, as a matter of public policy, it is questionable whether non-essential Use Group 16 uses, which are classified as semi-industrial, should be encouraged in a residential neighborhood.

The DSEIS indicates that the proposed actions would impact 24 intersections. The DSEIS proposes, among other mitigations, to decrease the amount of time allotted to pedestrians to cross West End Avenue. Based on longstanding community complaints, residents currently have difficulty crossing West End Avenue, particularly the elderly and those with children. Therefore, it is doubtful that this proposed mitigation is actually feasible.

If the impacts cannot be mitigated, then drivers will likely look for alternative north/south routes to West End Avenue on which to travel. Although the re-distributed traffic volume may be controlled on other avenues with signal changes, no such option exists for Riverside Boulevard because it lacks traffic lights. The applicant should re-examine the existing traffic analysis based on an assumption that the proposed mitigation on West End Avenue may not be feasible and that additional traffic may divert to other thoroughfares such as Riverside Boulevard. Additionally, if a new impact on Riverside Boulevard is identified, the applicant should explore signaling those intersections.

Further, according to the DSEIS, the proposed actions would result in three intersections that cannot be mitigated. As such the proposed uses would create or contribute to serious traffic congestion in the neighborhood, and the impacts indicate that the streets are not adequate to handle the resulting traffic. Therefore, the applicant cannot meet the required findings for the automobile service center or the public parking garage(s). Whether the applicant chooses a

single garage or a five-garage scenario, the impacts on the neighborhood will be the same because either scenario relies on the same number of ingress/egress points. Therefore, the option for a single garage or multiple garages is only a question of internal operation and not of environmental impact.

The applicant's DSEIS anticipates a demand for 1,374 spaces of accessory parking, which is based on an assumption of a high car ownership rate. The community board has noted that a survey performed for the Hudson Yards Rezoning found that a residential car ownership rate of between 31 and 36 percent exists for the area. Based on the Hudson Yards survey, the project's parking demand is more likely to be a maximum of 1,080 spaces.<sup>8</sup> The proposed public parking garage will house 1,101 spaces on the first sub-cellar level and 699 on the lowest sub-cellar level (for the accessory parking). The garage would still be able to accommodate the project's maximum residential parking demand even if it were not to include parking on the lowest sub-cellar level.

The applicant should remove the proposed Use Group 16 automobile service center and, at minimum, one floor of parking, which would reduce the total number of parking space to 1,100. Further, as the proposed mitigation for West End Avenue is potentially infeasible, the applicant should re-examine the proposed impacts on other major thoroughfares and investigate adding signalization on Riverside Boulevard.

#### *Affordable Housing*

Originally, the applicant committed to providing 12 percent of the residential units as affordable housing units. Late in the Borough President's review period, the applicant submitted a proposal to the Department of City Planning to make the City's Inclusionary Housing Program applicable for this site. The Inclusionary Housing Program would require that 20 percent of the total residential density be targeted to households that earn 80 percent or less of the Area Median Income. Further, the affordable housing will have to be permanent.

This new modification of the project brings the proposed development significantly closer to meeting community goals and is preferable to the applicant's previous commitment.

#### *Environmental Sustainability*

Promoting environmental sustainability in development is an important goal in the long-term planning of the City. Large-scale plans, which address larger geographic areas, represent a unique opportunity to consider sustainability in development. It is, therefore, essential to use this opportunity to plan not only for the immediate future, but to consider the impacts over the coming decades and to promote environmentally sustainable infrastructure.

The original Riverside South development plan attempted to incorporate new ideas of environmental sustainability by requiring the developer to provide environmentally sustainable technologies with a payback period of five years. The benefit of creating a sustainable development was part of the public policy considerations that led to the project's approval.

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<sup>8</sup> The applicant proposes a maximum number of 3,000 residential units and assuming a 36 percent car ownership rate the applicant will likely generate a demand for 1,085 spaces at its maximum.

Since this agreement in 1992, significant advances have been made in green technologies. Developments, even affordable housing developments, have increasingly been able to achieve high levels of environmental sustainability.

The applicant's proposal to continue incorporating technologies with a payback period of five years is no longer sufficient. As green technologies rapidly advance, maintaining a standard based on a payback period is no longer a meaningful way to ensure environmental sustainability. The applicant should instead identify specific sustainable practices and technologies that will be incorporated into the proposed development and work to achieve the equivalent of the highest level LEED rating possible.

### *Construction Impacts*

Large-scale projects inevitably affect the quality of life of surrounding residents during construction. The DSEIS for this proposed development does identify construction as a potential adverse impact category. Unfortunately, some disruption due to construction is unavoidable. The neighborhood disturbance due to construction is temporary and necessary for the redevelopment to occur. Construction impacts, however, can be mitigated to allow the development to move forward without overwhelming the community. The applicant should commit to implementing all construction mitigation measures identified in the DSEIS, including those relating to pollution and noise mitigation.

### *Retail Use, Local Hiring, and Job Training*

The proposed development will greatly increase the commercial uses in the area, which are otherwise predominately residential. This increase creates a unique opportunity to connect the development with the surrounding community. Successful developments usually have active retail, such as grocery stores, and other neighborhood-oriented retail. While a cinema is a positive neighborhood amenity, the proposed automobile showroom is a destination use that does not serve a local need. The applicant should work with the local community to identify needed neighborhood retail.

Further, the development has an opportunity to not only increase employment opportunities in the area, but also to make those jobs available to local residents, some of whom may lack the proper training. As part of any approvals, the applicant should explore and commit to local hiring practices and a job training program for low-income community members in order to ensure that the economic benefit of this development is retained within the community over the long run.

### *Environmental Mitigation*

Finally, the proposed development results in several unmitigated impacts on, among others, open spaces, day care facilities, pedestrian intersections, cross-town buses, and traffic. These impacts result not only from the increase in density on the site and the new uses, but also from the related introduction of a significant population to the area. According to the DSEIS, these impacts would still exist in a lower density alternative, but to a lesser extent. Since the potential environmental impacts would exist even under a lower density alternative, no change should be

made to the 1992 restrictive declaration or the original large-scale development plan without a corresponding plan to mitigate these impacts.

## **Conclusion**

Sound development of the site is desirable to the Upper West Side. The neighborhood would benefit from the increase in jobs and improvements to the immediate neighborhood resulting from redevelopment. However, it is important not to simply approve development at the site for the sake of development, but rather to advocate for a responsible and appropriate development plan.

The proposed recommendations would assist in blending the development into the larger community and resolve local concerns. I urge the applicant to continue to work with stakeholders throughout the remainder of the public review process.

## **BOROUGH PRESIDENT’S RECOMMENDATION**

The Riverside Center development has the potential to either improve the neighborhood or to recreate the past mistakes of Riverside South. Significant environmental impacts are unmitigated, and many community concerns regarding the proposed design have not been addressed. Most important, the proposal fails to meet many of the findings of the proposed actions and, as such, does not warrant approval.

**Therefore, the Manhattan Borough President recommends conditional disapproval of application M 920358 D ZSM (modification of the 1992 restrictive declaration) unless the applicant reduces density, mitigates new impacts, and addresses outstanding impacts on the school system associated with the Riverside South large-scale development.**

**Further, the Manhattan Borough President recommends approval of application N 100294 (A) ZRM (text amendment to allow modification of outer courtyard regulations and to include the site in the Inclusionary Housing Program) as the action would allow the CPC greater flexibility to encourage interesting architectural design and will make 20 percent of the floor area permanently affordable housing.**

**Further, the Manhattan Borough President recommends conditional disapproval of application C 100296 (A) ZSM (large-scale development special permit) unless the total density is reduced; the amount of open space is increased; West 59<sup>th</sup> Street is activated; and the site is redesigned to prevent the open space from being cast in shadows and obscured from the public street. Without the proposed alterations, the applicant does not meet the findings that the application results in a better relationship between the development and the surrounding area than would otherwise be possible, and will thus benefit the occupants of the development, neighborhood, and the City; that the modifications will not obstruct light and air; or that the surrounding streets are adequate to handle resulting traffic flow. However, the Manhattan Borough President recognizes that the provision of inclusionary housing in this special permit is a positive development since the application’s certification.**

Further, the Manhattan Borough President recommends disapproval of applications N 100295 ZRM and C 100297 ZSM (text amendment and special permit for the automobile showroom and service center) as the service center will create or contribute to traffic congestion and is inconsistent with sound public policy by placing non-essential, semi-industrial uses in residential neighborhoods.

Further, the Manhattan Borough President recommends conditional disapproval of applications C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM, and C 100293 ZSM (public parking garages) unless the public parking garage is limited to 1,100 spaces, which could be achieved by removing the lowest sub-cellar floor, as the proposed garage contributes to or creates serious traffic congestion and inhibits pedestrian flow (particularly on West 59<sup>th</sup> Street) and thus does not meet the required findings.

Further, the Manhattan Borough President recommends conditional disapproval of application C 100287 ZSM (construction over a railroad right-of-way) unless ADA-accessible entrances to the open space are provided at Riverside Boulevard and West 59<sup>th</sup> Street, and West 59<sup>th</sup> Street is brought to grade.

Further, the Manhattan Borough President recommends approval of applications N 100298 ZAM and N 100286 ZCM (curb cut on West 61<sup>st</sup> Street and West End Avenue) as they will be used for the extension of Freedom Place South and the West 60<sup>th</sup> Street, which will enhance the site's overall design;

Further, the Manhattan Borough President recommends conditional disapproval of application N 100299 ZCM and N 100300 ZCM (streetscape modifications) to allow multiple curb cuts on West 59<sup>th</sup> Street and waive streetscape requirements as the current configuration negatively impacts West 59<sup>th</sup> Street and has the potential of creating unsafe, inactive conditions. The proposed treatment should be revisited to encourage active uses and bring a greater portion of West 59<sup>th</sup> Street to grade. Without such changes, the proposed actions will not enhance the site plan or enhance the design as compared to an as-of-right scenario.



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Scott M. Stringer  
Manhattan Borough President

**EXHIBIT A**

**FIFTH MODIFICATION TO  
RESTRICTIVE DECLARATION**

**NEW YORK COUNTY**

**BLOCK 1171**

**ALL LOTS**

**RECORD AND RETURN TO:**

**Kramer Levin Naftalis & Frankel, LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: Paul D. Selver, Esq.**

## **FIFTH MODIFICATION TO RESTRICTIVE DECLARATION**

**THIS FIFTH MODIFICATION TO RESTRICTIVE DECLARATION** (“Fifth Modification”), made as of the \_\_\_ day of \_\_\_\_\_, 2010, by **HUDSON WATERFRONT ASSOCIATES, L.P.** (the “Declarant”).

### **WITNESSETH:**

**WHEREAS**, Penn Yards Associates entered into a Restrictive Declaration (the “Declaration”) made as of December 17, 1992 and recorded in the Office of the City Register, New York County (the “Office of the City Register”) on January 6, 1993 in Reel 1934, Page 1;

**WHEREAS**, the Declaration set forth certain restrictions, covenants, easements, obligations and agreements with respect to certain real property located on Block 1171, City and County and State of New York as described more particularly in Exhibit A (metes and bound description) attached hereto and made a part hereof and formerly designated as Lot 1 and now consisting of all lots on Block 1171 (including, but not limited to, Lots 155 and 165) (the “Subject Property”);

**WHEREAS**, by indenture made as of July 5, 1994 and recorded in the Office of the City Register on July 5, 1994 in Reel 2112, Page 2231, Penn Yards Associates conveyed all its rights, title and interests to Riverside South to Hudson Waterfront Associates, L.P.;

**WHEREAS**, by correction deed made as of January 18, 1996 and recorded in the Office of the City Register on January 29, 1996 in Reel 2286, Page 1359, Hudson Waterfront Associates, L.P., conveyed all its rights, title and interests to the property known as Block 1171, Lot 155 (“Parcel LM”), as more particularly described in Exhibit B attached hereto and made a part hereof, to Hudson Waterfront Associates IV, L.P.;

**WHEREAS**, by correction deed made as of December 12, 1995 and recorded in the Office of the City Register on December 15, 1995 in Reel 2271, Page 2378, Hudson Waterfront Associates, L.P., conveyed all its rights, title and interests to the property known as Block 1171, Lot 165 (“Parcel N”), as more particularly described in Exhibit C attached hereto and made a part hereof, to Hudson Waterfront Associates V, L.P.;

**WHEREAS**, by deed dated as of November 3, 2005 and recorded in the Office of the City Register on November 22, 2005 under CRFN 2005000648426, Hudson Waterfront Associates IV, L.P. conveyed all its rights, title and interests to Parcel LM to CRP/EXTELL Parcel L, L.P. (the “Parcel LM Owner”);

**WHEREAS**, by deed dated as of November 3, 2005 and recorded in the Office of the City Register on November 22, 2005 under CRFN 2005000648443, Hudson Waterfront Associates V, L.P. conveyed all its rights, title and interests to Parcel N to CRP/EXTELL Parcel N, L.P. (the “Parcel N Owner”);

**WHEREAS**, the Subject Property is being developed as a general large-scale development (the “Riverside South GLSD”), as contemplated by the Declaration, in connection with which Penn Yards Associates applied for and obtained special permits pursuant to Sections 74-52, 74-681, and 74-743 of the Zoning Resolution, as in effect at such time, and a certification pursuant to Section 26-07 of the Zoning Resolution, as in effect at such time which were approved by the New York City Planning Commission (the “Commission”) on October 26, 1992 and the New York City Council (the “Council”) on December 17, 1992 (920358ZSM) (the “Original Special Permits”);

**WHEREAS**, the Original Special Permits were subsequently modified by the Commission on December 16, 1996 (M 920358A ZSM), August 2, 1999 (M 920358B ZSM), and April 1, 2002 (M 920358C ZSM), (the Original Special Permit as modified, the “Riverside South Special Permit”);

**WHEREAS**, the Declaration was modified by the First Modification to the Restrictive Declaration (the “First Modification”) made as of October 4, 1994 and recorded in the Office of the City Register on December 2, 1994 in Reel 2159, Page 1096; by a Second Modification to the Restrictive Declaration (the “Second Modification”) made as of January 9, 1997 and recorded in the Office of the City Register on February 13, 1997 in Reel 2422, Page 424; by a Third Modification to the Restrictive Declaration (the “Third Modification”) made as of September 13, 1999 and recorded in the Office of the City Register on January 7, 2000 in Reel 3026, Page 1983; by a Fourth Modification to the Restrictive Declaration made as of November 9, 2001 and recorded in the Office of the City Register on January 25, 2002 in Reel 3436, Page 1992, as restated by Restated Fourth Modification to the Restrictive Declaration made as of November 9, 2001 and recorded in the Office of the City Register on March 15, 2002 in Reel 3470, Page 1813 (as restated, the “Fourth Modification”) (the Declaration, as amended by the First Modification, the Second Modification, the Third Modification, and the Fourth Modification, the “Riverside South Declaration”);

**WHEREAS**, the Riverside South Declaration provided, among other things, that Parcel LM and Parcel N (together, “Parcel LMN”) would be restricted to certain uses, subject to certain floor area restrictions, and limited to a specified building envelope;

**WHEREAS**, Declarant desires to further amend the Riverside South Declaration and Riverside South Special Permit to permit the development of Parcel LMN as a single integrated design within the Riverside South GLSD (“Riverside Center”) that respects the Manhattan street grid and provides a connection to Riverside Park South and the Hudson River waterfront and to integrate Riverside Center into its surrounding neighborhood, as reflected in modifications to previously approved plans and in new plans;

**WHEREAS**, pursuant to Section 9.02 of Riverside South Declaration, this Fifth Modification to the Riverside South Declaration must be approved, upon application by Declarant, by the Commission and the Council;

**WHEREAS**, in connection with the development of Riverside Center, the Parcel LM and Parcel N Owners filed an application under application Number M 920358D ZSM with the Commission requesting a fourth modification to the Riverside South Special Permit (the “Fourth Special Permit Modification”) and this Fifth Modification to the Riverside South Declaration, among other things to, amend the limitations on the overall floor area and the floor area of specific uses permitted in the Riverside South GLSD, eliminate the requirement to map West 60<sup>th</sup> Street through the project site in the event that the movie and television production studio use is eliminated and to amend, supplement or replace certain drawings attached to the Riverside South Declaration;

**WHEREAS**, the Parcel LM and Parcel N Owners have also filed applications with the Commission for new special permits under application Numbers C 100296(A) ZSM, C 100297 ZSM, C 100287 ZSM, C 100288 ZSM, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM and C 100293 ZSM (the “LMN Special Permits”), for an authorization under application Number N 100298 ZAM , for certifications under application Numbers N 100299 ZCM, N 100286 ZCM, N 100300 ZCM and for zoning text amendments under application Numbers N 100294 (A) ZRM and N 100295 ZRM (collectively with the application for the Fourth Special Permit Modification and this Fifth Modification to the Riverside South Declaration, the “Applications”);

**WHEREAS**, the Applications as referred to herein include all revisions filed with the New York City Department of City Planning through October 27, 2010;

**WHEREAS**, the modified restrictions for Parcel LMN are set forth in the LMN Restrictive Declaration dated as of the date hereof and intended to be recorded in the Office of the City Register simultaneously herewith (the “LMN Declaration”);

**WHEREAS**, the Commission approved the Applications, with modifications, on October 27, 2010, and the Council \_\_\_\_\_ ;

**WHEREAS**, pursuant to Section 9.05(a) of the Riverside South Declaration, all Unit Interested Parties (as defined therein) have consented to any amendment, modification, cancellation, revision or other change to the Riverside South Declaration made by Declarant and have waived and subordinated any rights they may have to enter into an instrument amending, modifying, canceling, revising or otherwise changing the Riverside South Declaration;

**NOW, THEREFORE**, Declarant does hereby declare and agree that the Riverside South Declaration shall be modified as set forth herein.

1. All capitalized terms used herein and not otherwise set forth or defined herein shall have the meaning ascribed to them in the Riverside South Declaration.
2. Drawings Z-8 and Z-15 of the Plans as set forth in Section 2.01(d) of the Riverside South Declaration are hereby deleted and are superseded and replaced with the following drawings prepared by Atelier Christian de Portzampac, Goldstein, Hill and West Architects, LLP and Mathews Nielsen Landscape Architects, attached hereto as Exhibit D:

<u>Number</u>	<u>Title</u>	<u>Last Revision Date</u>
Z-8R	Zoning Compliance & Computations	October 27, 2010
Z-15R	Zoning Lot Plan for Large Scale Plan, Railroad Yard & Right-of-Way Designation	October 26, 2010

3. Except as expressly provided herein, the controls governing the development of Parcel LMN are set forth in the LMN Declaration and shall supersede any such controls and obligations set forth in the Riverside South Declaration including but not limited to the provisions of Article VII of the Riverside South Declaration and the plans attached to the LMN Declaration shall supersede and replace any of the Plans to the extent that the Plans show or contain information about Parcel LMN and only to the extent of Parcel LMN. Any information on the Plans that incorporates information about Parcel LMN, such as sum totals, shall be deemed modified and superseded accordingly.
  
4. Notwithstanding paragraph 3 hereof, in connection with the development of Parcel LMN, the Declarant remains bound by:
  - (a) The provisions of Articles IV and VIII of the Riverside South Declaration, as may be further modified in the future, with respect to the development and maintenance of the Open Space provided that any development and maintenance of publicly accessible open space located on Parcel LMN shall be controlled by the LMN Declaration; and
  - (b) Section 6.01 (Option for Transitway Easement) of the Riverside South Declaration.
  - (c) Section 2.10 (Riverside South Implementation Task Force) of the Riverside South Declaration with respect to the development of the Open Space only.
  
5. Section 2.02(a) [**FLOOR AREA LIMITATIONS**] of the Riverside South Declaration is hereby deleted in its entirety and replaced with the following:
  - (a) In connection with any development of the Subject Property pursuant to the Riverside South Special Permit as further modified by the Fourth Special Permit Modification, and the LMN Special Permits, Declarant shall be allowed to construct or develop, in accordance with the Plans not more than 8,410,588 square feet of Floor Area (except that additional Floor Area may be developed with the inclusion of a public school on Parcel LMN to the extent of the size of the public school, but in no event exceeding 8,542,588 square feet of Floor Area), consisting of (i) a maximum of 8,346,138 square feet of residential use, 648,500 square feet of community facility use, 344,000 square feet of office use limited to Professional Offices (except on Parcel LMN), 426,800 square feet of retail use limited to Use Group 6A, 6C, Use Group 8A theaters and Use Group 9A Studios limited to studios, art, music, dancing or theatrical (except on Parcel LMN where permitted retail uses are limited to Use Groups 6, 8A and 10) and no more than 7,737 dwelling units.
  
6. Section 2.04 [**STUDIO USE LIMITATIONS**] is hereby deleted in its entirety.

7. Section 2.05 [**PARKING GARAGES**] is hereby deleted in its entirety and replaced with the following:
  - (a) In accordance with the Plans, Declarant agrees that the parking garages to be developed on the subject property shall not contain more than 4,017 public parking spaces. Except for parking spaces on Parcel LMN, all parking spaces shall be used primarily for the owners, occupants, employees, customers, residents or visitors of the use or the uses on the zoning lot. Any parking spaces which are not needed by the occupants of such zoning lot may be rented to persons who are not occupants of such zoning lot. Such spaces shall be made available to occupants of such zoning lots within 30 days after written request therefore is made to the landlord.
  - (b) Except for signs for parking garages on Parcel LMN, signs for the parking areas shall comply with the provisions of Section 22-323 of the Zoning Resolution on the Effective Date of this Declaration and shall be located within fifteen (15) feet of the entrance or exit to a garage.
8. Section 2.08 [**SEWAGE HOOK UPS**] is hereby deleted in its entirety.
9. Except as modified herein, the Riverside South Declaration remains unmodified, in full force and effect and binding upon the parties hereto. In the event that Parcel LMN is not developed pursuant to the approved Fourth Special Permit Modification and the LMN Special Permits, as set forth in Sections 2.01 (a) and 6.01 of the LMN Declaration, this Fifth Modification shall be of no further force and effect, and the provisions of the Riverside South Special Permit and the Riverside South Declaration (as it existed prior to this Fifth Modification) shall continue to govern the Riverside South GLSD and any development of Parcel LMN. In that event, this Fifth Modification may be cancelled pursuant to the procedures set forth in Section 6.01 of the LMN Declaration

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, Declarant has executed this Fifth Modification as of the date first set forth above.

**HUDSON WATERFRONT ASSOCIATES, LP**

By: Hudson Waterfront Corporation  
General Partner

By: \_\_\_\_\_  
Name: Robert Stuckey  
Title: Vice President



## EXHIBIT A

### **METES AND BOUNDS- Block 1171**

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, was formerly known as Tax Lot Number 1 in Block 1171 as shown on the Tax Map of the City of New York, New York County, and is more particularly described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of West 59th Street with the westerly side of West End Avenue;

THENCE Northerly along the westerly side of West End Avenue, 567 feet;

THENCE Northwesterly along a line which forms an angle on its northerly side with West End Avenue of 75 degrees 16 minutes 43 seconds, 118 feet;

THENCE Northerly along a line which forms an angle on its easterly side with the preceding course of 128 degrees 12 minutes 34 seconds, 492 feet 10-1/2 inches to a point of curvature;

THENCE continuing Northerly along a curve to the right having a radius of 850 feet, a central angle of 21 degrees 36 minutes 47 seconds, 320 feet 7-5/8 inches;

THENCE Easterly along a radial line, 1 foot 0-3/4 inches;

THENCE Northerly along a line which forms an angle on its easterly side with the preceding course of 88 degrees 07 minutes 30 seconds, 366 feet 9-1/4 inches;

THENCE Northwesterly along a line which forms an angle on its westerly side with the preceding course of 132 degrees 55 minutes 00 seconds, 2 feet 8 inches;

THENCE Northerly along a line which forms an angle on its easterly side with the preceding course of 133 degrees 01 minutes 00 seconds, 23 feet 9-1/4 inches;

THENCE Easterly along a line which forms an angle on its southerly side with the preceding course of 90 degrees 11 minutes 00 seconds, 4 feet 1 inch;

THENCE Northerly along a line which forms an angle on its westerly side with the preceding course of 81 degrees 17 minutes 30 seconds, 13 feet 7-1/8 inches;

THENCE Easterly along a line which forms an angle on its southerly side with the preceding course of 81 degrees 00 minutes 30 seconds, 35 feet 9-1/8 inches to the intersection of the westerly side of Freedom Place with the southerly side of West 66th Street;

THENCE Northerly on a curve to the right having a radius of 4967 feet 0 inches, a central angle of 2 degrees 09 minutes 29 seconds, 187 feet 0-7/8 inches along the westerly side of Freedom Place to a point of tangency;

THENCE still Northerly along the westerly side of Freedom Place, 930 feet 7-7/8 inches to the northerly side of West 70th Street;

THENCE still Northerly along a prolongation northerly of the westerly side of Freedom Place, 470 feet 11-3/4 inches to the southerly side of West 72nd Street;

THENCE Westerly along the southerly side of West 72nd Street, 443 feet 10 inches;

THENCE Southerly at right angles to the preceding course, 435 feet 2 inches;

THENCE Southwesterly along a line which forms an angle on its westerly side of 161 degrees 33 minutes 54 seconds with the preceding course, 94 feet 10-3/8 inches to the southerly line of West 70th Street, as said street is located pursuant to Plans and Profiles prepared pursuant to Chapter 677, Laws of 1928, as amended and filed October 29, 1929 in the Office of the Register of New York County as Map No. 2294, (the "Map No. 2294");

THENCE Westerly along the southerly line of West 70th Street, as shown on Map No. 2294, 576 feet 8-3/8 inches to the easterly line of 13th Avenue as shown on Map No. 2294;

THENCE southerly along the easterly line of 13th Avenue as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 69th Street as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 69th Street, as shown on Map No. 2294, 541 feet 0-3/8 inches to a point in the United States modified Bulkhead Line approved by the Secretary of War, February 5, 1930 (the "1930 USBH Line");

THENCE Southerly along the 1930 USBH Line, 60 feet 0 inches to the southerly line of West 69th Street as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 69th Street as shown on Map No. 2294, 539 feet 4 inches to the easterly line of 13th Avenue, as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 68th Street, as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 68th Street, as shown on Map No. 2294, 533 feet 7-7/8 inches to the 1930 USBH Line;

THENCE Southerly along the 1930 USBH Line, 60 feet 0 inches to the southerly line of West 68th Street as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 68th Street, as shown on Map No. 2294, 531 feet 11-1/2 inches to the easterly line of 13th Avenue, as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 67th Street, as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 67th street as shown on Map No. 2294, 526 feet 3-1/2 inches to the 1930 USBH Line;

THENCE Southerly along the 1930 USBH Line, 60 feet 0 inches to the southerly line of West 67th Street, as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 67th Street, a shown on Map No. 2294, 524 feet 7-1/8 inches to the easterly line of 13th Avenue as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue, as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 66th Street, as shown. on Map No. 2294;

THENCE Easterly along the northerly line of West 66th Street, as shown on Map No. 2294, 518 feet 11 inches to the 1930 USBH Line;

THENCE Southerly along the 1930 USBH Line, 60 feet 0 inches to the southerly line of West 66th Street, as shown on Map No 2294;

THENCE Westerly along the southerly line of West 66th Street, as shown on Map No. 2294, 517 feet 2-3/4 inches to the easterly line of 13th Avenue, as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue, as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 65th Street, as shown on Map No. 2294;

THENCE Easterly along the northerly line of Went 65th Street as shown on Map No. 2294, 511 feet 6-5/8 inches to the United States Bulkhead Line approved by the Secretary of War, March 26, 1927 (the "1927 USBH Line");

THENCE Southerly along the 1927 USBH Line, 320 feet 10 inches to the southerly line of West 64th Street, as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 64th Street, as shown on Map No. 2294, 502 feet 5-7/8 inches to the easterly line of 13th Avenue, as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue, as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 63rd Street, as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 63rd Street, as shown on Map No. 2294, 496 feet 9-3/4 inches to the 1927 USBH Line;

THENCE Southerly along the 1927 USBH Line, 320 feet 10 inches to a point;

THENCE Southerly along the Bulkhead Line established by the Board of Commissioners of The Central Park pursuant to Chapter 697 of the Laws of 1867, and identified on Map filed in the Office of the Register of New York County as Map #685 (the "1867 NYBH Line"), 201 feet 1-5/8 inches to a point in the United States Bulkhead Line approved by the Secretary of War, July 31, 1941 (the "1941 USBH Line") and the northerly line of West 61st Street as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 61st Street as shown on Map No. 2294, and the 1941 USBH Line, 38 feet 10-1/2 inches;

THENCE Southerly along the 1941 USBH Line, 60 feet 0 inches to the southerly line of West 61st Street, as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 61st Street, as shown on Map No. 2294, 35 feet 6-3/4 inches to the 1867 NYBH Line;

THENCE Southerly along the 1867 NYBH Line, 201 feet 1-5/8 inches to the northerly line of West 60th Street as shown on Map No. 2294;

THENCE Easterly along the northerly line of West 60th Street, as shown on Map No. 2294, 24 feet 5-1/4 inches to the 1941 USBH Line;

THENCE, Southerly along the 1941 USBH Line, 60 feet 0 inches to the southerly line of West 60th Street as shown on Map No. 2294;

THENCE Westerly along the southerly line of West 60th Street, as shown on Map No. 2294, 523 feet 0-1/8 inches to the easterly line of 13th Avenue as shown on Map No. 2294;

THENCE Southerly along the easterly line of 13th Avenue as shown on Map No. 2294, 200 feet 11 inches to the northerly line of West 59th Street, as shown on MAP No. 2294;

THENCE Easterly along the northerly line of West 59th Street, as shown on Map No. 2294, and along the northerly line of West 89th Street, 1567 feet 4 inches to the point or place of Beginning.

## **EXHIBIT B**

### **Property Description of Parcel L (Block 1171 Part of Lot 155)**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly line of West 61st Street with the easterly line of Riverside Drive:

- 1) RUNNING THENCE due east, along the southerly line of West 61st Street 182 feet 7-114 inches;
- 2) THENCE due south, 236 feet 0 inches;
- 3) THENCE due west, 234 feet 1-114 inches to a point in the easterly line of Riverside Drive;
- 4) THENCE north 9 degrees 36 minutes 13 seconds east, along the easterly line of Riverside Drive, 38 feet 8-518 inches to a point of curvature;
- 5) THENCE northerly, still along the easterly line of Riverside Drive, on the arc of a circle curving to the right having a radius of 1548 feet 0 inches and an included angle of 4 degrees 41 minutes 14 seconds, 126 feet 7-5/8 inches to a point of tangency;
- 6) THENCE north 14 degrees 17 minutes 27 east, still along the easterly line of Riverside Drive, 76 feet 4 inches to the point or place of BEGINNING.

### **Property Description of Parcel M (Block 1171 Part of Lot 155)**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of West 59th Street with the easterly line of Riverside Drive:

- 1) RUNNING THENCE due north, along the easterly line of Riverside Drive, 30 feet 0 inches to a point of curvature;
- 2) THENCE northerly, still along the easterly line of Riverside Drive, on the arc of a circle curving to the right having a radius of 1097 feet 10-3/4 inches and an included angle of 9 degrees 36 minutes 13 seconds, 184 feet 0-1/4 inches to a point of tangency;
- 3) THENCE north 9 degrees 36 minutes 13 seconds east, still along the easterly line of Riverside Drive, 9 feet 7-518 inches;
- 4) THENCE due east, 234 feet 1-114 inches;
- 5) THENCE due south, 222 feet 8 inches to a point in the northerly line of West 59th Street;

6) THENCE due west, along the northerly line of West 59th Street, 251 feet 1-114 inches to the point or place of BEGINNING.

## EXHIBIT C

### **Legal Description –Parcel N (Block 1171 Lot 165):**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of West 59th Street with the westerly line of West End Avenue:

- 1) RUNNING THENCE due west, along the northerly line of West 59th Street, 548 feet 10-3/4 inches;
- 2) THENCE due north, 458 feet 8 inches to a point in the southerly line of West 61st Street;
- 3) THENCE due east, along the southerly line of West 61st Street, 548 feet 10-3/4 inches to the corner formed by the intersection of the southerly line of West 61st Street with the westerly line of West End Avenue;
- 4) THENCE due south, along the westerly line of West End Avenue, 458 feet 8 inches to the point or place of BEGINNING.

EXCLUDING THEREFROM all that portion of the below described parcel lying below an upper limiting plane drawn 18 feet 4 inches above top of rail, bounded and described as follows:

BEGINNING at a point in the westerly line of West End Avenue, distant 27 feet 11-7/8 inches northerly from the corner formed by the intersection of the northerly line of West 59th Street with the westerly line of West End Avenue;

- 1) RUNNING THENCE north 19 degrees 37 minutes 20 seconds west, 226 feet 7-7/8 inches to a point of curvature;
- 2) THENCE northerly, on the arc of a circle curving to the right, having a radius of 128 feet 2-3/4 inches and an included angle of 12 degrees 13 minutes 03 seconds, 27 feet 4-1/8 inches to a point of tangency;
- 3) THENCE north 7 degrees 24 minutes 17 seconds west, 151 feet 9-3/4 inches to a point of curvature;
- 4) THENCE northerly, on the arc of a circle curving to the left, having a radius of 451 feet 8 inches and an included angle of 5 degrees 10 minutes 3 seconds, 40 feet 8-7/8 inches to a point in the southerly line of West 61st Street;
- 5) THENCE easterly, along the southerly line of West 61<sup>st</sup> Street, 56 feet 2-3/8 inches;
- 6) THENCE southerly, on the arc of a circle curving to the right, having a radius of 506 feet 8 inches and an included angle of 3 degrees 47 minutes 03 seconds, 33 feet 5-1/2 inches to a point of tangency;
- 7) THENCE south 7 degrees 24 minutes 17 seconds east, 151 feet 9-3/4 inches to a point of curvature;

8) THENCE southerly, on the arc of a circle curving to the left, having a radius of 73 feet 2-3/4 inches and an included angle of 12 degrees 13 minutes 03 seconds, 15 feet 7-3/8 inches to a point of tangency;

9) THENCE south 19 degrees 37 minutes 20 seconds east, 72 feet 4-3/4 inches to a point in the westerly line of West End Avenue;

10) THENCE due south, along the westerly line of West End Avenue, 163 feet 9-3/8 inches to the point or place of BEGINNING.

**EXHIBIT D**

**PLANS**

**EXHIBIT B**

**PARCEL LMN  
RESTRICTIVE DECLARATION**

**NEW YORK COUNTY  
BLOCK 1171  
LOTS 155 AND 165**

**RECORD AND RETURN TO:**

**Kramer Levin Naftalis & Frankel, LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: Paul D. Selver, Esq.**

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**PARCEL LMN RESTRICTIVE DECLARATION**

THIS PARCEL LMN RESTRICTIVE DECLARATION (“**Declaration**”), made as of the \_\_\_ day of \_\_\_\_\_, 2010, by CRP/EXTELL PARCEL L, L.P. (“**Parcel LM Owner**”) and CRP/EXTELL PARCEL N, L.P. (“**Parcel N Owner**”), each a Delaware limited partnership, having an address at c/o Extell Development Company, 805 Third Avenue, 7<sup>th</sup> Floor, New York, New York 10022 (together, the “**Declarant**”).

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

WHEREAS, Penn Yards Associates entered into a Restrictive Declaration (the “**Original Declaration**”) made as of December 17, 1992 and recorded in the Office of the City Register, New York County (the “**Office of the City Register**”) on January 6, 1993 in Reel 1934, Page 1 which Original Declaration imposed certain restrictions on the area generally bounded by West 72<sup>nd</sup> Street and Riverside Park to the north, West 59<sup>th</sup> Street to the south, the Hudson River to the west, and buildings at the west ends of West 70<sup>th</sup>, 71<sup>st</sup> and 72<sup>nd</sup> Streets to the east (“**Riverside South**”); and

WHEREAS, by indenture made as of July 5, 1994 and recorded in the Office of the City Register on July 5, 1994 in Reel 2112, Page 2231, Penn Yards Associates conveyed all its rights, title and interests to Riverside South to Hudson Waterfront Associates, L.P.;

WHEREAS, by correction deed made as of January 18, 1996 and recorded in the Office of the City Register on January 29, 1996 in Reel 2286, Page 1359, Hudson Waterfront Associates, L.P., conveyed all its rights, title and interests to the property known as Block 1171, Lot 155 (“**Parcel LM**”), as more particularly described in **Exhibit A** attached hereto and made a part hereof, to Hudson Waterfront Associates IV, L.P.;

WHEREAS, by correction deed made as of December 12, 1995 and recorded in the Office of the City Register on December 15, 1995 in Reel 2271, Page 2378, Hudson Waterfront Associates, L.P., conveyed all its rights, title and interests to the property known as Block 1171, Lot 165 (“**Parcel N**”), as more particularly described in **Exhibit B** attached hereto and made a part hereof, to Hudson Waterfront Associates V, L.P.;

WHEREAS, by deed dated as of November 3, 2005 and recorded in the Office of the City Register on November 22, 2005 under CRFN 2005000648426, Hudson Waterfront Associates IV, L.P. conveyed all its rights, title and interests to Parcel LM to Parcel LM Owner;

WHEREAS, by deed dated as of November 3, 2005 and recorded in the Office of the City Register on November 22, 2005 under CRFN 2005000648443, Hudson Waterfront Associates V, L.P. conveyed all its rights, title and interests to Parcel N to Parcel N Owner;

WHEREAS, the Original Declaration was modified by the First Modification to the Restrictive Declaration (the “**First Modification**”) made as of October 4, 1994 and recorded in the Office of the City Register on December 2, 1994 in Reel 2159, Page 1096; by a Second Modification to the Restrictive Declaration (the “**Second Modification**”) made as of January 9, 1997 and recorded in the Office of the City Register on February 13, 1997 in Reel 2422, Page 424; by a Third Modification to the Restrictive Declaration (the “**Third Modification**”) made as

of September 13, 1999 and recorded in the Office of the City Register on January 7, 2000 in Reel 3026, Page 1983; by a Fourth Modification to the Restrictive Declaration made as of November 9, 2001 and recorded in the Office of the City Register on January 25, 2002 in Reel 3436, Page 1992, as restated by Restated Fourth Modification to the Restrictive Declaration made as of November 9, 2001 and recorded in the Office of the City Register on March 15, 2002 in Reel 3470, Page 1813 (as restated, the "**Fourth Modification**") (the Original Declaration, as amended by the First Modification, the Second Modification, the Third Modification, the Fourth Modification, the "**Riverside South Declaration**"); and by a Fifth Modification to the Restrictive Declaration (the "**Fifth Modification to Riverside South Declaration**") dated as of the date hereof and intended to be recorded in the Office of the City Register simultaneously herewith (the Riverside South Declaration, as further amended by the Fifth Modification to Riverside South Declaration, the "**Amended Riverside South Declaration**");

**WHEREAS**, Fidelity National Title Insurance Company has certified, in a certification attached hereto as **Exhibit C** and made a part hereof, that as of August 22, 2010, Declarant and ING Life Insurance and Annuity Company, ING USA Life Insurance and Annuity Company, Connecticut General Life Insurance Company, and Henry Cheng Kar Shun are the only "parties-in-interest" (as defined in subdivision (d) of the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time (the "**Zoning Resolution**" or "**ZR**")) ("**Parties-in-Interest**"), to Parcel LM and Parcel N (together, "**Parcel LMN**" or the "**Subject Property**"); and

**WHEREAS**, all Parties-in-Interest have joined in this Declaration or have waived their right to do so by written instrument annexed hereto as **Exhibit D** and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

**WHEREAS**, Parcel LMN is part of Riverside South which is being developed as a general large-scale development (the "**Riverside South GLSD**"), in connection with which Penn Yards Associates applied for and obtained special permits pursuant to Sections 74-52, 74-681, and 74-743 of the Zoning Resolution, as in effect at such time, and a certification pursuant to Section 26-07 of the Zoning Resolution, as in effect at such time which were approved by the New York City Planning Commission (the "**Commission**") on October 26, 1992 and the New York City Council (the "**City Council**") on December 17, 1992 (C 920358 ZSM) (the "**Original Special Permit**");

**WHEREAS**, in connection with the previous four modifications to the Original Declaration, the Original Special Permit was modified by the Commission on December 16, 1996 (M 920358A ZSM), August 2, 1999 (M 920358B ZSM), and April 1, 2002 (M 920358C ZSM) (the Original Special Permit as modified, the "**Riverside South Special Permit**"); and

**WHEREAS**, Declarant desires to further amend the Riverside South Declaration and Riverside South Special Permit to permit the development of Parcel LMN as a single integrated design within the Riverside South GLSD ("**Riverside Center**") that respects the Manhattan street grid and provides a connection to Riverside Park South and the Hudson River waterfront and to integrate Riverside Center into its surrounding neighborhood and has filed an application under application Number M 920358D ZSM with the Commission requesting a fourth modification to the Riverside South Special Permit (the "**Fourth Riverside South Special**");

**Permit Modification**”) and the Fifth Modification to Riverside South Declaration as more specifically described below; and

**WHEREAS**, Declarant also filed applications with the Commission for the LMN Special Permits (as defined herein) under application Numbers C 100296A ZSM, C 100297 ZSM, C 100287 ZSM, C 100288, C 100289 ZSM, C 100290 ZSM, C 100291 ZSM, C 100292 ZSM and C 100293 ZSM, for the Authorization (as defined herein) under application Number N 100298 ZAM, for the Certifications (as defined herein) under application Numbers N 100299 ZCM, N 100286 ZCM, N 100300 ZCM and for the Zoning Text Amendments (as defined herein) under application Numbers N 100294A ZRM and N 100295 ZRM (collectively, with the application for the Fifth Modification to Riverside South Declaration and the Fourth Riverside South Special Permit Modification, the “**Applications**”);

**WHEREAS**, the Applications as referred to herein include all revisions filed with the New York City Department of City Planning (“**DCP**”) through October 27, 2010;

**WHEREAS**, the Applications request the following actions (the “**Actions**”):

- (i) the Fifth Modification to Riverside South Declaration and the Fourth Riverside South Special Permit Modification to, among other things, amend the limitations on the overall floor area and the floor area of specific uses permitted in the Riverside South GLSD, and to amend, supplement or replace certain drawings attached to the Riverside South Declaration in order to conform them to the drawings approved for the Actions;
- (ii) an amendment to the text of ZR Section 74-744 to allow, by special permit, automobile sales and service establishments listed in Use Group 16B within certain general large-scale developments in Manhattan Community District No. 7 and an amendment to the text of ZR Section 74-743 to modify, by special permit, the provisions of ZR Sections 12-10 concerning courts, and an amendment to ZR Sections 74-743, 23-144 and 23-954 to facilitate application of the City’s Inclusionary Housing Program to the Subject Property (the “**Zoning Text Amendments**”);
- (iii) a new special permit pursuant to ZR Sections 13-562, 74-681(a) and 74-681(c)(4) to permit, among other things, a public parking garage or garages with a total of 1,260 parking spaces and amend, supplement or supersede the previously approved drawings to permit the development of the Subject Property in accordance with the program and site plan shown on the drawings filed with this application; a new GLSD special permit to allow, pursuant to ZR Sections 74-743(a)(1) and (2) and 74-743(b), as amended, modifications to height and setback (including tower), minimum distance between buildings and inner and outer court regulations; and a special permit pursuant to ZR Section 74-744 to modify the use regulations in ZR Section 32-10, Use Group 16B to allow automobile sales and repair within the Riverside South GLSD (the “**LMN Special Permits**”);

- (iv) an authorization pursuant to ZR Section 13-553 to permit a curb cut on West End Avenue to facilitate the extension of West 60<sup>th</sup> Street westward through a portion of the Subject Property as a public access easement (the “**Authorization**”); and
- (v) a certification pursuant to ZR Section 26-15 to modify the provisions of ZR Section 26-15 to allow more than one curb cut for parking, and loading and curb cut access points for Freedom Place South on both West 59<sup>th</sup> and West 61<sup>st</sup> Streets and a certification pursuant to Section 26-15 to permit a curb cut on West End Avenue to facilitate the extension of West 60<sup>th</sup> Street westward through a portion of the Subject Property as a public access easement; and a certification pursuant to Section 26-17 to modify provisions of 37-35, 37-36 and 37-37 to modify provisions of applicable ground floor use, signage and transparency requirements. (the “**Certifications**”).

**WHEREAS**, the Commission adopted resolutions approving the Actions on October 27, 2010 under Calendar Numbers 5-11, 13, 14, and 16-18 (such resolutions, the “**Approvals**”);

**WHEREAS**, the Approvals authorize the development of the Subject Property as a complex of five mixed-use buildings including market-rate and affordable housing, various commercial uses, a public K-8 school, public parking, and approximately 2.76 acres of privately owned, publicly accessible open space (the “**Development**”);

**WHEREAS**, the Commission acted as lead agency and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined);

**WHEREAS**, the Commission prepared a Final Supplemental Environmental Impact Statement (“**FSEIS**”) and issued a Notice of Completion of FSEIS on October 15, 2010;

**WHEREAS**, a Technical Memorandum to the FSEIS was issued on October 26, 2010 (the “**October Tech Memo**”);

**WHEREAS**, to insure that the development of the Subject Property is consistent with the analysis in the FSEIS upon which the Commission has made findings pursuant to the City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY§5-01 et seq. (“**CEQR**”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“**SEQRA**”), and that the development of the Subject Property includes certain project components related to the environment which were material to the analysis of environmental impacts in the FSEIS and the October Tech Memo (“**PCREs**”) and is subject to certain mitigation of significant adverse environmental impacts required to be undertaken by Declarant at various times (“**Mitigation Measures**”), 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; and

**WHEREAS**, Declarant desires to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated now and in the future;

**NOW, THEREFORE**, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on Declarant, its successors and assigns.

## **ARTICLE I.**

### **CERTAIN DEFINITIONS**

#### Section 1.01 **Definitions.**

For purposes of this Declaration:

- (a) “**Actions**” shall have the meaning given in the Recitals to this Declaration.
- (b) “**Additional Interim Edge Condition Public Space Plan**” shall have the meaning given in Section 4.03(c) of this Declaration.
- (c) “**Adjusted Base Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.
- (d) “**Affordable Housing Plan**” shall have the meaning given in Section 2.02(a) of this Declaration.
- (e) “**Alternative Additional Edge Condition Interim Public Space Plan**” shall have the meaning given in Section 4.03(d) of this Declaration.
- (f) “**Alternative Construction and CO Schedule**” shall have the meaning given in Section 4.03(d) of this Declaration.
- (g) “**Amended Riverside South Declaration**” shall have the meaning given in the Recitals to this Declaration.
- (h) “**Applications**” shall have the meaning given in the Recitals of this Declaration, as same may be hereafter modified.
- (i) “**Approvals**” shall have the meaning given in the Recitals of this Declaration, as same may be hereafter modified.
- (j) “**Approved Additional Edge Condition Interim Public Space Plan**” shall have the meaning given in Section 4.03(d) of this Declaration.
- (k) “**Approved Construction and CO Schedule**” shall have the meaning given in Section 4.03(c) of this Declaration.
- (l) “**Attorney General**” shall mean the Attorney General of the State.

(m) “**Authorization**” shall have the meaning given in the Recitals of this Declaration.

(n) “**Available Base Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.

(o) “**Base Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.

(p) “**Building**” or “**Buildings**” shall mean any one of Building 1, Building 2, Building 3, Building 4, or Building 5 or all of the Buildings, as the context shall require.

(q) “**Building 1**” shall mean the building located at the northwest corner of the Subject Property, on West 61st Street near Riverside Boulevard, as shown on the Plans.

(r) “**Building 2**” shall mean the building located at the northeast corner of the Subject Property, on West 61st Street near West End Avenue, as shown on the Plans.

(s) “**Building 3**” shall mean the building located at the southwest corner of the Subject Property, on West 59th Street near Riverside Boulevard, as shown on the Plans.

(t) “**Building 4**” shall mean the building located on the south side of the Subject Property, along West 59th Street and east of Building 3, as shown on the Plans.

(u) “**Building 5**” shall mean the building located at the southeast corner of the Subject Property, on West 59<sup>th</sup> Street and West End Avenue, as shown on the Plans.

(v) “**Building Permit**” shall mean any of an Excavation Permit, Demolition Permit, Foundation Permit, or New Building Permit;

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

(x) “**Certifications**” shall have the meaning given in the Recitals of this Declaration.

(y) “**Chair**” shall mean the Chair of the City Planning Commission of the City of New York from time to time, or any successor to its jurisdiction.

(z) “**City**” shall mean the City of New York.

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

(bb) “**Commission**” shall have the meaning given in the Recitals to this Declaration.

(cc) “**Con Edison**” shall mean the Consolidated Edison Company of New York Inc. or any successor owner/operator of the West 59th Street generating station.

(dd) “**Consolidated Edison Power House**” shall mean the historic structure located at West 58<sup>th</sup> Street and 11<sup>th</sup> Avenue, designed by McKim Mead and White and constructed in 1904 which now houses the Con Edison West 59<sup>th</sup> Street Generating Station.

(ee) “**Construction Commencement**” shall mean the issuance of the first Building Permit by the Buildings Department to Declarant for work on the Subject Property.

(ff) “**DCP**” shall mean the New York City Department of City Planning, or any successor to its jurisdiction.

(gg) “**DEC**” shall mean the New York State Department of Environmental Conservation, or any successor to its jurisdiction.

(hh) “**Declarant**” shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 6.02(d) of this Declaration and any entity that becomes Declarant pursuant to Section 8.05 of this Declaration.

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

(jj) “**Demolition Permit**” shall mean a permit issued by the Buildings Department authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof.

(kk) “**DEP**” shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.

(ll) “**Development**” shall have the meaning given in the Recitals to this Declaration.

(mm) “**Distribution Requirements**” shall have the meaning given in Section 2.02(a) of this Declaration.

(nn) “**DOT**” shall mean the New York City Department of Transportation, or any successor to its jurisdiction.

(oo) “**EDC**” shall mean the New York City Economic Development Corporation, or any successor to its jurisdiction.

(pp) “**Effective Date**” shall have the meaning given in Section 6.01 of this Declaration.

(qq) “**Excavation Permit**” shall mean any permit issued by the Buildings Department authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property.

(rr) “**Extended Platform Interim Public Space Term**” shall have the meaning given in Section 4.03(c) of this Declaration.

(ss) “**Fifth Modification to Riverside South Declaration**” shall have the meaning given in the Recitals to this Declaration.

(tt) “**FSEIS**” shall have the meaning given in the Recitals to this Declaration.

(uu) “**Finally Complete**” or “**Final Completion**” shall mean the completion of all relevant items of work, including any so-called “punch-list” items that remain to be completed upon Substantial Completion of the LMN Public Space and Access, or portion thereof.

(vv) “**Final Approval**” shall mean approval or approval with modifications of the Applications (other than the Authorization and Certifications) by the City Council, or (b) if the City Council disapproves the decision of the Commission and the Mayor of the City of New York (the “**Mayor**”) files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor’s disapproval, in which event “Final Approval” shall mean the Mayor’s written disapproval of the City Council’s action pursuant to such New York City Charter Section 197-d(e).

(ww) “**First Garage Option Selection Notice**” shall have the meaning given in Section 6.01(b) of this Declaration.

(xx) “**Flex Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.

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

(zz) “**Foundation Permit**” shall mean any permit issued by the Buildings Department authorizing foundation work at the Subject Property.

(aaa) “**Fourth Riverside South Special Permit Modification**” shall have the meaning given in the Recitals to this Declaration.

(bbb) “**Further Garage Option Selection Notice**” shall have the meaning given in Section 6.01(b) of this Declaration.

(ccc) “**GLSD**” or “**General Large Scale Development**” shall have the meaning set forth for “general large-scale development” in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

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

(eee) “**HPD**” shall mean the New York City Department of Housing Preservation and Development, or any successor to its jurisdiction.

(fff) “**Inclusionary Housing Regulations**” shall have the meaning given in Section 2.02(a) of this Declaration.

(ggg) “**Individual Assessment**” shall have the meaning given in Section 5.04(a) of this Declaration.

(hhh) “**Individual Assessment Interest**” shall have the meaning given in Section 8.02 of this Declaration.

(iii) “**Individual Interest**” shall have the meaning given in Section 5.04(a) of this Declaration.

(jjj) “**Initial Base Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.

(kkk) “**Integrated Garage**” shall have the meaning given in Section 6.01(b) of this Declaration.

(lll) “**Interim Edge Condition Public Space Plans**” shall mean the Plans designated as Z-180, “Parcel 1 Interim Open Space Plan” and Z-181, “Parcel 4 Interim Open Space Plan,” attached hereto as **Exhibit K**.

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

(nnn) “**Lien Holder**” shall have the meaning given in Section 5.04(a) of this Declaration.

(ooo) “**LMN Parcel Plan**” shall mean the relationship between completion of particular Buildings on the Subject Property and the completion of the associated LMN Public Space Phase and/or the LMN Public Access Phase, as shown on drawing P-1 entitled “Public Space & Public Access Easement Logistics and Phasing Plan,” last revised October 20, 2010 and attached hereto as **Exhibit E**.

(ppp) “**LMN Public Access Easements**” shall have the meaning given in Section 4.04(a) of this Declaration.

(qqq) “**LMN Public Access**” shall have the meaning given in Section 4.01(b) of this Declaration.

(rrr) “**LMN Public Access Phase**” shall mean the portion of the LMN Public Access associated with a particular Building, as shown on the LMN Parcel Plan.

(sss) “**LMN Public Space**” shall mean the areas designated as “Public Space Easement,” “Sidewalk Adjacent Public Space Easement” and “Perimeter Sidewalk Public Access Easement” on the LMN Public Space and Access Plan (as hereinafter defined) (together with the LMN Public Access, the “**LMN Public Space and Access**”).

(ttt) “**LMN Public Space and Access Plan**” shall mean the Plan designated as Z-176, “Public Space and Access Easements Diagram.”

(uuu) “**LMN Public Space Easement**” shall have the meaning given in Section 4.05(a) of this Declaration.

(vvv) “**LMN Public Space Landscaping Plans**” shall mean the drawings designated as Z-166 through Z-179 of the Plans.

(www) “**LMN Public Space Phase**” shall mean the portion of the LMN Public Space associated with a particular Building, as shown on the LMN Parcel Plan (together with the LMN Public Access Phase, the “**LMN Public Space and Access Phase**”).

(xxx) “**LMN Special Permits**” shall have the meaning given in the Recitals to this Declaration.

(yyy) “**LMN Streets**” shall have the meaning given in Section 4.01(b) of this Declaration.

(zzz) “**Lot Owner**” shall mean only (a) fee owner(s) of the Subject Property or any portion thereof; (b) the holder of the lessee’s estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Parcel; (c) the cooperative corporation which holds beneficial ownership of any portion of the Subject Property or any building built on the Subject Property; and (d) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

(aaaa) “**Maximum Bonus Floor Area**” shall have the meaning given in Section 2.02(a) of this Declaration.

(bbbb) “**Maximum Building Floor Area With Bonus**” shall have the meaning given in Section 2.02(a) of this Declaration.

(cccc) “**Mitigation Measures**” shall have the meaning given in the Recitals to this Declaration.

(dddd) “**Mortgage**” shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property but shall not include a mortgage for any individual residential or commercial unit or the beneficial interest of any residential or commercial unit held in cooperative or condominium ownership.

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

(ffff) “**Named Mortgagee**” shall have the meaning given in Section 8.03 of this Declaration.

(gggg) “**New Building Permit**” shall mean, with respect to any Building, a work permit issued by the Buildings Department under a new building application authorizing construction of any Building.

(hhhh) “**New York City Charter**” shall mean the Charter of the City of New York, effective as of January 1, 1990, as amended from time to time.

(iiii) “**Non-residential Floor Area**” shall mean any floor area that is not used for residential use in accordance with the definitions of “floor area” and “residential” set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

(jjjj) “**Notice**” shall have the meaning given in Section 8.03 of this Declaration.

(kkkk) “**Obligation**” shall mean any requirement of this Declaration, including, without limitation, the requirements set forth in Article II, the requirements with respect to PCREs and Mitigation Measures set forth in Article III, the LMN Public Space requirements set forth in Article IV and the requirements for the LMN Property Owner’s Association set forth in Article V. “Obligations” shall refer to more than one Obligation, as the context shall require.

(llll) “**October Tech Memo**” shall have the meaning given in the Recitals to this Declaration.

(mmmm) “**OER**” shall mean the New York City Office of Environmental Remediation, or any successor to its jurisdiction.

(nnnn) “**Office of the City Register**” shall have the meaning given in the Recitals to this Declaration.

(oooo) “**Original Platform Interim Public Space Term**” shall have the meaning given in Section 4.03(c) of this Declaration.

(pppp) “**Parcel**” or “**Parcels**” shall mean any one of Parcel 1, Parcel 2, Parcel 3, Parcel 4 or Parcel 5 or all of the Parcels as the context shall require.

(qqqq) “**Parcel 1**” shall mean the parcel associated with Building 1, as shown on drawing Z-154 “Public Access Easement & Parcelization” of the Plans.

(rrrr) “**Parcel 2**” shall mean the parcel associated with Building 2, as shown on drawing Z-154 “Public Access Easement & Parcelization” of the Plans.

(ssss) “**Parcel 3**” shall mean the parcel associated with Building 3, as shown on drawing Z-154 “Public Access Easement & Parcelization” of the Plans.

(tttt) “**Parcel 4**” shall mean the parcel associated with Building 4, as shown on drawing Z-154 “Public Access Easement & Parcelization” of the Plans and the LMN Parcel Plan

(uuuu) “**Parcel 5**” shall mean the parcel associated with Building 5, as shown on drawing Z-154 “Public Access Easement & Parcelization” of the Plans.

(vvvv) “**Parcel LMN**” shall have the meaning given in the Recitals to this Declaration.

(www) “**Party-in-Interest**” shall have the meaning given in the Recitals to this Declaration.

(xxxx) “**PCO**” shall mean a permanent certificate of occupancy issued by the Buildings Department.

(yyyy) “**PCRE**” shall have the meaning given in the Recitals to this Declaration.

(zzzz) “**Perimeter Sidewalk Enlargements**” shall have the meaning given in Section 4.01(a) of this Declaration.

(aaaa) “**Plan or Plans**” shall mean any one or all of the drawings for the Development prepared by Atelier Christian de Portzamparc, Goldstein, Hill & West Associates, LLP, and Mathews Nielsen Landscape Architects, as approved pursuant to the Approvals, reduced-size copies of which are attached as **Exhibit F** to this Declaration, as more particularly described in Section 2.01(b).

(bbbb) “**Platform**” shall mean the structure to be constructed on the Subject Property in accordance with the Plans and at the approximate elevation of 24 feet above Manhattan Datum that will serve as the base for the Buildings and the LMN Public Space and Public Access above the cellar level.

(cccc) “**Platform Interim Public Space**” shall mean the interim landscaping and design treatments for the Parcels shown on the Platform Interim Public Space Plan.

(dddd) “**Platform Interim Public Space Plan**” shall mean the Plan designated as Z-182, “Interim Open Space on Platform,” attached hereto as **Exhibit L**.

(eeee) “**P.O.A.**” shall have the meaning given in Section 5.01 of this Declaration.

(ffff) “**Possessory Interest**” shall mean either (1) a fee interest in the Subject Property or any portion thereof or (2) the lessee’s estate in a ground lease of all or substantially all the Subject Property or all or substantially all of Parcel 1, Parcel 2, Parcel 3, Parcel 4 or Parcel 5.

(gggg) “**Proposed Construction and CO Schedule**” shall have the meaning given in Section 4.03(c) of this Declaration.

(hhhh) “**Proposed School Site**” shall have the meaning given in Section 2.03 of this Declaration.

(iiii) “**Public School**” shall mean the K-8 public school proposed to be located in Building 2 in accordance with Section 2.03 hereof.

(jjjj) “**Public School Obligations**” shall have the meaning given in Section 2.03 of this Declaration.

(kkkk) “**Residential Floor Area**” shall mean floor area that is used for residential use in accordance with the definitions of “floor area” and “residential” set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

(llll) “**Riverside South Special Permit**” shall have the meaning given in the Recitals to this Declaration.

(mmmm) “**Riverside South Declaration**” shall have the meaning given in the Recitals to this Declaration.

(nnnn) “**SCA**” shall mean the New York City School Construction Authority, or any successor to its jurisdiction.

(oooo) “**SCA Agreement**” shall have the meaning given in Section 2.03 of this Declaration.

(pppp) “**SCA Letter of Intent**” shall have the meaning given in Section 2.03 of this Declaration.

(qqqq) “**School Election Notice**” shall have the meaning given in Section 2.03 of this Declaration.

(rrrr) “**Separate Garages**” shall have the meaning given in Section 6.01(b) of this Declaration.

(ssss) “**Special Permits**” shall have the meaning given in Section 6.01(a) of this Declaration.

(tttt) “**Special Permit Election**” shall have the meaning given in Section 6.01(a) of this Declaration.

(uuuu) “**Special Permit Election Notice**” shall have the meaning given in Section 6.01(a) of this Declaration.

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

(wwww) “**Substantial Completion**” or “**Substantially Completed**” shall mean completion of construction substantially in accordance with the Plans, in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed. With respect to the LMN Public Space and Access, Substantial Completion shall mean that a LMN Public Space and Access

Phase, or portion thereof, has been completed substantially in accordance with the LMN Public Space Landscaping Plans (or the Platform Interim Public Space Plan, the Interim Edge Condition Public Space Plans or the Approved Additional or Alternative Additional Interim Public Space Plan, as applicable, if such LMN Public Space and Access Phase, or portion thereof, is constructed initially in accordance therewith), and to such an extent that such LMN Public Space and Access Phase, or portion thereof, may be operated and made available for public use, in the reasonable determination of the Chair, notwithstanding that landscaping, planting of vegetation or other tasks which must occur seasonally has not been completed, provided that Declarant supplies assurances in a manner reasonably acceptable to the Chair that such task will be completed in the appropriate season.

(xxxxx)        “**Subject Property**” shall have the meaning given in the Recitals to this Declaration.

(yyyyy)        “**Successor Declarant**” shall have the meaning given in Section 6.02 of this Declaration.

(zzzzz) “**TCO**” shall mean a temporary certificate of occupancy issued by the Buildings Department.

(aaaaa)        “**Temporary LMN Public Space Easement**” shall have the meaning given in Section 4.05(c) of this Declaration.

(bbbbb)        “**Tier 3**” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR Part 89, as of the date hereof.

(ccccc)        “**Tier 4**” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR Part 1039, as of the date hereof.

(dddddd)       “**Total Base Floor Area Remaining**” shall have the meaning given in Section 2.02(a) of this Declaration.

(eeeeee)        “**Uncontrollable Circumstances**” shall mean occurrences beyond Declarant’s reasonable control, and for which Declarant has taken all steps within Declarant’s control reasonably necessary to control or minimize, which cause delay in the performance of Obligations under this Declaration, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls); (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property); (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems); (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price); (v) acts of God (including severe weather conditions); (vi) removal of hazardous substances that could not have been reasonably foreseen; (vii) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or

commotion, earthquake, flood, fire or other casualty; (viii) a taking of the whole or any relevant portion of the Subject Property by condemnation or eminent domain; (ix) soil conditions that could not have been reasonably foreseen that substantially delay construction of any relevant portion of the Subject Project or substantially impair the ability to develop the Subject Property in the manner contemplated by this Declaration; (x) denial to Declarant by any party of a right of access to any adjoining real property or to the Subject Property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; (xii) unusual delays in transportation, and (xiii) any unreasonable material delay by any department or agency of the City, State of New York or United States government in the issuance of approvals required in order to permit Declarant to carry out its obligations under this Declaration that is not caused by any act or omission of the Declarant, as determined by the Chair in accordance with Section 7.06 of this Declaration.

(ffffff) “**Unit Interested Party**” shall mean only (a) a Lot Owner; (b) a Unit Owner; (c) the holder of a mortgage or lien encumbering any other interest in the Subject Property, including, but not limited to a fee estate or a ground lease; or (d) the holder of any other interest in any portion of the Subject Property or any improvements constituting a part of the Development, including any such residential or commercial unit or apartment or building held in condominium ownership, or owned by a cooperative corporation who qualifies as a Party-in-Interest under applicable law, including the Zoning Resolution.

(gggggg) “**Unit Owner**” shall not include the Lot Owner but shall mean (a) the owner of any individual residential or commercial condominium unit, or the owner of the beneficial interest of any residential or commercial unit, held in cooperative ownership, or (b) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership or owned by a cooperative corporation.

(hhhhhh) “**Unit Threshold**” shall have the meaning given in Section 2.03(b) of this Declaration.

(iiiiii) “**Use Group**” shall have the meaning set forth in the Zoning Resolution on the Effective Date of this Declaration.

(jjjjjj) “**Wind Reduction Tree Plan**” shall have the meaning set forth in Section 2.01(d) (i) of this Declaration.

(kkkkkk) “**Zoning Resolution**” shall have the meaning set forth in the Recitals to this Declaration.

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

## ARTICLE II.

### DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

**Development of the Subject Property.**

(a) **Designation of General Large Scale Development.** Declarant hereby confirms and agrees that the Subject Property shall continue to be treated as part of the Riverside South GLSD and shall thereby continue to be developed and enlarged as a single unit with the Riverside South GLSD; and shall be subject to the Amended Riverside South Declaration. Declarant agrees that the aggregate Floor Area of the Subject Property shall not exceed 2,882,829 square feet, unless a Public School is provided, in which case the maximum aggregate Floor Area of the Subject Property may be increased to the extent of the amount of Floor Area attributable to the Public School and in no event shall exceed 3,014,829 square feet. In the event that Declarant does not develop the Subject Property pursuant to the Special Permits, any development of the Subject Property shall be subject to the provisions of the Riverside South Special Permit, and the Riverside South Declaration shall continue to govern the development of the Subject Property.

(b) **Plans.** Any development of the Subject Property shall occur only if it is in substantial conformity with the Plans annexed hereto in **Exhibit F** and made a part hereof, and in compliance with this Declaration. For purposes of this Section 2.01(b), a penetration of building envelope beyond the “Maximum Envelope” shown on such Plans shall not be considered to be in substantial conformity therewith, irrespective of whether such penetration would be permitted under the Zoning Resolution on an as-of-right basis. Subject to the provisions of Section 6.01 hereof, no other development of the Subject Property shall be permitted unless all necessary approvals and amendments have been obtained and the Plans have been modified in accordance with this Declaration and the Amended Riverside South Declaration.

The “**Plans**” shall mean the following plans and drawings:

<u>Number</u>	<u>Title</u>	<u>Last Revision Date</u>
Z-1R	Index of Drawings Zoning Calculations	October 27, 2010
Z-6A	Site Survey	October 26, 2010
Z-8R	Zoning Compliance & Computations	October 27, 2010
Z-15R	Zoning Lot Plan for Large Scale Plan, Railroad Yard & Right-of-Way Designation	October 26, 2010
Z-100	Roof Plan/Site Plan	October 27, 2010
Z-101	L/M/N Ground Floor Plan with Maximum Building Envelopes	October 27, 2010
Z-102	Zoning Compliance Tower Lot Coverage Plan	October 26, 2010

Z-103	Zoning Compliance/Setback Compliance Plan	October 26, 2010
Z-104	Site Sections (1 of 2)	October 26, 2010
Z-105	Site Sections (2 of 2)	October 26, 2010
Z-106	Zoning Envelope Building 1	October 26, 2010
Z-107	Zoning Envelope Building 2	October 26, 2010
Z-108	Zoning Envelope Building 3	October 27, 2010
Z-109	Zoning Envelope Building 4	October 26, 2010
Z-110	Zoning Envelope Building 5	October 26, 2010
Z-111	Building Overhang Diagrams Buildings 1& 2	October 26, 2010
Z-112	Building Overhang Diagrams Buildings 3, 4, & 5	October 26, 2010
Z-113	Outer Court Diagrams	October 26, 2010
Z-114	Inner Court Diagrams	October 26, 2010
Z-115	Minimum Distance Diagrams	October 26, 2010
Z-116	Ground Floor Elevation Streetscape Diagrams Building 1	October 26, 2010
Z-117	Ground Floor Elevation Streetscape Diagrams Building 2	October 26, 2010
Z-118	Ground Floor Elevation Streetscape Diagrams Building 3	October 26, 2010
Z-119	Ground Floor Elevation Streetscape Diagrams Building 4	October 26, 2010
Z-120	Ground Floor Elevation Streetscape Diagrams Building 5	October 27, 2010

Z-121	Tower Tops Diagram	October 27, 2010
Z-130	Site Elevations	October 26, 2010
Z-131	59 <sup>th</sup> Street Elevations (Looking North & South)	October 26, 2010
Z-132	60 <sup>th</sup> Street Elevations (Looking North & South)	October 20, 2010
Z-133	61 <sup>st</sup> Street Site Elevations (Looking North & South)	October 26, 2010
Z-134	61 <sup>st</sup> Street Site Elevation	October 26, 2010
Z-135	West End Avenue Site Elevation	October 26, 2010
Z-136	59 <sup>th</sup> Street Site Elevation	October 26, 2010
Z-137	Riverside Boulevard Site Elevation	October 26, 2010
Z-138	Ground Floor Auto Dealership Plan	October 27, 2010
Z-139	Cellar Level Auto Dealership Plan	October 27, 2010
Z-140	Ground Floor Garage Plan	October 27, 2010
Z-141	Cellar Garage Plan	October 26, 2010
Z-142	Sub-Cellar 1 Garage Plan	October 26, 2010
Z-143	Sub-Cellar 2 Garage Plan	October 26, 2010
Z-144	Garage B-1 Ground Level	October 27, 2010
Z-145	Garage B-1 Plan Cellar Level, Sub-Cellar 1 Level Sub-Cellar 2 Level	October 27, 2010
Z-146	Garage B-2 Ground Level	October 27, 2010
Z-147	Garage B-2 Plan Cellar Level, Sub-Cellar 1 Level Sub-Cellar 2 Level	October 27, 2010
Z-148	Garage B-3 Ground Level	October 27, 2010
Z-149	Garage B-3 Plan Cellar Level, Sub-Cellar 1 Level Sub-Cellar 2 Level	October 27, 2010
Z-150	Garage B-4 Ground Level	October 27, 2010
Z-151	Garage B-4 Plan Cellar Level, Sub-Cellar 1 Level	October 27, 2010

	Sub-Cellar 2 Level	
Z-152	Garage B-5 Ground Level	October 27, 2010
Z-153	Garage B-5 Plan Cellar Level, Sub-Cellar 1 Level Sub-Cellar 2 Level	October 27, 2010
Z-154	Public Access Easement Plan & Parcelization	October 27, 2010
Z-166	Riverside Center Open Space Plan	October 27, 2010
Z-167	Materials Plan	October 26, 2010
Z-168	Grading Plan	October 26, 2010
Z-169	Planting Plan	October 26, 2010
Z-170	Bench and Site Furnishings Plan	October 26, 2010
Z-171	Site Furnishings	October 26, 2010
Z-172	Lighting Plan	October 26, 2010
Z-173	Site Lighting	October 26, 2010
Z-174	Site Sections	October 26, 2010
Z-175	Site Sections	October 26, 2010
Z-176	Public Space and Access Easements Diagram	October 26, 2010
Z-177	Open Space Diagrams	October 26, 2010
Z-178	Private Space Diagram	October 26, 2010
Z-179	Public Space Signage Plan	October 26, 2010
Z-180	Parcel 1 Interim Open Space Plan	October 27, 2010
Z-181	Parcel 4 Interim Open Space Plan	October 27, 2010
Z-182	Interim Open Space on Platform	October 26, 2010

(c) **Construction of LMN Public Space and Access and Amendments to LMN Parcel Plan.**

(i) The LMN Public Space and Access shall be constructed in accordance with the LMN Parcel Plan in such sequence as Declarant shall determine, subject to the provisions of Section 2.03(b) (ii) (cc).

(ii) Notwithstanding clause (i) above, the LMN Parcel Plan may be modified with the consent of the Chair in accordance with the provisions for amendments and modifications of this Declaration pursuant to Section 6.02(b) and upon finding that such modification will: (i) result in a comparable amount of publicly accessible open space and amenity (landscaping, benches and other seating, and plant materials and trees) associated with each of the Buildings; and (ii) maintain the quality and nature of the functional relationship between the publicly accessible open space and the Buildings.

(d) **Amendment to Plans.** Modifications of the Plans shall be made in accordance with the provisions for amendments and modifications of this Declaration pursuant to Section 6.02(a) hereof, except as provided pursuant to clauses (i) and (ii) below, in which case such modification shall be deemed a minor modification pursuant to Section 6.02(b) hereof. Except as provided pursuant to clauses (i) and (ii) below, any modification of the Plans pursuant to Section 6.02 (a) hereof that DCP determines to be a major modification of any of the Special Permits shall be reviewed and considered in accordance with the Uniform Land Use Review Procedure, and any such modification that DCP determines to be a minor modification of the Special Permits shall be reviewed and considered by the City Planning Commission.

(i) Changes to Trees and Shrubs: Prior to or following substantial completion of any LMN Public Space Phase or LMN Public Access Phase, Declarant shall not materially change the location and/or the specified type of tree as set forth in the “**Wind Reduction Tree Plan**” attached hereto as **Exhibit G** except as pursuant to Section 3.02(c) hereof. Such changes shall be subject to amendment and modification of this Declaration pursuant to Section 6.02(b) only and no application to modify the Special Permits with respect to the Plans set forth therein shall be required. In no event shall this clause (i) be construed as prohibiting or preventing Declarant from undertaking routine maintenance of any tree or shrub, nor from replacing any tree or shrub which is destroyed or materially damaged though natural causes, provided that such replacement is of the same type, at least the same caliper, and planted in the same location as set forth in drawings Z-166 “Riverside Center Open Space Plan” and Z-169 “Planting Plan“ of the Plans and otherwise conforms with **Exhibit G**.

(ii) Changes to interim design or landscaping features: The Platform Interim Public Space Plan and the Interim Edge Condition Public Space Plans may be modified with the consent of the Chair in accordance with the provisions for amendments and modifications of this Declaration pursuant to Section 6.02(b) and upon finding that such modification will: (i) result in a comparable amount of publicly accessible open space and amenity (landscaping, benches and other seating, and plant materials and trees); and (ii) maintain the quality and nature of the functional relationship between the publicly accessible open space and the Buildings. No application to modify the Special Permits with respect to the Plans set forth therein shall be required in connection therewith.

(e) **No Separate Entrances or Lobbies.** Where units in a Building with market-rate and affordable housing (as the latter term is defined in Section 23-911 of the Zoning Resolution) are accessed by a single elevator core, there shall be no separate primary building entrances or lobbies for market-rate and affordable housing units.

(f) **Auto Showroom Retail Frontage.** Ground floor auto showroom use within the Development shall conform to the location and dimensions shown on drawing Z-138 “Ground Floor Auto Dealership Plan” of the Plans.

Section 2.02 **Affordable Housing and Floor Area Calculations.**

(a) **Inclusionary Housing.** The Development shall be subject to the Inclusionary Housing provisions of the Zoning Resolution, Sections 23-90 et. seq. (the “**Inclusionary Housing Regulations**”), except as modified herein pursuant to the Approvals. Sample floor area calculations reflecting the provisions set forth in this Section 2.02 are attached hereto as **Exhibit H** for illustrative purposes only.

Table 1 – INITIAL BASE FLOOR AREA

<b>Building No.</b>	<b>Initial Base Floor Area (ZSF)</b>
<b>Building 1</b>	689,049
<b>Building 2</b>	372,467 to 471,467*
<b>Building 3</b>	299,563
<b>Building 4</b>	248,913
<b>Building 5</b>	552,130
<b>Initial Total Base Floor Area</b>	2,162,122 to 2,261,122*

\* The base floor area of Building 2 (and the Initial Total Base Floor Area) shall be increased by 0.75 square feet for every square foot of Floor Area provided for the Public School pursuant to Section 2.03 of this Declaration, up to a maximum of 471,467 ZSF.

(i) **Base.** Notwithstanding the maximum Floor Area otherwise shown on the Plans and permitted under Section 2.01 (a) of this Declaration, the total Floor Area of each Building shall not exceed the “**Base Floor Area**”, which shall be equal to the lesser of: (A) the amount set forth in Table 1 (the “**Initial Base Floor Area**”) for such Building; or (B) the “**Available Base Floor Area**”, which shall be equal to the Total Base Floor Area Remaining less three-quarters of the cumulative total amount of Flex Floor Area already accounted for in other Buildings. For the purposes of the foregoing: “**Flex Floor Area**” shall mean the incremental amount of Floor Area added to a Building pursuant to paragraph (iv) below; and “**Total Base Floor Area Remaining**” shall mean the difference between (xx) the Initial Total Base Floor Area amount provided in Table 1 above, and (yy) the cumulative total amount of Initial Base Floor Area already accounted for in other Buildings.

(ii) **Adjusted Base.** If a Building contains Non-Residential Floor Area, the Base Floor Area may be increased by 1 square foot for every 4 square feet of such Non-Residential Floor Area (the “**Adjusted Base Floor Area**”). If a Building does not contain Non-Residential Floor Area, the Adjusted Base Floor Area shall be equal to the Base Floor Area.

(iii) **Bonus.** If “affordable housing” for “low income households” (as such terms are defined in Section 23-911 of the Zoning Resolution) is provided in accordance with the provisions herein in connection with a Building, the Adjusted Base Floor Area of a Building may be increased as set forth in this paragraph. The “**Maximum Bonus Floor Area**” permitted in a Building shall be equal to the difference between (A) an amount equal to 1.33333 multiplied by the Base Floor Area for such Building (hereinafter “**Maximum Building Floor Area With Bonus**”), and (B) the Adjusted Base Floor Area. For each 1 percent of the Maximum Bonus Floor Area added to the Building’s floor area, 0.2 percent of the Residential Floor Area of such Building must be provided as “low income floor area” (as such term is defined in Section 23-911 of the Zoning Resolution), as illustrated in Table 2 below. Fractions of a percent of the Maximum Bonus Floor Area shall be rounded to the nearest whole number. The total Floor Area for such Building resulting from an increase pursuant to this paragraph shall not exceed the Maximum Building Floor Area With Bonus.

Table 2 – ALLOWABLE BONUS

<b>% of Maximum Bonus FA Added</b>	<b>Low Income FA as a % of Residential FA</b>
1%	0.2%
2%	0.4%
3%	0.6%
4%	0.8%
5%	1.0%
10%	2%
20%	4%
30%	6%
40%	8%
50%	10%
60%	12%
70%	14%
80%	16%
90%	18%
100%	20%

Table 3 – MAXIMUM ALLOWABLE FLOOR AREAS

	<b>Column 1</b>	<b>Column 2</b>
Building No.	<b>Maximum Flex Floor Area (ZSF)</b>	<b>Maximum Building Floor Area w/ Maximum Flex Floor Area (ZSF)</b>
<b>Building 1</b>	128,622	1,047,354
<b>Building 2</b>	69,527	698,150
<b>Building 3</b>	55,918	455,335
<b>Building 4</b>	46,462	378,347
<b>Building 5</b>	103,064	839,237

(iv) Flex Floor Area for Buildings Containing Residential Floor Area. If a Building provides an amount of “low income floor area” equal to or greater than 20 percent of the Residential Floor Area” of such Building, the Maximum Building Floor Area With Bonus of such Building may be increased by an amount not exceeding the maximum set forth in Column 1 of Table 3 above, provided that for each 5 square feet of such residential Flex Floor Area added to the building, one square foot of “low income floor area” is provided.

(v) Flex Floor Area for Non-Residential Buildings. If a Building contains only Non-Residential Floor Area, the Adjusted Base Floor Area of such Building may be increased by an amount not exceeding the maximum set forth in Column 1 of Table 3 above.

(vi) Reductions to Maximum Floor Area of Development. If, in conjunction with any Building containing Residential Floor Area, an amount of “low income floor area” is not provided equal to at least 20 percent of the Residential Floor Area of such Building, then the maximum Floor Area for the Development, as set forth in Section 2.01(a) hereof, shall be reduced by an amount equal to the difference between the Maximum Building Floor Area With Bonus and the total Floor Area of such Building.

(vii) Maximum Total Floor Area of a Building. In no event shall the total Floor Area of a Building exceed the maximum provided for such Building in Column 2 of Table 3 herein, subject to the maximum Floor Area for the Development, as modified in paragraph (vi) herein.

(viii) Distribution. Pursuant to the Approvals, and only in connection with affordable housing provided within the Buildings, the Declarant may seek to modify the unit distribution requirements specified in Section 23-96(b) of the Zoning Resolution (the “**Distribution Requirements**”). If Declarant seeks to modify the Distribution Requirements for a Building in accordance with the foregoing, the following provisions shall apply:

(aa) Prior to submitting an application to the Buildings Department for a Building Permit for a Building, Declarant shall submit the proposed “affordable housing plan”, as such term is defined in Zoning Resolution Section 23-911 (hereinafter, the “**Affordable Housing Plan**”), for such Building to the Commissioner of the Department

of Housing Preservation and Development (“**HPD**”), with copies to the Chair of the City Planning Commission and the Chair of Community Board 7, which plan shall identify, or be accompanied by written material which identifies the rationale for and nature and extent of any proposed modification of the Distribution Requirements.

(bb) No modification of the Distribution Requirements under the Affordable Housing Plan shall be effective as part of such Affordable Housing Plan unless the HPD Commissioner shall have certified to the Chair of the City Planning Commission, with copies to Declarant and the Chair of Community Board 7, that the proposed modification of the Distribution Requirements, with any changes required by the HPD Commissioner in order to make such certification, is the minimum necessary to implement the Affordable Housing Plan successfully, including an explanation of the HPD Commissioner’s reasons therefor. Such certification may be given concurrent with HPD’s approval of the Affordable Housing Plan and, if given earlier or separately, it shall afford Community Board 7 the same opportunity to comment as provided in Section 23-961(d)(3).

(cc) In conjunction with the foregoing, the HPD Commissioner shall also certify that development pursuant to the Affordable Housing Plan will be in compliance with the requirement set forth in Section 2.01(e) hereof.

(ix) Design Requirements for Smaller Buildings. Declarant shall not apply for any New Building Permit from the Buildings Department with respect to a Building, if such Building will not provide affordable housing in connection therewith or will do so in an amount such that the Building will contain less than 90% of the Floor Area shown in Table 4 below (for the purposes of this subpart (ix) and subpart (x) of this Section, such smaller Building shall be referred to as the “**Smaller Building**”) unless the Chair shall have first certified to the Buildings Department that he or she has received:

(aa) drawings demonstrating that the Smaller Building is in accordance with the design guidelines and key architectural features provided in **Exhibit I** attached hereto ; and

(bb) a sensitivity analysis, using a method and protocol acceptable to DCP and DEP, which demonstrates to the satisfaction DEP and DCP that the Smaller Building does not have the potential to alter the conclusions in the FSEIS with respect to air quality or pedestrian wind conditions by reason of new or different impacts that cannot be avoided or mitigated in the manner disclosed in the FSEIS.

Table 4

<b>Building No.</b>	<b>“Proposed FA with Inclusionary Housing Bonus” from Drawing Z-1R of Plans (ZSF)</b>
<b>Building 1</b>	918,732
<b>Building 2</b>	628,623
<b>Building 3</b>	399,417
<b>Building 4</b>	331,884
<b>Building 5</b>	736,173

(x) No Amendment to Plans or Declaration Required for Smaller Buildings. In the event of a certification by the Chair with respect to a Smaller Building made under subpart (vii) of this Section, no amendment to the Plans or this Declaration shall be required, provided that Declarant complies with the drawings submitted for purposes of Chair review under subpart (ix) of this Section and that the Building otherwise complies in all other respects with the Approvals and the requirements of this Declaration.

Section 2.03 **Public School.**

(a) Declarant shall, subject to subclause (iii) of paragraph (b) hereof: (aa) engage in a collaborative design development process with the New York City School Construction Authority (“**SCA**”), which shall include collaboration on schematic design, design development and contract documentation; (bb) perform construction at its own expense of “School Base Building Work,” as defined under a School Design, Construction, Funding and Purchase Agreement with SCA (the “**SCA Agreement**”) intended to be entered into pursuant to a May 3, 2010 Letter of Intent executed by the SCA and accepted and agreed to by Declarant, attached to this Declaration as **Exhibit J** (the “**SCA Letter of Intent**”); (cc) perform construction at SCA expense of “Additional School Base Building Work,” as defined in the SCA Agreement; (dd) enter into a condominium regime with respect to the Public School and the remainder of Building 2, or other regime acceptable to SCA and Declarant, as a means of transferring ownership of the Public School to SCA; and (ee) transfer the Public School to SCA ((aa) to (ee) collectively, the “**Public School Obligations**”), the Public School Obligations to be performed pursuant to, in accordance with, and conditioned upon the terms and conditions of the SCA Agreement.

(b) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(i) Within three (3) months of the date of this Declaration, Declarant shall promptly commence negotiations with the SCA and thereafter diligently pursue the completion and execution of the SCA Agreement.

(ii) Not less than eighteen (18) months prior to the date Declarant anticipates filing for a New Building Permit for Building 2, Declarant shall provide written

notice to the SCA (the “**School Election Notice**”) advising the SCA of the plan to file for such New Building Permit and offering the SCA the location within the base of such Building 2 for the Public School, as shown on drawing Z-101 of the Plans (the “**Proposed School Site**”). Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 7 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

- (aa) If SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA intends to proceed with the Public School on the Proposed School Site, and has or anticipates receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement, Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the Public School into Building 2 in accordance with the SCA Agreement. SCA’s notice to Declarant of its intent to proceed with the development of the Public School shall be accompanied by a statement as to the floor area required to be set aside for use by the Public School, provided that such amount shall not exceed 132,000 square feet. Provided that the SCA has agreed to proceed with the Public School in the manner set forth in this subclause (aa), the Buildings Department shall not issue, and Declarant shall not accept a New Building Permit for Building 2, including the Proposed School Site, unless and until the SCA has approved the construction documents to be filed with the application for the New Building Permit insofar as such documents pertain to the School Base Building Work, as more particularly set forth in the SCA Agreement.
- (bb) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA does not intend to proceed with the Public School on the Proposed School Site, and in any event if the SCA fails to respond to Declarant’s notice within such thirty (30) day period, Declarant shall be permitted to construct Building 2 identified in the School Election Notice without including a Public School in Building 2, and Declarant shall have no further obligation under this Section 2.03(b). In such event Declarant shall certify to the Buildings Department, with a copy to DCP, that the SCA has failed to respond to Declarant’s notice and that Declarant is proceeding to construct Building 2 without a Public School.
- (cc) Declarant covenants to seek a New Building Permit for Building 2 as one of the first two New Building Permits issued for new buildings containing residential units.

(iii) Provided that the SCA has agreed to proceed with the Public School in the manner set forth in subclause (aa) above and in the SCA Agreement, the Buildings Department shall not issue, and Declarant shall not accept, subject to Uncontrollable Circumstances, temporary certificates of occupancy (“**TCOs**”) or permanent certificates of occupancy (“**PCOs**”) for more than 938 residential units on the Subject Property (the “**Unit**”

**Threshold**”) until such time as (I) Declarant has completed the School Base Building Work, and (II) has delivered the School Base Building Work to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement. Notwithstanding the foregoing, in the event that Declarant’s obligations under this Section 2.03 have terminated pursuant to subclause (ii)(bb) of paragraph (b) hereof, Declarant may apply for and the Buildings Department may issue TCOs and PCOs for any and all residential units in the Development without regard to this subclause (iii).

(iv) The Unit Threshold set forth in subclause (iii) may be modified with the consent of Declarant, SCA, and DCP in the event that, as demonstrated to the satisfaction of DCP in a Technical Memorandum, such modification is warranted in relation to actual school utilization rates or residential growth in the study area identified in the FSEIS.

(c) For purposes of this Section 2.03, Uncontrollable Circumstances may include, in addition to the elements set forth in the definition thereof under Article I of this Declaration, a failure or delay by SCA resulting from the following: (aa) a failure or delay in approval of a site selection for the Public School pursuant to the New York State Public Authorities Law; (bb) a failure or delay in approval of the SCA Agreement; (cc) a failure or delay in securing funds for the Public School; (dd) a failure or delay in review of design submissions in accordance with timeframes established under the SCA Agreement; and (ee) a failure or delay in change orders initiated or otherwise caused by SCA.

Section 2.04 **Representation.** Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a General Large Scale Development and related restrictions as set forth herein.

### ARTICLE III.

#### PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES

##### Section 3.01 **Project Components Related to the Environment for Construction.**

Declarant shall implement and incorporate as part of its construction of the Development as appropriate the following PCRE’s related to Construction prior to any commencement of construction of the Subject Property:

(a) **Construction Air Emissions Reduction Measures.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, 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:

1. To minimize hourly emissions of NO<sub>2</sub> to the maximum extent practicable, non-road diesel-powered vehicles and construction equipment meeting or achieving the equivalent of the United States Environmental Protection Agency (“**EPA**”) Tier 3 Non-road Diesel Engine Emission Standard shall be used in construction, and construction equipment meeting the Tier 4 standard shall be used once Tier 4-compliant equipment is widely available for use in New York City and the use of such equipment is practicable.

2. All non-road, diesel-powered construction equipment with engine power output rating of 50 horsepower or greater that will be or is anticipated to be used twenty (20) or more days over the course of the project shall utilize the best available tailpipe technology to reduce diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under either the EPA or California Air Resources Board (“CARB”) verification programs.

3. All on-site diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

4. Idling of all vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property, except for vehicles being used to operate a loading, unloading or processing device (e.g., concrete mixing trucks).

5. The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practicable use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid, battery, or solar power. Construction contracts shall require the use of electric engines where practicable. Subject to 3.01(a) (ii) below, Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use grid power rather than diesel engine power shall include, but not be limited to, cut-off saws, masonry bench saws, material hoists, table saws, welders, and water pumps.

6. Large emissions sources, such as concrete trucks and pumping operations shall be located, to the extent practicable, away from operable windows, fresh air intakes, parks, and playgrounds.

7. All ready-mix concrete delivery trucks and concrete pumping trucks shall be either retrofitted with a diesel particle filter as specified in 3.01(a)(2) above, or come equipped with an OEM emissions control package meeting 2007 or newer model year on-highway engine certification levels for particulate matter emissions of 0.01 g/bhp-hr (as per Title 40 of the Code of Federal Regulations § 86.007–11).

(ii) To facilitate the use of electrically powered equipment and minimize the use of diesel and gasoline engines, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Parcel (whichever first occurs), Declarant shall apply to Con Edison to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to DCP at the time the

application is first sent to Con Edison. Upon connection to grid power, electrically powered equipment will be used to the extent practicable.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(a), with respect to applicable work at the Subject Property.

(b) **Fugitive Dust Control Plan.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities during development of the Subject Property (the "**Fugitive Dust Control Plan**"), which Fugitive Dust Control Plan shall contain the following measures:

1. Fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils shall be controlled through water spraying.

2. Large piles of soil, rock or sediment either shall be kept wet, coated with a non-hazardous, biodegradable dust suppressant and/or covered to prevent wind erosion and fugitive dust. Longer term stockpiles shall be covered with a tarp weighted down with sand bags.

3. Concrete and rock grinding, drilling and saw cutting operations shall be wet blade or misted if significant dust is being generated. Such operations, if occurring in an enclosed space, shall utilize vacuum collection or extraction fans.

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

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

6. Truck routes and surfaces on which nonroad vehicles are operating within construction areas shall be watered as needed; or, in cases where such routes will remain in the same place for extended periods, the soil on such surfaces and roadways shall be stabilized with a biodegradable dust suppressant solution, covered with gravel, or temporarily paved to avoid the re-suspension of dust.

7. In addition to regular cleaning by the City, roads adjacent to construction areas shall also be cleaned by Declarant on a regular basis, using appropriate legal methods, to minimize fugitive dust emissions.

8. Materials and waste during demolition shall be brought to grade by hoists, cranes or chutes. If chutes are used, the bottom end of drop chutes shall be

inserted into covered trucks or bins in a sealed manner so as to ensure that dust is not released from the truck or bin.

9. A vehicular speed limit of 5 miles per hour shall be observed within construction areas.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(b) with respect to applicable work at the Subject Property.

(c) **Construction Noise Reduction Measures.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property:

1. 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 on Citywide Construction Noise Mitigation, as set forth in Chapter 28 of Title 15 of the Rules of the City of New York.

2. Declarant shall develop and implement a plan for minimization of construction noise (the "**Noise Reduction Plan**"). The Noise Reduction Plan shall contain both path control and source control measures, including the following:

(A) **Path Control Measures**

(aa) Noise barriers shall be erected around the perimeter of areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Prior to Construction Commencement of any Building, a solid fence shall be erected around the perimeter of the areas where construction activities are taking place, which shall be at least 8 feet high, and 15 feet high adjacent to residential and other sensitive locations.

(bb) Noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations to the extent practicable.

(cc) Path noise control measures such as portable noise barriers, panels, enclosures, and acoustical tents shall be employed where practicable to shield noisy equipment such as concrete vibrators, tower cranes, hoists, impact wrenches, line drills, pile rigs, tempers, and trowel machines.

(dd) Acoustical curtains shall be utilized where practicable for internal construction activities within the buildings under construction, to break the line-of-sight and provide acoustical shielding between noise sources and sensitive receptors.

(B) Source Control Measures

(aa) The noise emission levels of the construction equipment listed in table 20-13 of the FSEIS shall not exceed the levels set forth in the fifth column of that table when using the appropriate path control measure. For listed construction equipment for which no noise level has been provided in the fifth column of table 20-13, the noise emission levels shall not exceed those found in the third column of that table, as determined by manufacturer's specifications adjusted to a reference distance of 50 feet. Contractors shall be required to properly maintain construction equipment, including equipment noise mufflers.

(bb) To the extent practicable, the noise of backup alarms on construction equipment shall be minimized.

(cc) For construction activities involving the use of pile drivers, hoe-rams, jackhammers, or blasting, additional noise reduction measures chosen by Declarant from a list of options to be set forth in the Noise Reduction Plan shall be implemented where feasible.

(ii) If construction work will occur at night or on weekends, Declarant shall prepare an additional noise reduction plan (the "**Alternative Noise Reduction Plan**") in accordance with the City Noise Control Code prior to commencing such nighttime or weekend work.

(iii) Declarant shall maintain a website or implement another program to inform the affected public about the construction work schedule.

(iv) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) with respect to applicable work at the Subject Property.

(d) **Construction Soil Erosion and Sediment Reduction Measures.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for soil erosion and sediment control for all construction activities (including demolition and excavation) related to the development of the Subject Property, in conformance with the requirements of the DEC Standards and Specifications for Erosion and Sediment Control (the "**Soil Erosion and Sediment Control Plan**"), which Soil Erosion and Sediment Control Plan shall contain the following measures:

1. The wheels or treads of vehicles and equipment that could track soil from areas under construction shall be washed before leaving such areas. To reduce the use of potable water for this purpose, to the extent practicable, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations.

2. Rinse water from the wheel wash (described in this Section 3.01(d)) shall be reabsorbed into the ground or pumped into tanks holding storm water or dewatering water. The wheel wash shall not be used for concrete trucks.

3. Concrete trucks shall be rinsed into watertight dedicated bins. The captured washout water shall be left to evaporate, be treated, or be returned to the concrete manufacturer.

4. Concrete from trucks, chutes, buckets and other equipment shall be removed and collected in dedicated waste bins prior to equipment rinsing. Concrete spillage on the Subject Property shall be collected in dedicated waste bins.

5. Disturbed areas shall be stabilized for the duration of construction activity or until construction work resumes on the inactive disturbed areas. All disturbed areas of construction, including exposed ground and subgrade surfaces, storage piles of fill, dirt and other bulk materials, which are not being actively utilized for construction purposes for a period of seven (7) calendar days or more, shall be stabilized using: water as a dust suppressant; biodegradable dust stabilizer or suppressant; physical barriers or covers; or vegetative ground cover.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(d) with respect to applicable work at the Subject Property.

(e) **Construction Dewatering Plan.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan setting forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property (the "**Dewatering Plan**"), which Dewatering Plan shall:

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

2. Identify the necessary permits required from DEP and/or DEC to discharge dewatering water into the City's sewers or surface waters.

3. (1) Require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to reuse on the Subject Property or discharge into the City's sewer system or surface waters, (2) require the water in such sedimentation tanks to be tested periodically for pH, turbidity and contaminants, and (3) if unacceptable levels of turbidity or contaminants are identified, as determined by applicable DEP or DEC regulations, require treatment prior to discharge off site.

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

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(e) with respect to applicable work at the Subject Property.

(f) **Construction Pest Management Plan.**

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with Buildings Department requirements, throughout the development of the Subject Property (the "**Construction Pest Management Plan**"), which Construction Pest Management Plan shall contain the following requirements:

1. Vegetation fostering vermin shall be kept trimmed.
2. Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.
3. Standing water shall be pumped out before the water becomes septic.
4. Prior to the start of construction and as necessary during the construction period, the Declarant shall cause its contractor to bait appropriate areas of the site, using only USEPA and DEC-registered rodenticide.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(f) with respect to applicable work at the Subject Property.

(g) **Hazardous Materials Remediation and Protection Measures.** The FSEIS has identified potential hazardous materials at the Subject Property. Declarant has agreed to comply with a Remedial Action Plan (a "**RAP**") and a Construction Health and Safety Plan (a "**CHASP**") for the remediation of said hazardous materials during construction of the Development, which shall be prepared and submitted to Mayor's Office of Environmental Remediation ("OER") for its approval prior to Construction Commencement. The RAP and CHASP will provide that any necessary remediation for each Building in the Development may proceed independently of any other Building(s) and therefore it is expected that OER may issue a Notice of No Objection as set forth in Section 3.01(g)(iii)(1) below, a Notice to Proceed as set forth in Section 3.01(g)(iii)(2) below, a Notice of Satisfaction as set forth in Section 3.01(g)(iii)(3) below, and a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(4) below, on a Building-by-Building basis, irrespective of the construction sequence of the Buildings in the Development.

(i) Permits. Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Development or any Future Project (hereinafter defined), shall be submitted to or accepted from the Buildings Department by Declarant until OER has issued to the Buildings Department, with respect to the area to be disturbed, a Notice of No Objection as set forth in Section 3.01(g)(iii)(1) below, a Notice to Proceed as set forth in Section 3.01(g)(iii)(2) below, a Notice of Satisfaction as set forth in Section 3.01(g)(iii)(3) below or a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(4) below, as applicable. Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the Buildings Department at the time of filing of any application set forth in this Section 3.01(g)(i).

(ii) TCO and PCO. Declarant covenants and agrees that no application for a TCO or PCO that reflects a change in use group respecting the Subject Property for the Development or any Future Project as hereinafter defined shall be submitted to or accepted from the Buildings Department by Declarant until OER has issued to the Buildings Department, as applicable, a Notice of No Objection as set forth in Section 3.01(g)(iii)(1) below, a Notice of Satisfaction as set forth in Section 3.01(g)(iii)(3) below or a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(4) below. Declarant shall submit a copy of the Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction to the Buildings Department at the time of filing of any application set forth in this Section 3.01(g)(ii).

(iii) Notices.

1. **Notice of No Objection.** OER shall issue a Notice of No Objection for the Development or any Building within the Development, as the case may be (or any Future Project), after Declarant has completed the work set forth in the project-specific Sampling Protocol (hereinafter defined) submitted to OER, and OER has determined in writing that the results of the Sampling Protocol demonstrate that no hazardous materials remediation is required in connection with the Development (or any Future Project) or (if the remedial activities are proceeding on a building-by building basis) the portion of the Development that is the subject of the grading, excavation, foundation, alteration, building or other permit application submitted to the Buildings Department.

2. **Notice to Proceed.** OER shall issue a Notice to Proceed for the Development or any Building within the development, as the case may be, (or any Future Project) after it determines that: (A) the RAP and CHASP have been approved by OER, and (B) the permit(s) respecting the Subject Property that allow grading, excavation, foundation, alteration, building, soil disturbance or construction of the superstructure for the Development (or any Future Project) are necessary to further the implementation of the approved RAP.

3. **Notice of Satisfaction.** OER shall issue a Notice of Satisfaction for the Development or any Building within the development, as the

case may be, (or any Future Project) after (A) the project-specific RAP has been prepared for and accepted by OER and (B) OER has determined in writing that such RAP has been completed to the satisfaction of OER.

4. **Final Notice of Satisfaction.** OER shall issue a Final Notice of Satisfaction for the Development or any Building within the development, as the case may be, (or any Future Project) after (A) the project-specific RAP has been prepared and accepted by OER, (B) OER has set forth in writing that such RAP has been completed to the satisfaction of OER, and (C) all potential hazardous materials have been removed or remediated as and to the extent required by the RAP and no further hazardous remediation is required on the Subject Property as determined by OER.

(iv) Future Projects. Following the final completion of all phases of the Development, if any further development of the Subject Property which involves a change in use or soil disturbance is conducted (a “**Future Project**”), Declarant shall submit to OER for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan (a “**Sampling Protocol**”) specific to the Future Project, and test and identify any such potential hazardous materials pursuant to said Sampling Protocol. If any such hazardous materials are found, Declarant shall submit to OER for approval a RAP and CHASP specific to the Future Project based on the results of the Sampling Protocol, and upon the approval of the RAP and CHASP by OER, Declarant shall provide for the remediation of such hazardous materials in accordance with such RAP and CHASP.

(h) **Historic and Cultural Resource Protection Measures**

(i) Archaeological.

(aa) The FSEIS identified potential subsurface prehistoric remains on Parcel N of the Subject Property that were discovered through archaeological documentary studies conducted in connection with the environmental review for the Original Special Permit. Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit with respect to Parcel N of the Subject Property which permits soil disturbance, including excavating of test pits for environmental soil sampling, shall be submitted to or accepted from the Buildings Department by the Declarant until LPC has issued to the Buildings Department, as applicable, a Notice to Proceed as set forth in subparagraph (i)(bb), a Notice of No Objection as set forth in subparagraph (i)(cc), a Notice of Satisfaction as set forth in subparagraph (i)(dd) or a Final Notice of Satisfaction as set forth in subparagraph (i)(ee). Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction, as the case may be, to the Buildings Department at the time of filing of any application set forth in this Paragraph (i) (aa).

- (bb) Notice to Proceed with LPC-Approved Phase IB Field Testing and/or Mitigation – LPC shall issue a Notice to Proceed after it approves a Phase IB Field Testing Plan and Mitigation Plan. Issuance of a Notice to Proceed shall enable the Declarant to obtain a building permit solely to perform excavation or other work necessary to implement the Field Testing and Mitigation Plans. All such testing and any mitigation work shall be undertaken in consultation with the LPC. The LPC shall review and approve the scope of work in all permits prior to field testing or mitigation work commencing on the Subject Property.
- (cc) Notice of No Objection After Field Work – LPC shall issue a Notice of No Objection if Declarant has performed required LPC-approved Phase IB field testing and, as a result of such testing, the LPC determines in writing that the Subject Property does not contain potentially significant archaeological resources. Issuance of a Notice of No Objection shall be sufficient to enable Declarant to obtain a full building permit for the performance of excavation or construction on the Subject Property.
- (dd) Notice of Satisfaction – LPC shall issue a Notice of Satisfaction after the Mitigation Plan has been prepared and accepted by LPC and LPC has determined in writing that all significant identified archaeological resources have been documented and removed from the Subject Property. Issuance of a Notice of Satisfaction shall enable Declarant to obtain a building permit for excavation and construction of the Declarant’s proposed new building(s) on the Parcel N of Subject Property;
- (ee) Final Notice of Satisfaction – LPC shall issue a Final Notice of Satisfaction after the mitigation has been completed and the LPC has set forth in writing that the Mitigation Plan, including but not limited to the Final Archaeological Report and a curation plan for any archaeological resources found on the Subject Property, has been completed to the satisfaction of LPC.
- (ff) No TCO or PCO for any Building on Parcel N shall be granted by the Buildings Department or accepted by Declarant until LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection.
- (gg) The Director of Archaeology of the LPC shall issue all notices required to be issued hereunder reasonably promptly after Declarant has made written request to the LPC and has provided documentation to support each such request, and the Director or Archaeology of the LPC shall in all events endeavor to issue such written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within thirty (30) calendar days after Declarant has requested such written notice.

- (hh) Any submittals necessary under this Declaration from Declarant to LPC shall be addressed to the Director of Archaeology of LPC, or such other person as may from time to time be authorized by the Chair of the LPC to receive such submittals. As of the date of this Declaration LPC's address is:

Landmarks Preservation Commission  
1 Centre Street, 9N  
New York, NY 10007

Any notices sent to Declarant shall be sent to the address hereinabove first set forth, to the attention of General Counsel and shall be sent by personal delivery, delivery by reputable overnight carrier or by regular mail.

- (ii) **Architectural.**
- (aa) Prior to commencing demolition or construction activities within ninety (90) feet of the Consolidated Edison Power House (heard by LPC for designation as an individual landmark and appearing eligible for listing on the State/National Registers), Declarant shall develop a Construction Protection Plan ("**CPP**") in coordination with LPC to avoid any adverse physical, construction-related impacts to the Consolidated Edison Power House, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery and shall submit same to DCP.
- (bb) The Buildings Department shall not issue, and Declarant shall not accept, a Building Permit allowing work within ninety (90) feet of the Consolidated Edison Power House until DCP shall have certified to the Buildings Department Commissioner that LPC has determined in writing that the CPP is acceptable.
- (cc) All construction activities (including demolition and excavation) within 90 feet of the Consolidated Edison Power House shall be undertaken in accordance with the CPP.
- (dd) The CPP shall follow the guidelines set forth in LPC's *Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings* as appropriate, except as may be otherwise approved by LPC. The CPP shall also follow the requirements established in the guidelines set forth in Section 523 of Chapter 9 of the *CEQR Technical Manual*.
- (ee) Construction procedures included in the CPP to protect the foundations and structures of the Consolidated Edison Power House shall be developed and monitored by structural and foundation engineers experienced in working with historic structures.

(ff) The CPP shall:

1. Describe in detail the demolition, excavation and construction procedures anticipated to occur.
2. Provide for the inspection and reporting of existing conditions.
3. Establish protection procedures, including the types and locations of barriers that will be used to protect the Consolidated Edison Power House during construction activities.
4. Establish a monitoring program to measure vertical and lateral movement and vibration.
5. Establish dewatering procedures including systematic monitoring and recharging systems.
6. Establish methods and materials to be used for any repairs.
7. Establish and monitor construction methods to limit vibrations. Specifically, the CPP shall establish vibration mitigation measures to be implemented should construction activities involve the use of certain equipment within specified distances from the Consolidated Edison Power House, as specified below:

Clam Shovel Drop	15 feet
Auger Drill Rig	16 feet
Jackhammer	6 feet
Mounted Hoe Ram	70 feet
Vibratory Pile Driver	120 feet
Impact Pile Driver	73 feet

8. Authorize the structural and foundation engineers to issue 'stop work' orders to prevent damage to the Consolidated Edison Power House and establish procedures for the recommencement of work following same.

(i) **Maintenance and Protection of Traffic Plan.**

(i) Prior to Construction Commencement of any Building, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of such 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, unless DOT advises Declarant that a MPT is required.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

Section 3.02 **Project Components Related to the Environment for Design and Operation of the Building.**

Declarant shall implement and incorporate as part of its construction of the Development as appropriate the following PCRE's related to the Design and Operation of the Development as outlined below.

(a) **Con Edison West 59<sup>th</sup> Street Generating Station Combustion Turbine:**

(i) **TCOs or PCOs for Dwelling Units and Hotel Rooms in Buildings 1, 3, 4 and 5.**

1. Declarant shall not apply for or accept any TCO or PCO for any dwelling units or hotel rooms subject to the New York State Multiple Dwelling Law for Building 1, Building 3, Building 4 or Building 5 until Declarant has certified to DCP, and DCP has certified to the Buildings Department, that the existing combustion turbine (the "**CT**") at the Con Edison West 59<sup>th</sup> Street Generating Station has been converted to burn natural gas for normal operations and testing (the "**Con Edison Modifications**"), and that the CT will comply with the following operating limits (the "**CT Operating Limits**"):

(A) the CT shall be bid in to the New York State Independent System Operator ("**NYISO**") with a limitation of a maximum of four (4) consecutive hours of operation per day (the "**Four Hour Per Day Limit**"); and

(B) periodic testing of the CT by Con Edison shall be subject to the Four Hour Per Day Limit except for (x) emissions tests for particulate matter as required by the facility's Title V permit, and (y) the initial startup, tuning, testing, and commissioning of the CT after it is converted to burn natural gas.

2. Pursuant to the CT Operating Limits, the Four Hour Per Day Limit shall not apply to the CT when the following conditions occur:

(A) when an emergency black start is needed for the Con Edison West 59<sup>th</sup> Street Generating Station;

(B) when an emergency black start is needed for the Con Edison Energy Control Center;

- (C) during the summer (peak load) months, during an emergency condition or to avoid an emergency condition in the Con Edison 49<sup>th</sup> Street load pocket;
- (D) during the non-summer months, during an emergency condition or to avoid an emergency condition in the 49<sup>th</sup> Street load pocket when one major piece of equipment is off-line for maintenance and two major pieces of equipment fail;
- (E) when the NYISO or Con Edison operate in a “condition yellow” (i.e., when the system is one contingency from requiring voltage reduction or load shedding to maintain system integrity); or
- (F) when NYISO declares an emergency or when Con Edison or NYISO declares a maximum generation condition.

In the event of a condition specified in Section 3.02(a)(i)(2)(A) or (B) hereof, the CT shall be permitted to run using kerosene. In the event of a condition specified in Section 3.02(a)(i)(2)(C), (D), (E) or (F) the CT shall be permitted to run using kerosene for any period when the gas supply to the CT is interrupted.

3. In order to satisfy the requirements of Section 3.02(a)(i)(1) hereof, Declarant shall demonstrate, to the satisfaction of DCP, that: (aa) the CT Operating Limits have been accepted by NYISO and are in force and effect; (bb) the CT Operating Limits have been incorporated into the facility’s Title V permit by modification thereof approved by DEC; (cc) there is a final agreement between Con Edison and Declarant providing for implementation of the Con Edison Modifications and the CT Operating Limits and providing that Declarant may enforce the CT Operating Limits, whether or not such CT Operating Limits are included in the Title V permit (the “**Con Edison Agreement**”); and (dd) the Con Edison Modifications are operational and in effect. In the event that the CT Operating Limits are removed from the Title V permit or such permit is modified at any time in a manner inconsistent with Section 3.02(a)(i)(1) and (2) hereof, and Con Edison thereby ceases to comply with the CT Operating Limits, the City shall have the right to bring an action to compel Declarant to enforce its rights under the Con Edison Agreement with respect to Con Edison’s continued compliance with the CT Operating Limits.

(ii) Building 3 New Building Permit. Declarant shall not accept a New Building Permit for Building 3 unless: (aa) it has (1) certified to DCP, and DCP has certified to the Buildings Department, that Declarant and Con Edison have executed the Con Edison Agreement, and (2) it has provided DCP with a copy of the modified Title V permit incorporating the CT Operating Limits; and (bb) Declarant first submits to the Chair a report

describing the total utilization of the CT, excluding utilization for testing and excluding any days on which the CT runs for four (4) hours or less, during the period of January 1, 2010 through December 31, 2011 (the “**CT Reporting Period**”). If the CT is out of service during the CT Reporting Period for implementation of the Con Edison Modifications, the CT Reporting Period shall be extended for the amount of time the CT was out of service. In the event that the report shows that the rate of utilization of the CT during the CT Reporting Period is 55 hours per year or less, Declarant may proceed with construction and occupancy of Building 3, including occupancy of dwelling units or hotel rooms subject to the New York State Multiple Dwelling Law, subject to the requirements of Sections 3.02 (a)(i)(iii)(iv) and (v) hereof. In the event that the report shows that the rate of utilization of the CT during the CT Reporting Period is more than 55 hours per year, Declarant shall provide DCP with an analysis of (aa) whether utilization of the CT at a rate of more than 55 hours per year is likely to recur, and (bb) whether, using the methodology for determining significant adverse air quality impacts set forth in the FSEIS, PM2.5 emissions from the CT would have the potential to result in a significant adverse air quality impact on Building 3. In the event that, based on the analysis provided by Declarant, DCP reasonably determines that (aaa) utilization of the CT at a rate of more than 55 hours per year is likely to recur, and (bbb) there is the potential for a significant adverse air quality impact from CT PM2.5 emissions on Building 3, Declarant shall propose to DCP measures in addition to the CT Modifications to address PM2.5 emissions on Building 3. In that event, notwithstanding the provisions of Section 3.02(a)(i) to the contrary, Declarant shall not apply for or accept any TCO or PCO for dwelling units or hotel rooms subject to the New York State Multiple Dwelling Law with windows on the south façade of Building 3 with an elevation at or above 219 feet above mean sea level until the additional measures to address PM2.5 emissions have been agreed upon and implemented.

(iii) Building 2 and Non Residential and Non Hotel Portions of Buildings 1, 3, 4 and 5. Declarant may construct Building 2, and all portions of Buildings 1, 3, 4 and 5 that do not contain dwelling units or hotel rooms subject to the New York State Multiple Dwelling Law and which are below 219 feet above mean sea level, regardless of whether the Con Edison Modifications have occurred or the CT Operating Limits have been imposed. Notwithstanding the foregoing, Declarant shall not apply for or accept (aa) TCOs for Building 2, or those portions of Buildings 1, 3, 4 and 5 that do not contain dwelling units or hotel rooms subject to the New York State Multiple Dwelling Law until Declarant has (A) certified to DCP, and DCP has certified to the Buildings Department, that Declarant and Con Edison have executed the Con Edison Agreement, and (B) provided DCP with a copy of the modified Title V permit incorporating the CT Operating Limits.

(iv) Air Intakes. Air intake manifolds for the Building 3 central air conditioning system shall not be located on the south and east facades of Building 3, but may be located on the north or west façades of Building 3. There shall be no restriction on the location of the air intake manifolds for any other Building.

(v) Balconies. Dwelling units located on the south façade of Building 3 shall not have balconies.

(b) Development Noise Attenuation: Declarant shall, prior to acceptance of a New Building Permit, submit plans for DCP review pursuant to Section 3.09 of this

Declaration and to OER demonstrating compliance with the following noise attenuation requirements for all Buildings constructed on the Subject Property:

(i) The facades of each Building shall be designed to provide a composite Outdoor-Indoor Transmission Class (OITC) rating greater than or equal to the attenuation requirements listed in Table 19-10 from the FSEIS set forth below.

**Table 19-10**  
**Minimum Required Building Attenuation**

Building	Facade	Governing Noise Receptor Location	Floor(s)	Maximum L <sub>10(f)</sub> (dBA) <sup>2</sup>	Required Building Attenuation (dBA) <sup>1</sup>
1	west	11	1-4	79.3	35
			5-9	80.5	37
			10-24	79.9	35
			25-36	77.1	33
			37	75.3	31
	north	11	1-4	76.0	31
			5-14	80.9	37
			15-19	79.4	35
			20-36	77.9	33
	east	10	37	75.5	31
all			66.4	31 <sup>4</sup>	
all			76.0	35 <sup>4</sup>	
2	east	5	all	69.0	N/A <sup>2</sup>
	north	2	all	68.2	N/A <sup>2</sup>
	south	5	all	74.5 <sup>3</sup>	31
	west	10	all	74.5 <sup>3</sup>	35 <sup>4</sup>
3	west	11	1-4	81.9	38
			5-9	82.3	39
			10-14	80.9	37
			15-24	79.5	35
			25-34	77.1	33
	north	11	35-45	75.3	31
			1-14	77.7	33
			15-24	74.8	31
	south	9	25-45	72.8	28
			1-24	75.2	31
east	9	25-39	73.0	28	
all	9	40-45	69.8	N/A <sup>2</sup>	
4	east	9	all	65.4	N/A <sup>2</sup>
	south	9	all	68.0	N/A <sup>2</sup>
	west	9	1-4	69.5	N/A <sup>2</sup>
			5-37	72.8	28
	north	9	1-4	66.7	N/A <sup>2</sup>
5-37	71.5	28			
5	east	5	1-14	72.2	28
			15-40	68.9	N/A <sup>2</sup>
	south	9	1-4	76.7	33
			5-14	75.1	31
			15-29	72.3	28
			30-40	69.8	N/A <sup>2</sup>
			all	68.0	35 <sup>4</sup>
north	5	all	63.7	N/A <sup>2</sup>	

**Notes:**  
<sup>1</sup> Required attenuation values shown are for residential and school uses. Commercial uses would require 5 dBA less attenuation.  
<sup>2</sup> These facades/floors having incident L<sub>10</sub> values of 70 dBA or less would not require specific window/wall attenuation measures.  
<sup>3</sup> These L<sub>10</sub> values are based on predicted playground noise levels rather than traffic noise levels.  
<sup>4</sup> At these locations, required attenuation values were increased beyond those based on operational noise concerns to account for noise that would be generated by construction of adjacent buildings on the project site (see Chapter 20, "Construction").

(ii) Following issuance of a TCO or PCO for a Building, Declarant shall not eliminate or modify a noise attenuation measure unless DCP has approved such modification or elimination in accordance with this Section 3.02(b). The Buildings Department shall not issue, and Declarant shall not accept, a Demolition Permit or alteration permit from the Buildings Department which would result in elimination or modification of any such noise attenuation measure. In no event shall this Section 3.02(b) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Noise attenuation system, provided same is consistent with the terms of this Section 3.02(b).

(c) **Wind Conditions.**

(i) If Declarant seeks to make any material changes to the locations and/or specified types of trees in the Wind Reduction Tree Plan, then prior to requesting any modification of the Wind Reduction Tree Plan pursuant to Section 6.02(b), Declarant shall cause a qualified consultant expert and experienced in the field of wind conditions analysis (“**Wind Conditions Consultant**”) to conduct a preliminary sensitivity analysis, using a method and protocol acceptable to DCP, to assess the effect of such changes on the pedestrian-level wind conditions (“**Preliminary Sensitivity Analysis**”), in order to determine whether the proposed modified Wind Reduction Tree Plan has the potential to result in a unacceptable pedestrian wind conditions (“**Unacceptable Wind Conditions**”).

(ii) In the event Declarant demonstrates to the satisfaction of the Chair, based on the Preliminary Sensitivity Analysis, that the proposed modified Wind Reduction Tree Plan would not result in Unacceptable Wind Conditions, then no further wind testing shall be required and the proposed modified Wind Reduction Tree Plan may be included in connection with an application to amend this Declaration in accordance with Section 6.02(b) hereof, subject to review and approval by the Chair. No application to modify the Special Permits and Plans shall be required in connection therewith.

(iii) In the event that the Preliminary Sensitivity Analysis indicates that the proposed modified Wind Reduction Tree Plan has the potential to result in Unacceptable Wind Conditions, then:

- (aa) Declarant shall have the Wind Conditions Consultant undertake wind tunnel testing to assess the effect of the proposed modified Wind Reduction Tree Plan on pedestrian-level wind conditions, in accordance with a methodology and protocol acceptable to DCP, in order to measure whether and to what extent any Unacceptable Wind Conditions may exist under such plan (the “**Wind Conditions Report**”). In the event that computer modeling software or other technology becomes available, which is demonstrated to the satisfaction of DCP to have sufficient accuracy, then such modeling or technology may be utilized in lieu of wind tunnel testing;
- (bb) In the event the Wind Conditions Report indicates that implementation of the proposed modified Wind Reduction Tree Plan has the potential to result in Unacceptable Wind Conditions, Declarant shall, acting in

consultation with DCP, incorporate revised practicable tree and shrub planting features into the proposed modified Wind Reduction Tree Plan which are: (1) determined through such wind tunnel testing (or alternative testing method approved by DCP) to be effective in reducing or eliminating such exceedances; and (2) compatible with the urban design considerations of the LMN Public Space and Access, including the goals of maintaining view corridors, maintaining pedestrian circulation and access, and not impeding or blocking circulation and access for emergency service vehicles (the “**Wind-Reduction Design Modifications**”).

(iv) In the event that the Wind Conditions Report indicates that implementation of the proposed modified Wind Reduction Tree Plan has the potential to result in Unacceptable Wind Conditions but does not identify Wind-Reduction Design Modifications, then such report shall describe the reasons that: (1) no practicable Wind-Reduction Design Modifications are available that would be effective in materially reducing or eliminating the potential for the Unacceptable Wind Conditions; or (2) potential Wind-Reduction Design Modifications are not compatible with the urban design considerations of the LMN Public Space and Access. In that event, DCP shall, from the date of receipt, have thirty (30) days to review the Wind Conditions Report and provide Declarant with comments regarding conclusions (1) or (2) above, as applicable. Declarant shall thereafter cause the Wind Conditions Consultant to submit responses to such comments, including further consideration of whether practicable Wind-Reduction Design Modifications are available which would be effective in materially reducing or eliminating the potential for Unacceptable Wind Conditions and are compatible with the urban design considerations of the LMN Public Space and Access. DCP shall review any Wind-Reduction Design Modifications identified in such responses to determine whether they may be incorporated into a modified landscaping plan in connection with an application to amend this Declaration in accordance with Section 6.02(b) hereof, subject to review and approval by the Chair. No application to modify the Special Permits with respect to the Plans set forth therein shall be required in connection therewith.

Section 3.03 **Project Components Related to the Environment Relating to Sustainability**. Declarant shall implement and incorporate as part of its design and operation of any Building, the following PCREs relating to sustainability:

(a) **Construction Materials**. Declarant shall use reasonable efforts to use locally-purchased materials and recycled materials, including concrete made with slag or fly ash, to the extent practicable for construction on the Subject Property. For purposes of this Section 3.03(a), “locally” shall mean within 500 miles of the Subject Property. As an alternative to slag or fly ash, ultra low-carbon cement or cement replacements (such as cement made from recycled materials or using a salt water and carbon dioxide process) may be considered. Following Construction Commencement, Declarant shall provide DCP with an annual report, due January 31<sup>st</sup> of each year during which Declarant is performing construction on any Building, listing the amounts of locally-purchased and recycled materials utilized in construction during the prior year and proposed measures to increase such amounts in future construction, if any.

(b) **Energy Efficiency**.

(i) Subject to Section 3.03(b)(vi) hereof, Declarant shall incorporate certain energy efficiency measures, with respect to fuel consumption and energy use (“**EEMs**”) in each Building, that are designed to result in at least 10% less energy consumption in buildings (the “**Minimum Energy Savings**”) than the standard set forth in the Energy Conservation Construction Code of New York State, in effect as of the date that is ninety (90) days prior to Declarant’s submission of an application to the Buildings Department for a New Building Permit for such Building (the “**Effective Energy Code**”). EEMs may include, but shall not be limited to building design, high-performance glazing, increased insulation, high efficiency lighting (occupancy sensors), higher efficiency HVAC equipment, variable frequency drives for pumps and fans, premium efficiency motors, improved temperature controls, the use of Energy Star appliances, and except as set forth herein, operable windows to all residential living spaces and allowance to all residents of full control over their fresh air, heating and cooling.

(ii) Declarant shall cause to be prepared by a qualified building energy consultant (the “**BEC**”), a report identifying the EEMs for a Building that are designed to result in the Minimum Energy Savings (the “**Energy Report**”). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve the Minimum Energy Savings. Nothing herein shall be deemed to preclude Declarant from achieving a greater amount of energy savings.

(iii) No later than ninety (90) days prior to submitting an application for a New Building Permit for a Building to the Buildings Department, Declarant shall cause the BEC to submit copies of a draft Energy Report to DCP, which shall, from the date of receipt, have thirty (30) days to review the draft Energy Report, based on consultation with the Energy Division of EDC, and to provide Declarant with written comments detailing any issues regarding the sufficiency of the proposed EEMs to achieve the Minimum Energy Savings. Declarant shall cause the BEC to submit to DCP a final Energy Report, which shall include responses to such comments. The final Energy Report shall be accompanied by a written certification of the BEC stating that, in its opinion, the EEMs described in the final Energy Report are sufficient to achieve the Minimum Energy Savings. The Buildings Department shall not issue, and Declarant shall not accept, any New Building Permit for a Building until DCP shall have certified in writing to the Commissioner of the Buildings Department that a final Energy Report for such Building has been submitted in accordance with the procedures of this Section 3.03(a)(iii).

(iv) Commissioning. Declarant shall retain a commissioning agent (the “**Commissioning Agent**”), independent of the construction contractor for any portion of the Development, to lead, review and oversee the completion of commissioning activities. At least 90 days prior to accepting a TCO for each Building, Declarant shall have the commissioning agent submit for review by DCP, based on consultations with the Energy Division of EDC or its successor, a plan for commissioning of major building energy systems, which shall specify measures to verify that the Building’s major energy-related systems are installed, calibrated and perform according to design (the “**Commissioning Plan**”).

(aa) DCP shall provide written comments detailing the sufficiency of the Commissioning Plan within thirty (30) days after receipt thereof. If DCP provides any recommendations for revisions to the Commissioning Plan, then Declarant shall have the Commissioning Agent (i) submit a revised Commissioning Plan to DCP incorporating any revisions to the plan,

and/or (ii) provide a written explanation to DCP as to why any recommendation has not been incorporated into the Commissioning Plan. In any event, however, the Commissioning Plan must verify that major building energy systems are installed, calibrated and perform according to design.

- (bb) No less than sixty (60) days following issuance of a TCO for each Building, the Declarant shall have the Commissioning Agent submit a report to DCP (i) certifying that commissioning has been performed in accordance with the Commissioning Plan; and (ii) describing any problems that were identified and corrective actions that were implemented.

(v) Measurement and Verification. At least 90 days prior to accepting a TCO for each Building, Declarant shall have a BEC submit for review by DCP, based on consultations with the Energy division of EDC, a plan to measure and verify the energy performance of the Building and its energy systems (not including any equipment or systems installed in individual rental, condominium or cooperative units) (the “**Measurement and Verification Plan**”). Such Measurement and Verification Plan shall (i) describe the expected performance of the Building and its energy systems using energy simulation or engineering analysis; (ii) specify metering equipment necessary to measure energy use; (iii) describe a process to evaluate performance, comparing predicted performance to actual performance, during at least one year of post-construction occupancy; and (iv) describe a process to identify and repair of any component or system, which is not performing according to design.

- (aa) DCP shall provide written comments detailing the sufficiency of the Measurement and Verification Plan within thirty (30) days after receipt thereof. If DCP provides any recommendations for revisions to the Measurement and Verification Plan, then Declarant shall have the BEC (i) submit a revised Measurement and Verification Plan to DCP, incorporating any revisions to such plan, and/or (ii), provide a written explanation to DCP as to why any recommendation has not been incorporated into the Measurement and Verification Plan.

- (bb) No more than two (2) years following occupancy of each Building, Declarant shall have the BEC submit a report to DCP (i) certifying that measurement and verification has been performed in accordance with the Measurement and Verification Plan; and (ii) describing any problems that were identified and corrective actions that were implemented.

(vi) In the event that the Effective Energy Code is more stringent than the Energy Conservation Construction Code of New York State in effect on the Effective Date (“**ECCCNYS 2007**”), and Declarant determines both that: (aa) incorporating particular EEMs necessary to achieve the Minimum Energy Savings would result in a Material Increase in Costs (defined below) of construction and operation of a Building, in and above the costs that would have been associated with achieving the Minimum Energy Savings from ECCCNYS 2007 (the

**“Materially Increased Cost Determination”**); and (bb) there are no alternative EEMs that, if implemented, could achieve the Minimum Energy Savings without resulting in a Material Increase in Costs of construction of operation of a Building, in and above the costs that would have been associated with achieving the Minimum Energy Savings from ECCCNY 2007 (a **“No Feasible Alternative Determination”**); then Declarant shall so notify DCP in the Energy Report submitted pursuant to Section 3.03(b)(ii). In such event:

- (xx) the draft Energy Report submitted pursuant to Section 3.03(b)(ii) shall (1) describe EEMs that would achieve the Minimum Energy Saving from the Effective Energy Code; (2) identify any EEM that would not be incorporated into the Building due to a Material Increase in Costs, (3) provide the basis for the Materially Increased Cost Determination and the No Feasible Alternative Determination; (4) identify all EEMs that are proposed to be incorporated into the Building; (5) provide the percentage reduction in energy consumption from the Effective Energy Code that will be achieved by incorporating such EEMs (**“Reduced Energy Savings”**); and (6) confirm that, in any event, incorporation of the proposed EEMs will result in at least 10% less energy consumption than would be achieved under ECCCNY 2007. For the purposes of this Section 3.03(b)(vi), a “Material Increase in Costs” shall refer to, for any EEM, *incremental* costs above those that would be required to achieve the Minimum Energy Savings under ECCCNY 2007, which Declarant has reasonably demonstrated will not be recovered within five (5) years from the first date of occupancy subsequent to receiving a TCO; and
- (yy) Declarant shall respond to any comments by DCP on the sufficiency of the reduced scope of EEMs, in accordance with Section 3.03(b)(iii) hereof. If it is found that the Materially Increased Cost Determination and the No Feasible Alternative Determination have sound and reasonable bases, then Declarant shall design and construct the Building with the EEMs that have been identified to achieve the Reduced Energy Savings.

(vii) Steam supplied by Con Edison shall be used to provide heating and domestic hot water to Buildings 1, 2, 3 and 4 and to provide heating for Building 5. Domestic hot water for Building 5 may be provided, in lieu of steam, by a natural gas-fired boiler with a stack located on the roof of Building 5.

(c) **Water Conservation Measures.**

(i) In all residential units, Declarant shall install appliances, including, without limitation, dishwashers and clothes washers, which at a minimum meet EnergyStar standards for water conservation.

(ii) Declarant shall install water-conserving toilets and faucets in all Buildings.

(iii) Prior to accepting a TCO for a Building, Declarant shall certify to DCP that it has implemented the provisions of clauses (i) and (ii) of this Section 3.03(b), and if same have not been implemented, the reasons for such failure.

(d) **Electric Vehicle Battery-Charging Station.**

(i) If the Subject Property contains five (5) separate parking garages, then Declarant shall install a minimum of one battery-charging station within each of the parking garages, and if the Subject Property contains a single parking garage, then Declarant shall install a minimum of five (5) battery-charging stations within this parking garage, for use by residents and occupants of the Subject Property who own, lease or otherwise use electric-powered vehicles. Declarant shall also install additional battery-charging stations within the parking garage(s) in accordance with and subject to the provisions of this Section 3.03(d). In determining the number of battery-charging stations to be installed in the parking garage(s), Declarant shall evaluate trends at the time of the construction of the parking garage(s) and anticipated future trends relating to use of electric-powered vehicles, practices regarding the installation of battery-charging stations in residential and commercial buildings, and any relevant technology, design or engineering considerations.

(ii) Not less than sixty (60) days prior to accepting a TCO or PCO for all or any portion of the parking garage(s) allowing for parking spaces for more than 100 vehicles, the Declarant shall certify to DCP that the provisions of clause (i) have been implemented by providing a schedule for the installation of the number of battery-charging stations to be installed in the parking garage(s) pursuant to clause (i) as TCOs or PCOs are accepted. If the Subject Property contains a single parking garage, such schedule shall provide, at a minimum, for installation of a number of battery-charging stations that is equal to the number of garage entrances that will be open and useable in connection with the portion of the garage for which such TCO or PCO is sought.

(iii) Notwithstanding the provision of clauses (i) and (ii), Declarant shall not be required to install battery-charging stations in the parking garage(s) if Declarant determines, with the concurrence of the Chair, that battery-charging stations are not likely to be utilized on a frequent basis by residents or occupants of the Buildings under existing or reasonably foreseeable future market conditions; or that there are technology, design or engineering considerations which make installation of a battery-charging station in the parking garage(s) infeasible or cost-prohibitive.

Section 3.04 **Environmental Mitigation.** Declarant shall, in accordance with the FSEIS for the Development, the Notice of Completion of which is dated October 15, 2010, undertake the mitigation measures set forth therein (the "**Mitigation Work**"), as follows:

(a) **Traffic/Pedestrians.**

Chapter 22 of the FSEIS identifies significant traffic and pedestrian impacts and mitigation measures. As part of the traffic and pedestrian mitigation, Declarant has committed to conduct, at Declarant's own expense, two traffic and pedestrian monitoring programs (the interim year monitoring program, and the completion year monitoring program, each a "**TMP**")

in order to: (aa) determine when and to what extent the FSEIS-identified traffic and pedestrian mitigation measures (collectively, the "**Transportation Mitigation Measures**") will be needed and implemented as the Buildings are constructed and occupied; (bb) determine the need for any adjustments to the FSEIS-identified traffic and pedestrian mitigation measures based on current conditions at the time of the TMP ("**Adjustments**"), provided that any such Adjustments shall be commensurate with the intended effects of the Transportation Mitigation Measures and shall be the most cost-effective measures available reasonably to achieve such intended effects, and provided further that the TMPs are intended to be supplemental to and not in duplication or replacement of the FSEIS; and (cc) assess, additionally, in connection with the completion year TMP only, the need for vehicular and traffic safety measures on West 59<sup>th</sup> and West 61<sup>st</sup> Streets between Riverside Boulevard and West End Avenue based on actual operations, and to implement such practicable measures as are necessary to address unsafe conditions identified as a result of the completion year TMP (the "**Operational Safety Measures**").

(i) **Interim Year TMP.** Declarant shall not apply for and shall not accept a TCO for Building 2 or Building 5, whichever is the latter to be built, until (A) Declarant has, no later than 180 days prior to seeking such TCO from the Buildings Department, submitted to DCP and DOT for DOT's approval, in consultation with DCP, a scope of work for the interim year TMP, (B) such scope of work has been approved in writing by DOT, and (C) the Chair has certified to the Buildings Department that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the interim year TMP, plus the estimated costs of the improvements associated with the Transportation Mitigation Measures. DOT shall make reasonable efforts to approve the scope of work for the interim year TMP within 90 days of receipt of such scope of work. Declarant shall notify DOT upon the completion and occupancy of either Building 2 or Building 5, whichever is the latter to be built, but before commencing the interim year TMP and, on a date or at another appropriate milestone specified by DOT, Declarant shall proceed with the interim year TMP. The findings of the interim year TMP will be used by DOT as the basis for directing implementation of some or all of the Transportation Mitigation Measures and/or Adjustments.

(ii) **Interim Year Transportation Mitigation Measures.** Upon conclusion of the interim year TMP, Declarant shall send written notice to DOT, along with a copy of the interim year TMP reports, requesting a determination as to which Transportation Mitigation Measures and/or Adjustments DOT finds necessary according to the results of such TMP. (To the extent that DOT deems unnecessary one or more specific Transportation Mitigation Measures, Declarant shall have no further obligation with respect to such specific measure(s) until conclusion of the completion year TMP as described hereafter, although Declarant may have continuing obligations for one or more related Adjustments.) Declarant shall either pay DOT/the City for the ordinary and customary costs, if any, of improvements associated with the needed Transportation Mitigation Measures and/or Adjustments (including but not limited to the costs of the design and construction of capital improvements or relocation thereof) or, if so directed by DOT, shall in good order implement such measures itself under DOT's direction and in compliance with DOT requirements for implementation. Declarant shall submit all of the required drawings/designs as per AASHTO and DOT specifications to DOT for its

review and approval and to other City agencies, as appropriate. Any and all signal work shall be performed by an electrical contractor approved by DOT.

(iii) Completion Year TMP. Declarant shall not apply for and shall not accept a TCO or PCO for the fifth new Building within the Development until (A) Declarant has, no later than 180 days prior to seeking such TCO from the Buildings Department, submitted to DCP and DOT for DOT's approval, in consultation with DCP, a scope of work for the completion year TMP, (B) such scope of work has been approved by DOT in writing, and (C) the Chair has certified to the Buildings Department that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the completion year TMP, plus the estimated costs of implementing the Transportation Mitigation Measures and/or Adjustments that have not already been implemented. DOT shall make reasonable efforts to approve the scope of work for the completion year TMP within 90 days of receipt of such scope of work. Declarant shall notify DOT upon the completion of the fifth new Building within the Development but before commencing the completion year TMP and, on a date or at another appropriate milestone specified by DOT, Declarant shall proceed with the completion year TMP. The findings of the completion year TMP will be used by DOT as the basis for directing implementation of some or all of the remaining Transportation Mitigation Measures and/or Adjustments.

(iv) Completion Year Mitigation and Operational Safety Measures. Upon conclusion of the completion year TMP, Declarant shall send written notice to DOT, along with a copy of the completion year TMP reports, requesting a determination as to which Transportation Mitigation Measures and/or Adjustments DOT finds necessary according to the results of such TMP. (To the extent that DOT deems unnecessary one or more specific FSEIS-identified mitigation measures, Declarant shall have no further obligation with respect to such specific measure(s) under this Declaration, although Declarant may have continuing obligations for one or more related Adjustments.) To the extent DOT finds necessary according to the results of such TMP, Declarant shall also propose Operational Safety Measures which shall be subject to DOT approval. Declarant shall either pay DOT/the City for the ordinary and customary costs, if any, of improvements associated with the needed Transportation Mitigation Measures and/or Adjustments and/or Operational Safety Measures, if any (including but not limited to the costs of the design and construction of capital improvements or relocation thereof) or, if so directed by DOT, shall in good order implement such measures itself under DOT's direction and in compliance with DOT requirements for implementation. Declarant shall submit all of the required drawings/designs as per AASHTO and DOT specifications to DOT for its review and approval and to other City agencies, as appropriate. Any and all signal work shall be performed by an electrical contractor approved by DOT.

(b) **Child Care**

(i) Within 180 days following the issuance of a Building Permit for a Building which would, together with all Buildings on the Project Site which have previously received a Building Permit, cause the total number of Affordable Housing Units on the Project Site to exceed 191 Affordable Housing Units, Declarant shall notify the New York City

Administration for Children’s Services (“**ACS**”) at its Division of Child Care and Head Start and request a day-care needs assessment (the “**Assessment Request**”) to determine if development of the Subject Property, both existing and anticipated, would have the potential to create a need for additional day care capacity within the study area boundary identified in Chapter 4, Figure 4-3 of the FSEIS attached hereto as **Exhibit L** (the “**Study Area**”). In the event that ACS determines within ninety (90) days of the Assessment Request that such development would result in a need for additional day care capacity within the Study Area and that ACS is prepared to expand day care capacity within the Study Area but has no funding available for such purpose, Declarant shall in good faith offer assistance to expand existing ACS capacity within the Study Area so as to accommodate forty-four (44) additional child care slots (“**Capacity Expansion Offer**”). ACS shall notify Declarant in writing, within sixty (60) days of receipt of Declarant’s Capacity Expansion Offer, whether the Capacity Expansion Offer is accepted or declined. If such existing ACS facilities (the “**Off-Site ACS Facilities**”) cannot reasonably accommodate forty-four (44) additional child care slots or ACS declines the Capacity Expansion Offer, then Declarant shall offer ACS up to 10,000 square feet, or such other lesser amount acceptable to ACS, of space suitable for use as a child care center and complying with the applicable provisions of Chapter 47 of the New York City Health Code (including either a facility to be operated under contract with ACS or by a day care provider identified by ACS that accepts ACS vouchers), in any Building on the Project Site or at another existing location within the Study Area, at a rate affordable to ACS providers (currently \$10 per square foot) (the “**Child Care Space Offer**”). ACS shall notify Declarant in writing, within ninety (90) days of receipt of Declarant’s offer, whether the Child Care Space Offer is accepted or declined, either for some or all of the space acceptable to ACS, subject to all City requirements governing the leasing of property.

(ii) The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO for any residential units in the Building referred to in Section 3.04(b)(i) until: (A) Declarant has made an Assessment Request, (B) DCP has notified the Buildings Department that Declarant has complied with the provisions of this Section 3.04(b), and (C) ACS has either: (1) determined that no additional day care capacity is needed within the Study Area or that it is not prepared to expand day care capacity within the Study Area, either pursuant to this Declaration or independently hereof; (2) determined that there is a need for additional day care capacity within the Study Area and: (aa) further determined that the Off-Site ACS Facilities can accommodate forty-four (44) additional child care slots and that funding is available for such purpose; (bb) further determined that the Off-Site ACS Facilities can accommodate forty-four (44) additional child care slots but that there is no funding available for such purpose and has accepted Declarant’s Capacity Expansion Offer; (cc) further determined that the Off-Site ACS Facilities cannot reasonably accommodate forty-four (44) additional child care slots or declined Declarant’s Capacity Expansion Offer and accepted a Child Care Space Offer; or (dd) declined a Child Care Space Offer made in accordance with this Declaration; or (3) failed to respond to an Assessment Request, a Capacity Expansion Offer or a Child Care Space Offer made pursuant to Section 3.04(b)(i) within the time periods set forth therein. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO for any residential units with respect to such Building.

(iii) Declarant shall have no further obligation or further responsibilities under this Section 3.04(b) in the event that ACS notifies the Chair that: (A) ACS has determined that no additional day care capacity is needed within the Study Area or that

it is not prepared to expand day care capacity within the Study area, either pursuant to this Declaration or independently hereof; (B) ACS has determined that there is a need for additional day care capacity within the Study Area and: (aa) has further determined that the Off-Site ACS Facilities can accommodate forty-four additional child care slots and that funding is available for such purpose: ( bb) has accepted a Capacity Expansion Offer or Child Care Space Offer; or (cc) has declined both a Capacity Expansion Offer and a Child Care Space Offer. Declarant shall also have no further obligation or further responsibilities under this Section 3.04(b) in the event that it demonstrates to the satisfaction of the Chair that ACS has failed to respond to the Assessment Request, Capacity Expansion Offer or Child Care Space Offer within the time periods set forth in Section 3.04(b)(i).

(c) **Construction: Off-Site Noise Control Measures.** If the Subject Property is developed using the podium approach as discussed in the FSEIS, then prior to Construction Commencement, Declarant shall demonstrate by means of appropriate documentation satisfactory to DCP that the following measures have been implemented at the sites indicated and at the specific locations where the FSEIS identified significant adverse construction noise impacts, to maintain interior  $L_{10(1)}$  noise levels of 45 dBA: offer to provide window air conditioning units where none are currently provided at the fifth and sixth (top) floors of the west façade and the top floor of the south façade of 249 West 61st Street (the “Amsterdam Houses,” identified as noise receptor B2 in the FSEIS).

(d) **Active Open Space.**

Declarant shall construct a children’s play area or “tot lot” of approximately 3,033 square feet in the vicinity of Building 4, as shown on the LMN Public Space and Access Plan and the LMN Parcel Plan.

Section 3.05 **Inconsistencies with the FSEIS.**

If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FSEIS as a PCRE or Mitigation Measure to be implemented by Declarant, such PCRE or Mitigation Measure shall be deemed incorporated in this Declaration by reference. If there is any inconsistency between a PCRE or Mitigation Measure as set forth in the FSEIS and as incorporated in this Declaration, the more restrictive provision shall apply.

Section 3.06 **Innovation; Alternatives; Modifications Based on Further Assessments.**

(a) **Innovation and Alternatives.** In complying with Sections 3.01 through 3.04 of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Development which Declarant demonstrates to the satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Declaration.

(b) **Modifications Based on Further Assessments.** In the event that Declarant believes, based on changed conditions, that a PCRE or Mitigation Measure required

under Sections 3.01 through 3.04 should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified, Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination, provided that Declarant records a notice of such change against the Subject Property in the office of the City Register.

(c) **Process for Innovations, Alternatives and Modifications Pursuant to Section 3.06.** Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to this Section 3.06 hereof (the “**Section 3.06 Request**”), Declarant shall meet with DCP (and at DCP’s option, the Monitor) to respond to any questions or comments on such request and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 3.06 Request.

Section 3.07 **Appointment and Role of Independent Monitor.**

(a) Declarant shall, with the consent of DCP, retain a third party (the “**Monitor**”) reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under Sections 3.01, 3.02, 3.03(a), and 3.04(c) of this Declaration (the “**Construction Monitoring Measures**” or “**CMMs**”). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. In the event that the Declarant that is a signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more Parcels within the Subject Property (other than transfers of condominium units), then such third party shall be entitled with respect to such Parcel so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP and Declarant, to appoint a separate Monitor for such Parcel and shall, for the purposes of Article 3 be considered a Declarant. Accordingly there may exist more than one Monitor with respect to multiple construction activities proceeding simultaneously on the Subject Property, pursuant to separate Monitor Agreements (hereafter defined).

(b) The “Scope of Services” described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the “**Monitor Agreement**”) shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor’s responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for

unsatisfactory performance of its responsibilities under the Monitor Agreement; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within forty-five (45) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property with respect to an identified stage(s) of development on the Subject Property including, with respect to the Buildings, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.07. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

(c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs 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; and (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Monitor shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to the applicable portion of the Subject Property either on or outside the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any of the Buildings and LMN Public Space then located on the Subject Property; and (r) conducted in a manner that will minimize any interference with the Development. The Monitor Agreement shall provide that Declarant shall have the right to

require Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities.

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

(e) Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 3.07(b)) in accordance with the terms of the Monitoring Agreement.

(f) If DCP determines, based on information provided by the Monitor and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a CMM, DCP may thereupon give Declarant written notice of such alleged violation (each, a "**CMM Default Notice**"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 8.03. Notwithstanding any provisions to the contrary contained in Section 7.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within ten (10) business days; (ii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice that a cure period greater than ten (10) business days would not be harmful to the environment or that the required cure cannot be accomplished within ten (10) business days (such longer cure period, a "**Proposed Cure Period**"). If DCP accepts within three (3) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the "**New Cure Period**"), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the ten (10) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall,

promptly at DCP's request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

Section 3.08 **Uncontrollable Circumstances Involving a PCRE or Mitigation Measure.** Notwithstanding any provision of Section 7.06 to the contrary, where the Obligation as to which an Uncontrollable Circumstance applies is a PCRE or Mitigation Measure set forth in this Article III of the Declaration, Declarant may not be excused from performing such PCRE or Mitigation Measure that is affected by Uncontrollable Circumstances unless and until the Chair, based on consultation with the Monitor designated under Section 3.07 of this Declaration, has made a determination in his or her reasonable discretion that not implementing the PCRE or Mitigation Measure during the period of Uncontrollable Circumstances, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FSEIS.

Section 3.09 **DCP Review.**

(a) Not less than ninety (90) days prior to the sooner to occur of (i) the date Declarant anticipates to be the date of Construction Commencement, and (b) the date Declarant anticipates obtaining any Building Permit from the Buildings Department, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, 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 DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the implementation of a PCRE or Mitigation Measure set forth in this Article III, shall be accepted as compliance with the relevant PCRE or Mitigation Measure.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Monitor) 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 DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and any 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 3.09 until DCP has certified to Declarant and the Buildings Department that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to Declarant within thirty (30) days of receipt of the Permit Notice, (y) meet with Declarant within forty-five (45) days of receipt of the Permit Notice or (z) respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under 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 Building on the Subject Property, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to obtain such TCO or PCO (each such notice, a "**CO Notice**"). Within twenty (20) days of delivery of any CO Notice, DCP shall have the right to inspect the Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigation Measures required to be incorporated into the Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to the Buildings Department, within five (5) days following any such inspection (x) advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and (y) specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be

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

## ARTICLE IV.

### LMN PUBLIC SPACE AND ACCESS EASEMENTS

#### Section 4.01 Construction of the LMN Public Access.

(a) Declarant agrees that (i) an eight-foot wide portion of the Subject Property running parallel to and abutting the northern side of West 59<sup>th</sup> Street, (ii) a two-foot wide portion of the Subject Property running parallel to and abutting the southern side of West 61<sup>st</sup> Street, and (iii) a two-foot wide portion of the Subject Property running parallel to and abutting the eastern side of Riverside Boulevard, as shown on the LMN Public Space and Access Plan, shall be improved and constructed in accordance with NYCDOT standards and specifications, for the purpose of providing public pedestrian access thereover (together, the “Perimeter Sidewalk Enlargements”).

(b) Declarant agrees that (i) the unmapped portion of West 60<sup>th</sup> Street located on the Subject Property, (ii) the unmapped portion of Freedom Place South extending from the northern boundary of the Subject Property to the northern boundary of West 60<sup>th</sup> Street, and (iii) the unmapped portion of Freedom Place South extending from the southern boundary of West 60<sup>th</sup> Street to the southern boundary of the Subject Property, as shown on the LMN Public Space and Access Plan, shall be improved and constructed in accordance with NYCDOT standards and specifications, for the purpose of providing emergency vehicle access and general vehicular ingress and egress (collectively, the “LMN Streets”, and together with the Perimeter Sidewalk Enlargements, referred to as the “LMN Public Access”).

(c) Declarant covenants to construct the LMN Public Access substantially in accordance with the LMN Public Space Landscaping Plans and the LMN Parcel Plan.

(d) Declarant shall proceed with the construction of the LMN Public Access on a Parcel-by-Parcel basis, in accordance with the LMN Parcel Plan. In the event that the Platform is constructed in its entirety prior to or in association with the first Building to be constructed and not on a Parcel-by-Parcel basis, the LMN Public Access shall be constructed in its entirety.

#### Section 4.02 Construction of the LMN Public Space.

(a) Declarant covenants to construct the LMN Public Space substantially in accordance with the LMN Public Space Landscaping Plans and the LMN Parcel Plan. Notwithstanding the foregoing, the LMN Public Space shall, under the circumstances described below, be constructed initially in accordance with the Interim Edge Condition Public Space Plans or the Platform Interim Public Space Plan.

(b) In the event that (i) the Platform is constructed on a Parcel-by-Parcel basis; (ii) Buildings 1, 3, and 4 are not constructed concurrently; and (iii) as a result, a boundary of the LMN Public Space that is associated with Building 1, 3 or 4, as the case may be, will not front on a LMN Access Easement or a street or will not adjoin another LMN Public Space Easement that has been previously Substantially Completed, Declarant shall construct and fence such edge of the LMN Public Space, or portion thereof, initially in accordance with the

applicable interim design and landscape treatment shown in the Interim Edge Condition Public Space Plans.

(c) In the event that (i) the Platform is constructed in its entirety prior to or in association with the first Building to be constructed and not on a Parcel-by-Parcel basis; and (ii) the first Building to be constructed is either of Building 2 or Building 5, then the LMN Public Space on the Platform associated with Buildings 1, 3, and 4 shall be constructed initially in accordance with Platform Interim Public Space Plan, unless (x) one or more extensions are obtained pursuant to Section 4.03(c)(ii) below, and (y) the LMN Public Space Phase for Buildings 1, 3, or 4 is by reason of such extensions Substantially Completed in accordance with the LMN Public Space Landscaping Plans.

#### Section 4.03 **Completion of LMN Public Space and Access**

(a) **Buildings 2 and 5:** The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any dwelling units in Building 2 or Building 5, as the case may be, until the Declarant has Substantially Completed the LMN Public Space and Access Phase associated with such Building, and the Chair has so certified such Substantial Completion to the Buildings Department.

(b) Declarant shall notify the Chair when, in the opinion of Declarant, the LMN Public Space and Access Phase associated with Building 2 or 5, as the case may be, has been Substantially Completed. Within ten (10) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the LMN Public Space Landscaping Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the LMN Public Space Landscaping Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within ten (10) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(c) **Buildings 1, 3, and 4.**

(i) **Parcel-by-Parcel Scenario.**

(aa) No later than ninety (90) days prior to the issuance of a Building Permit for any one of Buildings 1, 3, or 4, Declarant shall submit to the Chair proposed schedules for (i) the Substantial Completion of the LMN Public Space and Access Phase associated with, and (ii) the issuance of TCOs for, such Building, including appropriate conditions on the issuance of such TCOs ("**Proposed Construction and CO Schedule**"). The Proposed Construction and CO Schedule shall be designed to facilitate and ensure the Substantial Completion of the LMN Public Space and Access Phase

associated with such Building as soon as reasonably practicable, taking into account the logistics of the construction of such Building. The Proposed Construction and CO Schedule may include interim benchmarks to permit the Declarant to apply for and receive TCOs for portions of a Building that, because construction logistics have prevented Substantial Completion of the of the LMN Public Space and Access Phase, are ready for occupancy prior to the Substantial Completion of such LMN Public Space or Access Phase; provided, that the Proposed Construction and CO Schedule shall require Substantial Completion of portions of the LMN Public Space and Access Phase that are not encumbered by construction logistics prior to the issuance of a portion of the TCOs for the Building. In the event that, pursuant to the conditions described in Section 4.02(b) above, construction initially proceeds in accordance with the Interim Edge Condition Public Space Plans and such Plans do not reflect the proposed sequence of construction of Buildings 1, 3, and 4, Declarant shall also submit to the Chair an additional Interim Edge Condition Public Space Plan (“**Additional Interim Edge Condition Public Space Plan**”) for the Chair’s review and approval. Declarant shall provide security or an alternative mechanism, in a form reasonably acceptable to the Chair, to ensure that any LMN Public Space and Access Phase initially constructed in accordance with the Interim Edge Condition Public Space Plans or an Additional Interim Edge Condition Public Space Plan is Substantially Completed in accordance with the LMN Public Space Landscaping Plans.

- (bb) Within thirty (30) days of delivery to the Chair of a Proposed Construction and CO Schedule and Additional Interim Edge Condition Public Space Plan, if applicable, the Chair shall either (i) accept the Construction and CO Schedule and the Additional Interim Edge Condition Public Space Plan, if applicable, and transmit a copy of the approved Construction and CO Schedule (“**Approved Construction and CO Schedule**”) and the Additional Interim Edge Condition Public Space Plan (“**Approved Additional Interim Edge Condition Public Space Plan**”) to the Buildings Department with a copy to Declarant or (ii) propose an alternative construction and CO schedule to Declarant (“**Alternative Construction and CO Schedule**”) and/or an alternative additional edge condition interim public space plan (“**Alternative Additional Interim Edge Condition Public Space Plan**”), if applicable. The Chair shall have the right to review construction plans and drawings for the Building during such thirty (30) day period. In the event that the Chair delivers an Alternative Construction and CO Schedule and/or Alternative Additional Interim Edge Condition Public Space Plan, Declarant and DCP shall meet within five (5) business days of such delivery to review the Alternative Construction and CO Schedule and/or Alternative Additional Interim Edge Condition Public Space Plan. If the Declarant accepts such Alternative Construction and CO Schedule and/or Alternative Additional Interim Edge Condition Public Space Plan, the Chair shall transmit a copy of the same to the Buildings Department with a copy to Declarant. In the event of a

continued disagreement between DCP and Declarant with respect to the Proposed and Alternative Construction and CO Schedule, Declarant may seek resolution of such matter by the Deputy Mayor of Planning and Economic Development, or any successor Deputy Mayor. Thereafter, and the Chair shall transmit a copy of the Construction and CO Schedule and/or the Additional Edge Condition Interim Open Space Plan approved pursuant to such process to the Buildings Department with a copy to Declarant.

- (cc) The Buildings Department shall not issue, and Declarant shall not accept, a TCO for dwelling units in Building 1, 3, or 4, as the case may be, until the Declarant has Substantially Completed, in accordance with the Approved Construction and CO Schedule for such Building, all or a portion of the LMN Public Space and Access Phase (or, if construction initially proceeds pursuant to the conditions in Section 4.02(b) above, the work shown on the Interim Edge Condition Public Space Plans or Approved Additional or Alternative Additional Interim Edge Condition Public Space Plan, as the case may be) for such Building, and the Chair has certified such Substantial Completion to the Buildings Department. Declarant shall notify the Chair when, in the opinion of Declarant, it has Substantially Completed, in accordance with the Approved Construction and CO Schedule for a Building, all or a portion of the LMN Public Space and Access Phase (or, if construction initially proceeds pursuant to the conditions in Section 4.02(b) above, the work shown on the Interim Edge Condition Public Space Plans or Approved Additional or Alternative Additional Interim Edge Condition Public Space Plan, as the case may be) associated with such Building. Within ten (10) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the relevant Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be Substantially Completed, such notice shall contain a detailed statement of the reasons for such nonacceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within ten (10) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(ii) Single Platform Scenario. In the event that the conditions set forth in Section 4.02(c) above apply, the Platform Interim Public Space and all of the LMN Public Access shall be Substantially Completed in accordance with the Platform Interim Public Space Plan on or before a date which is 24 months after the date of issuance of the first TCO for all floor space in the first of Building 2 or 5 to be constructed in the

Development (the “**Original Platform Interim Public Space Term**”). Notwithstanding the foregoing, prior to the expiration of the Original Platform Interim Public Space Term, the Declarant may notify the Chair, with evidence that commencement of construction of a Building on a Parcel within the Platform Interim Public Space is imminent, and request an extension of the Original Platform Interim Public Space Term with respect to such Parcel, and the Chair may grant such an extension to an extent that the Chair determines to be reasonable under the circumstances (the “**Extended Platform Interim Public Space Term**”). Substantial Completion of the Platform Interim Public Space on other Parcels on the Platform shall remain subject to the Original Platform Interim Public Space Term. If construction on such Parcel has not commenced, or if the Platform Interim Public Space with respect to such Parcel has not been Substantially Completed by the expiration of the Extended Platform Interim Public Space Term, and Declarant has not requested and received approval from the Chair for a further extension of the Extended Platform Interim Public Space Term with respect to such Parcel, Declarant may not accept any additional TCOs in connection with any Building unless and until the Platform Interim Public Space is Substantially Completed. In the event that construction has commenced on such Parcel prior to expiration of the Extended Platform Interim Public Space Term, Declarant shall not apply for or accept any TCOs for the Building on such Parcel unless and until the LMN Public Space and Access Phase associated with such Building is Substantially Completed in accordance with the LMN Public Space Landscaping Plans and an Approved Construction and CO Schedule, pursuant to the procedure set forth in Section 4.03(c)(i) above, and unless and until the Platform Interim Public Space on other unimproved portions of the Platform has been Substantially Completed by the expiration of the Original Platform Interim Public Space Term, except to the extent an extension is requested and received with respect to another Parcel on the Platform. At such time as construction commences for a Building on Substantially Completed Platform Interim Public Space, the LMN Public Space and Access Phase shall be Substantially Completed in accordance with the LMN Public Space Landscaping Plans and an Approved Construction and CO Schedule, pursuant to the procedure set forth in Section 4.03(c)(i) above.

(d) **Permanent Certificates of Occupancy.** The Buildings Department shall not issue, and Declarant shall not accept, a PCO for units in any Building until the Declarant has Finally Completed the LMN Public Space and Access Phase, or portion thereof, associated with such Building, in accordance with the LMN Public Open Space Landscaping Plans. However, (i) if construction initially proceeds pursuant to the conditions in Section 4.02(b) above and Declarant constructs pursuant to the Interim Edge Condition Public Space Plans or Approved Additional or Alternative Additional Interim Edge Condition Public Space Plan, as the case may be, and (ii) at least eighteen (18) months has passed since the Chair has certified the Substantial Completion of such LMN Public Space and Access Phase, or portion thereof, in accordance therewith, then the Chair may certify Final Completion of such LMN Public Space Access Phase for such Building pursuant to the provisions set forth in subparagraphs (e)-(f) below, and the Buildings Department may issue and Declarant may accept, a PCO for units in such Building.

(e) Declarant shall notify the Chair when, in the opinion of Declarant, the LMN Public Space and Access associated with a Building has been Finally Completed. Within ten (10) business days of its receipt of Declarant’s notice, the Chair shall either (i) issue a

certification of Final Completion, or (ii) notify Declarant of any work that, according to the applicable Plans referenced in subsection (d) above, remains to be completed before the Chair will issue a certification of Final Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the applicable Plans referenced in subsection (d) above, such notice shall contain a detailed statement of the reasons for such nonacceptance in the form of a so-called “punch list” of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within ten (10) business days of receipt of such notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Final Completion.

(f) In the event that such LMN Public Space and Access Phase, or portion thereof, is constructed pursuant to the conditions in Section 4.02(b), in connection with the issuance of any certificate of Final Completion for the LMN Public Space and Access Phase, or portion thereof, constructed in accordance pursuant to the Interim Edge Condition Public Space Plans or Approved Additional or Alternative Additional Interim Edge Condition Public Space Plan, as the case may be, pursuant to paragraph (d) above, the Chair may require Declarant to post security or provide an alternative security mechanism in addition to that provided in accordance with Section 4.03(c)(i)(aa), in a form reasonably acceptable to the Chair, to ensure that any LMN Public Space and Access Phase will be Finally Completed in accordance with the LMN Public Space Landscaping Plans.

#### Section 4.04 **LMN Public Access Easements.**

(a) Subject to subsection (d) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 4.03 that a LMN Public Access Phase, or portion thereof, is Substantially Complete, such that the same shall be open and in use for the purposes set forth in Sections 4.01(a) and (b), as applicable, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement (the “**LMN Public Access Easements**”) in perpetuity, for the benefit of the general public, encompassing the area of the LMN Public Access Phase, or portion thereof, unobstructed from the surface thereof to the sky, for the purposes of: (1) pedestrian access; and (2) emergency vehicle access and general vehicular ingress and egress, as applicable. Any such grant of the LMN Sidewalk and Street Easements shall not cause the LMN Public Access or any portion thereof to be considered a “street” as defined in Section 12-10 of the Zoning Resolution for the purpose of zoning, and shall not affect the floor area calculations, height and setback compliance, or any other aspect of compliance with the Zoning Resolution for any development on the Subject Property.

(b) The Declarant covenants that all liens, including but not limited to judgment liens, mortgage liens, mechanics’ liens and vendees liens, and all burdens, covenants, encumbrances, leases, licenses, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and related easements, shall be or shall be caused by Declarant to be, at and after the time of vesting of the LMN Public Access Easements in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the LMN

Public Access Easements and shall demonstrate same by means of appropriate documentation reasonably satisfactory to the City.

(c) The LMN Public Access Easements shall encompass all of the LMN Public Access included in such LMN Public Access Phase, or portion thereof, and all LMN Public Access completed in an earlier LMN Public Access Phase, subject to paragraph (d) of this Section 4.04. Declarant waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of LMN Public Access Easements. Notwithstanding the foregoing, the LMN Public Access Easements shall not encompass any area or volume below the grade of the surface of the Platform.

(d) Notwithstanding anything to the contrary in this Section 4.04 or Section 4.06(a), Declarant shall be entitled upon notification to the Chair pursuant to this Section, to close to the public any portion of the LMN Public Access that has been Substantially Completed to the extent and for the period of time that such closure is reasonably required to allow for the construction of a Building in a safe manner, or to complete a subsequent LMN Public Access Phase, or portion thereof, or to allow for necessary maintenance and repair and the easement granted pursuant to paragraph (a) of this Section 4.04 is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the LMN Public Access not less than thirty (30) days prior to such closure (except in the case of an emergency), and shall provide the Chair with a description of the need (including, if the closure is related to construction of a Building, an explanation as to how the LMN Parcel Plan for such Building does not provide sufficient space for such construction in a safe manner, extent and estimated period of time of closure reasonably required pursuant to this clause.

Section 4.05 **LMN Public Space Easement.**

(a) Subject to paragraph (b) of this Section 4.05 and Section 4.07(g) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 4.03 that a LMN Public Space Phase, or portion thereof, is Substantially Complete, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement (the "**LMN Public Space Easement**") in perpetuity, for the benefit of the general public, encompassing the area of the LMN Public Space Phase, or portion thereof, unobstructed from the surface thereof to the sky, for the purposes of: (1) passive recreational use by the general public; and (2) access for fire, police, and other emergency services.

(b) Notwithstanding anything to the contrary in this Section 4.05 or Section 4.06(b), Declarant shall be entitled, upon notification to the Chair pursuant to this Section, to close to the public any portion of the LMN Public Space that has been Substantially Completed to the extent and for the period of time that such closure is reasonably required to allow for the construction of a Building in a safe manner, or to complete a subsequent LMN Public Space Phase, or portion thereof, or to allow for necessary maintenance and repair, and the easement granted pursuant to paragraph (a) of this Section 4.05 is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the LMN Public Space not less than thirty (30) days prior to such closure (except in the case of an emergency), and shall provide the Chair with a description of the need (including, if the closure is related to construction of a Building,

an explanation as to how the LMN Parcel Plan for such Building does not provide sufficient space for such construction in a safe manner) extent and estimated period of time of closure reasonably required pursuant to this clause.

(c) In the event that the conditions set forth in Section 4.02(c) apply, immediately upon certification by the Chair pursuant to Section 4.03(c)(ii) that a LMN Public Space Phase, or portion thereof, is Substantially Complete in accordance with Platform Interim Public Space Plan, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement (the “**Temporary LMN Public Space Easement**”), for the benefit of the general public, encompassing the area of such LMN Public Space Phase, or portion thereof, unobstructed from the surface thereof to the sky, for the purposes of: (1) passive recreational use by the general public; and (2) access for fire, police, and other emergency services. Notwithstanding the foregoing, the Temporary LMN Public Space Easement shall not encompass any area or volume below the grade of the surface of the Platform. The Temporary LMN Public Space Easement on a Parcel shall terminate upon the commencement of construction of the Building associated with such Parcel.

(d) The Declarant covenants that all liens, including but not limited to judgment liens, mortgage liens, mechanics’ liens and vendees liens, and all burdens, covenants, encumbrances, leases, licenses, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and related easements, shall be or shall be caused by Declarant to be, at and after the time of vesting of the LMN Public Space Easement in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the LMN Public Space Easement, and shall demonstrate same by means of appropriate documentation satisfactory to the City.

(e) The LMN Public Space Easement shall commence for the benefit of and shall vest in the City commensurate with and on the date of Substantial Completion of each LMN Public Space Phase, or portion thereof, and shall encompass all of the LMN Public Space included in such LMN Public Space Phase, or portion thereof, and all LMN Public Space completed in an earlier LMN Public Space Phase, or portion thereof, subject to Section 4.07(g) hereof. Declarant waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of the LMN Public Space Easement. Notwithstanding the foregoing, the LMN Public Space Easement shall not encompass any area or volume below the grade of the wearing surface of the platform.

(f) The LMN Public Space and Access Plan indicates the location of the approved envelopes of the Buildings and includes illustrative footprints for these Buildings, which footprints are subject to change and may be located anywhere within the approved envelopes shown on the Plans. Declarant covenants and agrees that, notwithstanding the LMN Public Space calculations and the envelopes shown on the LMN Public Space and Access Plan, those areas located between the actual, as built, face of all buildings that front on the LMN Public Space and the LMN Public Space shall be publicly accessible during the same hours as the LMN Public Space provided in Section 4.06(b) below, and shall be subject to the LMN Public Space Easement.

Section 4.06 **Hours of Access of LMN Public Space and Access**

(a) Declarant covenants that, upon Substantial Completion of each LMN Public Access Phase pursuant to Section 4.03, subject to Section 4.04(d) above, such LMN Public Access Phase shall remain open and accessible to the public pursuant to the LMN Public Access Easement 24 hours per day, 365 days per year.

(b) Declarant covenants that, upon Substantial Completion of each LMN Public Space Phase pursuant to Section 4.03(b) or (c), subject to Sections 4.05(b) and 4.07(g) hereof, each such LMN Public Space Phase shall remain open and accessible to the public pursuant to the LMN Public Space Easement daily during the hours of 6:00 a.m. to 1:00 a.m. with the exception of the “tot lot” described in Section 3.04(d) hereof, which shall be open between dawn and dusk. Notwithstanding the foregoing, the Sidewalk Adjacent Public Space Easement and the Perimeter Sidewalk Widening Public Access Easement areas of the LMN Public Space as indicated on the LMN Public Space and Access Plan shall remain open and accessible to the public pursuant to the LMN Public Space Easement daily 24 hours per day, 365 days per year.

Section 4.07 **Maintenance and Repair of LMN Public Space and Access**

(a) Declarant shall maintain the LMN Public Access in good repair and in accordance with the standards of NYCDOT for the maintenance of public streets.

(b) Declarant shall be responsible for the maintenance and repair of the LMN Public Space and any paving of and landscaping or street furniture provided in the LMN Public Access, in accordance with the standards set forth in this Section 4.07. All such maintenance shall be performed in a good and worker-like manner.

(c) **Cleaning.**

(i) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the LMN Public Space and Access in clean, neat and good condition.

(ii) All walkways, lighting and all other improvements and facilities installed in the LMN Public Space and Access shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(v) Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed.

(vi) Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

(d) **Landscape Maintenance.** A maintenance program for the planted portions of the LMN Public Space and Access shall be established, consisting of a “**Spring Start-up Period**” program, a “**Season Closing Period**” program, and a continuing maintenance program through the “**Growing Season.**”

(i) Spring Start-Up Period: The Spring Start-up Period shall commence on March 1<sup>st</sup> and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

- (aa) Remove any winter protectives from trees, shrubs and other planting materials;
- (bb) Remove all landscaping debris including leaves and dead branches;
- (cc) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- (dd) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;
- (ee) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
- (ff) Remove any sand deposited as a result of winter sandings;
- (gg) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;
- (hh) Reseed grassed areas as needed.

(ii) Season Closing Period: The Season Closing Period shall begin on October 1<sup>st</sup> and shall terminate not later than November 1<sup>st</sup> of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period: Rake and collect leaves from the LMN Public Space and Access;

- (aa) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;
- (bb) Apply commercially available nitrogen rich fertilizer to all lawn areas;
- (cc) Reseed grassed areas as needed.

(iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

- (aa) Inspect trees on a regular basis and spray when necessary;
- (bb) Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to City or State regulations governing water usage;
- (cc) Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed;
- (dd) Weed as needed, no less than on a bi-weekly basis.
- (e) **Water Feature Maintenance.**

The water features within the LMN Public Space shall be maintained at all times in a first-class condition. The water features shall be operational during all hours when the LMN Public Space is open and accessible to the public under Section 4.06 hereof, except between November 1 and March 1.

(f) **Repairs and Replacements.** Repairs and replacements of facilities or utilities within the LMN Public Space and LMN Public Access shall occur as needed to maintain such facilities or utilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and subject to the notice requirements of Section 8.03 hereof and completing the same within a reasonable expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the LMN Public Space Landscaping Plans and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the LMN Public Space and Access:

- (i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;
- (ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;
- (iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;
- (iv) Signage: All signs and graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

(v) **Painting:** All items with painted surfaces shall be painted on an “as needed” basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;

(vi) **Plant Materials and Trees:** Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and

(vii) **Construction Defects and Hazardous Conditions:** Declarant shall periodically inspect the LMN Public Space for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

(g) **Closure.** Notwithstanding Section 4.06 hereof, Declarant may close the LMN Public Space or the most limited portions thereof as may be necessary in order (i) to accomplish the maintenance, repairs or replacements; (ii) to make emergency repairs to mitigate hazardous conditions or emergency conditions; or (iii) to address other emergency conditions and shall notify the Chair of such closing and its expected duration as soon as practicable. Emergency conditions for which the LMN Public Space may be closed pursuant to (iii) above shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with the New York City Police Department (the “**NYPD**”) or the Buildings Department, as appropriate, and having following the NYPD’s or Building Department’s direction, if any, with regard to the emergency situation. Declarant shall promptly notify the Chair in writing of any closure which extends more than twelve (12) hours. Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or mitigation to be undertaken, and will exercise due diligence in the performance of such repairs etc. or mitigation so that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. In addition, Declarant may close the LMN Public Space or the most limited portions thereof as may be necessary to the public for one day per year, or such other period as shall be required by law to prevent a public dedication of the LMN Public Space, other than Saturday, Sunday or public holiday, on the same date in January of each year or as near to such date as is possible, to preserve Declarant’s ownership interest in the LMN Public Space and to prevent a public dedication.

(h) **Operating Rules for LMN Public Space.** The activities, uses and conduct permitted within the LMN Public Space shall comply with all applicable laws and regulations of the City, in addition to being subject to the policies set forth in the schedule annexed hereto as **Exhibit K**. Declarant may modify the policies set forth in **Exhibit K** with the prior written approval of DCP, which shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE V.

### LMN PROPERTY OWNERS' ASSOCIATION

#### Section 5.01 **Organization of LMN Property Owners' Association.**

(a) Declarant shall cause to be organized a LMN Property Owners' Association ("**P.O.A.**") or comparable entity, independent and separate from any Riverside South Property Owners Association organized in accordance with the Amended Riverside South Declaration, if any of the following changes are made in the ownership of the Development: (i) All or any portion of the Development is converted to condominium or cooperative ownership held in fee simple and/or leasehold; or (ii) the Development is owned by more than one fee owners and/or ground lessees of all or substantially all of the Subject Property or any portion thereof, unless the entities owning or leasing the same are under common control or are affiliated entities, in which case this Section 5.01 does not apply. The following provisions of this Article V shall be operative only in the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration.

(b) In the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration, Declarant shall (i) cause to be filed a Certificate of Incorporation for the P.O.A., or comparable entity, as a property owners' association organized under Section 402 of the New York State Not-for-Profit Corporation Law for the purpose of operating, maintaining and repairing the LMN Public Space and maintaining and repairing the LMN Public Access; and (ii) certify to the Chair that the Certificate of Incorporation for P.O.A. has been filed with the New York Secretary of State. P.O.A. shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-For-Profit Corporation law. Declarant, if required, shall (i) file with the Department of Law of the Office of the Attorney General of the State of New York a plan offering interests in P.O.A. pursuant to New York General Business Law Section 352-e (or shall comply with the requirements of any successor statute thereto), (ii) file any governing documents of P.O.A., including any required amendment to the Certificate of Incorporation of P.O.A., with the New York Secretary of State and/or the office of any other official or any other public record required by law in order to empower P.O.A. to carry out its obligations with respect to the Subject Property in full compliance with the requirements of this Declaration.

(c) If the Declarant fails to comply with the provisions of this Section 5.01, the City may proceed with any available enforcement measures.

Section 5.02 **Purposes.** Declarant shall cause the P.O.A. to be established for the purpose of operating, maintaining and repairing the LMN Public Space and Access in accordance with Sections 4.06 and 4.07 hereof, subject to Sections 5.03(a) and (b) hereof, and for the functions described in Section 5.03 hereof.

Section 5.03 **Powers.** To the extent permitted by law, Declarant shall cause P.O.A. to be established with the power, authority, and responsibility to:

(a) maintain, repair and operate the LMN Public Space to the extent required herein, in accordance with Article IV hereof, including, but not limited to, in compliance with the requirements of Article IV as to hours of operation and public accessibility; provided, however, that for so long as Declarant retains an ownership interest in any portion of any Parcel, then Declarant may elect to retain the authority to maintain, repair, and operate the LMN Public Space located on such Parcel, subject to an appropriate arrangement with the P.O.A.;

(b) maintain and repair the LMN Public Access to the extent required herein, in accordance with Section 4.07 hereof; provided, however, that for so long as Declarant retains an ownership interest in any portion of any Parcel, then Declarant may elect to retain the authority to maintain and repair the LMN Access located on such Parcel, subject to an appropriate arrangement with the P.O.A.;

(c) impose fees or assessments against Lot Owners, for the purpose of collecting funds reasonably necessary for the operation, maintenance and repair of the LMN Public Space or the maintenance and repair of the LMN Public Access, or for any other obligations of P.O.A. which are properly allocable to Lot Owners pursuant to this Declaration, and collect, receive, administer, protect, invest and dispose of such funds;

(d) exercise any of its duties or obligations pursuant to this Declaration without seeking the separate consent of the Lot Owners;

(e) bring actions to recover fees or assessments owed to P.O.A; and

(f) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration including without limitation, the powers set forth in Section 6.02(d) herein, and as may be granted to P.O.A. in furtherance of P.O.A.'s purposes pursuant to the New York State Not-for-Profit Law.

#### Section 5.04 **Lot Owner Obligations.**

(a) The P.O.A. shall have as members all Lot Owners of the Subject Property or any portion thereof, whether residential, commercial or community facility. The P.O.A. shall assess all real property within the applicable portion of the Development for the purposes of maintaining, repairing and operating the LMN Public Space and maintaining and repairing the LMN Public Access, and for any other Obligation of P.O.A. pursuant to this Declaration. Each Lot Owner, by acceptance of a deed or lease for its portion of the Subject Property, shall, whether or not the covenant is expressed in such deed or lease, be deemed to covenant and agree to pay all assessments which may be imposed by P.O.A. on the property owned or leased by such Lot Owner, which shall be assessed on a reasonable prorated basis as determined by Declarant and set forth in the applicable condominium declarations (each such individual assessment, together with such interest, costs and reasonable attorneys' fees as may be assessed in accordance with the provisions of this Declaration, the "**Individual Assessment**"). Each and every Individual Assessment, together with such interest, costs and reasonable attorneys' fees as may be imposed pursuant to Section 5.04(c) below, shall be a charge on the land or leasehold interest and a continuing lien on the property interest against which such assessment is made (such individual property interest, the "**Individual Interest**") and such charge and lien shall be

subordinate only to (i) liens securing the payment of real estate taxes, (ii) the lien of a first mortgage or cooperative loan, and/or (iii) the lien of any condo board for any unpaid common charges of the condominium, encumbering such Individual Interest in the event of a foreclosure. It is expressly understood that Lot Owners who may be assessed for the maintenance, repair and operation of the Subject Property shall not include a Mortgagee or a holder of other lien or encumbrance (“**Lien Holder**”) encumbering (xx) the fee estate in the Subject Property or any portion thereof, or (yy) the lessee’s estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Parcel, or (zz) any single Building to be built on the Subject Property, unless and until any such Mortgagee or Lien Holder succeeds to a Possessory Interest by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the Subject Property and such Possessory Interest would otherwise constitute the interest of a Lot Owner subject to this Section 5.04(a). While it is intended that the Mortgagee or Lien Holder is to be included among the parties set forth in the definition of “Unit Interested Party,” it is not intended that any such Mortgagee or Lien Holder shall be deemed to be a Lot Owner or shall be liable for any Individual Assessment imposed by P.O.A. pursuant to this Article V unless and until it succeeds to a Possessory Interest as described in the immediately preceding sentence.

(b) Each periodic Individual Assessment by the P.O.A. shall be the obligation of the Lot Owner against whom the Individual Assessment is charged at the time same falls due and may not be waived by such Lot Owner. The P.O.A. may bring an action to recover any delinquent Individual Assessment, including interest, costs and reasonable attorneys’ fees of any such action, at law or at equity, against the Lot Owner obligated to pay the same. In the event a Lot Owner has not paid its Individual Assessment to the P.O.A. within ninety (90) days of the date such payment was due, the P.O.A. shall take all reasonable measures as may be required in order to collect such unpaid Individual Assessment.

(c) The periodic assessments charged to a Lot Owner which is the board of managers of a condominium shall be included within the common charges of the condominium. The maintenance charges imposed by a cooperative apartment corporation which is a Lot Owner on the owners of the shares of stock of such corporation allocated to cooperative apartments shall include an amount sufficient for such apartment corporation to pay the amount of any assessments imposed on it pursuant to the provisions hereof. The P.O.A. may bring an action to foreclose the P.O.A.’s lien against such Lot Owner’s Individual Interest to recover any such delinquent assessment(s), including interest and costs and reasonable attorneys’ fees of any such action. Any Unit Interested Party, by acceptance of a deed or a lease or mortgage to a portion of the Subject Property, thereby agrees to the provisions of this Section 5.04(c). Any Unit Owner may eliminate the P.O.A.’s lien described above on his or her unit [Individual Interest] by payment to the P.O.A. of such Unit Owner’s prorated share of the periodic assessment by the P.O.A. to the cooperative corporation or condominium in which such unit is located. No Lot Owner or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the LMN Public Space and Access Easements or abandonment of the P.O.A.’s property, or by renunciation of membership in the P.O.A., provided, however, that a Lot Owner’s or Unit Owner’s liability with respect to future assessments ends upon the valid sale or transfer of such Lot Owner’s or Unit Owner’s [Individual Interest] in the Subject Property. A

Lot Owner or Unit Owner may give to the P.O.A. nevertheless, subject to acceptance thereof by the P.O.A, a deed in lieu of foreclosure.

(d) In the event of a default by a Lot Owner which is the board of managers of a condominium or a cooperative apartment corporation, the City shall, prior to enforcing any rights against any other Lot Owners, first attempt to enforce its rights under this Declaration against such board of managers or cooperative apartment corporation.

(e) Notwithstanding anything to the contrary in this Declaration, the liability of any Lot Owner and any liens of the City shall be limited to such Lot Owner's interest in the Subject Property, on an in rem basis only, for the collection of any judgment recovered against such Lot Owner, and no other property of such Lot Owner shall be subject to levy, execution or other enforcement procedure for satisfaction of such judgment and the Lot Owner shall have no personal liability with respect to such assessment, and where a Lot Owner is the owner of a residential or commercial unit or units in a building subject to a cooperative plan or condominium declaration, the liability of any such Lot Owner for assessments as hereinabove provided shall be limited to an amount equal to that proportion of the total assessment payable for such building as such Lot Owner's proportionate share in such cooperative or condominium bears to such total assessment, as measured by such Lot Owner's percentage interest in his, her or its unit and in the common areas, or common elements or maintenance percentage interests appurtenant thereto in accordance with the applicable condominium declarations. Notwithstanding the foregoing, nothing in this Section 5.04(e) shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

Section 5.05 **Deed References.** Every deed in respect of all or any portion of the Subject Property, any other lease or occupancy agreement referred to in the definition of Lot Owner, and every declaration of condominium imposed on any portion of the Subject Property shall (i) contain a recital that the grantee or the lessee assumes, subject to the provisions of Section 5.04(c) and (d) herein, the obligations of a Lot Owner as set forth in this Article V, and (ii) confirm that the operation, maintenance and repair of the LMN Public Space, the maintenance and repair of the LMN Public Access, and the provisions of this Declaration are conditions to the City actions relating to the development of the Subject Property; provided, however, that the requirements of this Section 5.05 shall be satisfied by a reference to this Declaration and the provisions hereof in such deed, lease, occupancy agreement, or declaration of condominium, and the failure to include the specific provisions of this Article V in such deed, lease, occupancy agreement, or declaration shall not relieve such Lot Owner from any of such Lot Owner's obligations hereunder.

Section 5.06 **Non-Existence, Incapacity or Default of P.O.A.** If P.O.A. or a comparable entity shall cease to exist, or be unable or unwilling to act, or be in default of its obligations under this Declaration, the City shall have the right, but not the obligation, to take any action necessary or appropriate to cure any default by P.O.A. or to protect and preserve the rights of the City under this Declaration including, but not limited to, any legal actions or proceedings necessary or appropriate against P.O.A. or any of its members for the purpose of protecting the City's rights and interest under this Declaration.

## ARTICLE VI.

### EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION

#### Section 6.01 Effective Date; Lapse; Cancellation.

(a) This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Applications (the “**Effective Date**”). Following such Effective Date, Declarant shall be subject to the provisions of Sections 3.01, 3.04(a) and (c), 3.05, 3.06, 3.07, 3.08 and 3.09 of this Declaration, in connection with any activities undertaken on the Subject Property, including but not limited to land contour work, landfill operations and other site preparation work, which are subject to such provisions. Declarant shall not have any obligations under other provisions of Articles I-V of this Declaration unless and until Declarant has elected to proceed under the Fourth Modification to the Special Permit and the LMN Special Permits (collectively, the “**Special Permits**”) by obtaining a Foundation Permit for any Building pursuant to the Special Permits or a Building Permit for the Platform (the “**Special Permit Election**”). The Building Department shall not issue and the Declarant shall not accept the first Foundation Permit for any Building or the Building Permit for the Platform until (i) Declarant has given the Chair written notice that it has elected to proceed under the Special Permits by obtaining a Foundation Permit for a Building or a Building Permit for the Platform (the “**Special Permit Election Notice**”) and (ii) the Chair has notified the Buildings Department of the receipt of the Special Permits Election Notice.

(b) Declarant may construct the public parking garage(s) on the Subject Property in either of two configurations: as a single, integrated public parking garage pursuant application Number C 100288 ZSM of the LMN Special Permits (the “**Integrated Garage**”), or as five separate public parking garages pursuant to application Numbers C 100289 ZSM-C 100293 ZSM of the LMN Special Permits (the “**Separate Garages**”); provided that Declarant shall give notice identifying the configuration it will be using to the Chair, with a copy to the Buildings Department, as provided herein. Prior to applying for or accepting a New Building Permit for the second Building to be constructed on the Subject Property, the Declarant shall give notice (the “**First Garage Option Selection Notice**”) to the Chair, with a copy to the Buildings Department, as to whether it intends to construct the garage in such Building as part of the Integrated Garage or as one of the Separate Garages. Declarant shall thereupon construct the garage in the second Building utilizing the configuration identified in the First Garage Option Selection Notice, provided that in the event the First Garage Option Selection Notice states that Declarant intends to construct under a different configuration than for the first Building, no TCO may be issued with respect to such second Building unless and until the Chair has certified that any alterations to the garage in the previously constructed first Building as are necessary to ensure compliance with the Plans for the garage configuration in the First Garage Option Selection Notice have been made. Declarant may thereafter give one further notice (the “**Further Garage Option Selection Notice**”) to the Chair, with a copy to the Buildings Department that it intends thereafter to construct the garage(s) pursuant to a different configuration. The Further Garage Option Selection Notice shall be given to the Chair and the Buildings Department prior to Declarant’s applying for and accepting a New Building Permit for

the first Building to be constructed after giving such notice that utilizes the configuration described therein. No TCO may be issued for the Building with respect to which the Further Garage Option Selection Notice is associated, unless the Chair has certified to Buildings Department that as built conditions in the garage associated with such Building are in substantial conformity with the Plans for the garage configuration set forth in the Further Garage Option Selection Notice and that alterations to garage(s) previously constructed as needed to conform the as built conditions to those shown on the Plans pertaining to such configuration have been made.

(c) The Special Permits shall automatically lapse unless Declarant has completed substantial construction of at least one Building pursuant to the Special Permits within ten (10) years from the date of the Final Approval. For purposes of this sub-clause, the term “substantial construction of at least one Building” shall be defined in accordance with Section 74-99 of the Zoning Resolution, or any successor provision thereto. The ten (10) year period described in this sub-clause shall be extended for the aggregate period of time in which Declarant is prevented from initiating or completing substantial construction, in accordance with Section 11-42 of the Zoning Resolution.

(d) If development of the Subject Property pursuant to the Special Permits has not commenced in accordance with the Special Permit Election, Declarant may record in the Office of the Register (the “**Register**”) of the City of New York for New York county (the “**Register’s Office**”), with written notice to and approval of the Chair, and not subject to the procedure for approval of instruments modifying this Declaration set forth in the Article VI, an instrument discharging the obligations of this Declaration, except as noted below, the recording of which instrument shall constitute a waiver of the right to develop the subject property pursuant to the Special Permits and a termination of all covenants under this Declaration and all other documents, if any, recorded in accordance with Section 6.01(e), and the recording of which instrument shall render this Declaration null and void and all other documents, if any, recorded in accordance with Section 6.01(e). Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant’s intent to discharge this Declaration and request the Chair’s approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant or Successor Declarant (as hereinafter defined) shall provide a copy thereof to the Commission so certified by the Register.

(e) Promptly, and no later than ten (10) days after such Final Approval of the Applications and prior to application for any Building Permit relating to the Subject Property, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Application and required by this Declaration to be recorded in public records, in the Office of the City Register, indexing them against the entire Subject Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Office of the City Register, promptly upon receipt of such documents from the Office of the City Register. If Declarant fails to so record such documents, then the City may record duplicate originals of

such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(f) Notwithstanding anything to the contrary contained in this Declaration, if the Final Approval is 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 cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. In the event that the Final Approval is declared invalid or otherwise voided only in part, no further development of the Subject Property pursuant to the Final Approval shall be commenced or continued, unless this Declaration shall have been amended, at Declarant's option, subject to Section 6.02 hereof. Prior to the recordation of an instrument discharging this Declaration, Declarant shall notify the Chair of Declarant's intent to cancel and terminate this Declaration and request the Chair's approval, which approval shall be limited to insuring that such cancellation and termination is in proper form and that any provisions of this Declaration necessary to protect the environment with respect to any work performed as of the date of cancellation survive such termination. The Chair shall respond to such notice and request within thirty (30) days of receipt by the Chair of such notice, and the failure of the Chair to respond within such thirty (30) day period shall be deemed an approval by the Chair of the cancellation of the Declaration. Upon recordation of such instrument, Declarant or Successor Declarant shall provide a copy thereof to the Commission so certified by the Office of the City Register.

Section 6.02 **Modification and Amendment.**

(a) This Declaration may be amended, modified or cancelled (other than pursuant to Section 6.01 hereof) only upon application by Declarant, with the express written approval of the Commission or an agency succeeding to the Commission's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(b) Notwithstanding the provisions of Section 6.02(a), any change to this Declaration subject to Section 2.01(d)(i) or (ii) hereof or that the Chair deems to be a minor modification may be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind (other than Declarant), including, without limitation, any present or future Party-in-Interest who is not a Successor Declarant, except that a modification to a PCRE or Mitigation Measure shall not be deemed a minor modification unless DCP determines that such modification may be made without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure. Minor modifications shall not be deemed amendments requiring the approval of the Commission.

(c) Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 6.02(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to DCP and,

upon Declarant's failure to so record, permit its recording by DCP at the cost and expense of Declarant.

(d) For so long as (i) Declarant or (ii) any successor entity to the balance and entirety of Declarant's fee interest in the Subject Property (the "**Successor Declarant**") shall hold a fee interest in the Subject Property or any portion thereof, all other Unit Interested Parties, their heirs, successors, assigns and legal representatives hereby irrevocably (i) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (ii) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint Declarant, or any Successor Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Unit Interested Parties' consent or waiver of rights as set forth in this Section 6.02(d). At such time as Declarant or a Successor Declarant no longer holds a fee interest in the Subject Property or any portion thereof, the P.O.A. shall have the power and authority of Declarant or Successor Declarant pursuant to this Section 6.02(d).

## ARTICLE VII.

### COMPLIANCE; DEFAULTS; REMEDIES

Section 7.01 **Default.** Except as otherwise provided in Sections 3.06 and 7.03 of this Declaration, if Declarant fails to observe any of the terms or conditions of this Declaration, the Chair shall give Declarant and any Mortgagees of whom the City has received notice in accordance with Section 8.03 hereof written notice of such alleged violation, and upon receipt of such notice Declarant and/or Mortgagee shall within forty-five (45) days thereof either (i) effect a cure of such alleged violation, or commence a cure if the violation is not capable of cure within such forty-five (45) day period, or (ii) demonstrate to the City why the alleged violation has not occurred. If Declarant and/or Mortgagee commences to effect such cure within such forty-five (45) business day period (or if cure is not capable of being commenced within such forty-five (45) business day period, Declarant and/or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty-five (45) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant and/or Mortgagee continues to proceed diligently with the effectuation of such cure. If more than one Declarant and Mortgagee exists at any time on the Subject Property, notice shall be provided to all Declarants and Mortgagees from whom the City has received notice in accordance with Section 8.03 hereof, and the right to cure shall apply equally to all Declarants and Mortgagees. If, after the notification procedures set forth above, Declarant and/or Mortgagee fails to cure such alleged violation of Declarant's obligations under this Declaration, the City shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement to obtain or compel Declarant's performance under this Declaration and may decline to approve and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default under this Declaration. The time period for curing any violation by Declarant and/or Mortgagee shall be subject to extension for Uncontrollable Circumstances pursuant to Section 7.06 of this Declaration.

Section 7.02 **Denial of Public Access.** Notwithstanding any provisions of Section 7.01 of this Declaration to the contrary, in the event of a denial of public access of an ongoing nature to the LMN Public Space and/or the LMN Public Access in violation of Sections 4.04, 4.05, and 4.06 of this Declaration, Declarant and/or Mortgagee shall have the opportunity to effect a cure within twenty four (24) hours of receipt of notice thereof. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction. In addition, if the City has reason to believe that the use and enjoyment of the LMN Public Space and/or the LMN Public Access by any member of the public has been denied by Declarant, the City may treat the denial of access as a violation of the Zoning Resolution and seek civil penalties at the Environmental Control Board for the violation relating to privately owned public space.

Section 7.03 **Enforcement of Declaration.** No person or entity other than Declarant, P.O.A., the City, or a successor, assign or legal representative of any such party, shall be entitled to enforce, or assert any claim arising out of or in connection with, this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than the parties named above in this Section 7.03, who shall be deemed to be the proper entities to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications. Declarant consents to the enforcement by the City, administratively or at law or equity, or by any legal means necessary, of the covenants, conditions, easements, agreements and restrictions contained in this Declaration.

Section 7.04 **Certain Remedies.**

(a) Declarant hereby agrees that failure to comply with conditions or restrictions in the Special Permits or this Declaration shall constitute a violation of the Zoning Resolution, and such failure to comply may constitute the basis for denial or revocation of Building Permit(s) or certificate(s) of occupancy with respect to the Development or for revocation of the Special Permits.

(b) In any application for modification, renewal or extension of the Special Permits, or for an amendment or modification of this Declaration, Declarant shall verify that it has complied with each of the conditions of the Special Permits and/or the Declaration theretofore prescribed by the Commission and the City Council.

(c) In the event that Declarant has not complied with the conditions of the Special Permits and/or the Declaration, such non-compliance may constitute grounds for the Commission and/or the City Council, as applicable, to disapprove any application for modification, renewal or extension of the Special Permits and/or for amendment or modification of the Declaration.

(d) For purposes of this Section, Declarant shall not be deemed to have failed to comply under any of paragraphs (a), (b) or (c) hereof unless and until Declarant or a Named Mortgagee, as the case may be, has failed to remedy or cure the event or occurrence which is the basis of any allegation of a failure to comply in accordance with the procedure as set forth in

Sections 7.01 and 7.02 of this Declaration with respect to alleged default(s), including all applicable notice and cure periods afforded Declarant and Named Mortgagee(s) therein.

(e) In any proceedings brought by the City against Declarant pursuant to paragraph (a) of this Section, including, without limitation, with respect to the performance of any Obligations, seeking to deny or revoke building permits or certificates of occupancy with respect to the Development, or to revoke the Special Permits, or to impose a lien, fine or other penalty, if the event or occurrence which is the basis of an allegation of a failure to comply by Declarant or the P.O.A. is the failure of Declarant or P.O.A. to perform an obligation associated with a particular Building, then the City shall only deny or seek the revocation of building permits or certificate of occupancy for the affected Building's tax lot(s), and only seek to impose a fine, lien, or other penalty on the affected Building, and any such event or occurrence shall not provide the basis for denial or revocation of the Special Permits or Building Permits or certificates of occupancy or the imposition of any fine, lien or other penalty, with respect to Buildings comprising a portion of the Development for which no such failure to comply has occurred.

Section 7.05 **Indemnification of Certain City Expenses.** If Declarant is found by a court of competent jurisdiction to have been in default in the performance of an Obligation and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of such Obligation, provided, however, that nothing in this Section 7.05 shall require the P.O.A. to have any indemnification obligations other than with respect to the Obligations pursuant to Article IV of this Declaration and the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such Obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

Section 7.06 **Uncontrollable Circumstances.**

(a) In the event that, as the result of Uncontrollable Circumstances, Declarant is unable to perform or complete any Obligation (i) at the time or times required by this Declaration; (ii) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (iii) prior to submitting an application for a New Building Permit or other permit or certificate of occupancy (TCO or PCO) which is tied to the completion of such requirement, where applicable, Declarant shall promptly after the occurrence of Uncontrollable Circumstances becomes apparent so notify the Chair in writing. Such notice (the "**Delay Notice**") shall include a description of the Uncontrollable Circumstances, and, if known to Declarant, their cause and probable duration. In the exercise of his or her reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice (i) certify in writing that the Uncontrollable Circumstances have occurred; or (ii) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstances have occurred. Upon a certification that Uncontrollable Circumstances have occurred, the Chair may grant Declarant appropriate

relief and, as a condition thereto, may require that Declarant post a bond, letter of credit or other reasonable security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration.

(b) Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, Declarant shall promptly recommence the work or implement the measure needed to complete the Obligation, in accordance with any applicable directive of the Chair previously issued in connection with a grant of relief, unless an alternative has been specified and agreed to in accordance with this Section 7.06.

## ARTICLE VIII.

### MISCELLANEOUS

Section 8.01 **Binding Effect.** Except as specifically set forth in this Declaration and, subject to applicable law, Declarant shall have no obligation to act or refrain from acting with respect to the Subject Property. The Obligations in this Declaration shall be binding upon Declarant and any other individual or entity, only for the period during which Declarant or such other individual or entity is the holder of a fee or other interest in the Subject Property and only to the extent of its interest in the Subject Property. The provisions of this Declaration shall run with the land and shall inure to the benefit of and be binding upon Declarant.

Section 8.02 **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, and any or all of its successors and assigns or the subsequent holders of any interest in the Subject Property, to the extent of their respective interests in the Subject Property, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event that any Building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Owner's Individual Assessment Interest. The "**Individual Assessment Interest**" shall mean the Unit Owner's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the P.O.A or on the condominium in which such condominium unit is located. In the event of a default in the obligations of the P.O.A as set forth herein, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners' unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Owners' unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid

common charges of the condominium, and the lien of the P.O.A. pursuant to the provisions of Article 5 hereof. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, the P.O.A, and/or the boards of managers of any condominium association. In the event that the P.O.A shall default in its obligations under this Declaration, the City shall have the right to obtain from the P.O.A and/or the boards of managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing in this Section 8.02 shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

Section 8.03 **Notices.**

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

- (a) if to Declarant: to the address at the commencement of this Declaration

Attention: General Counsel

with copies to: Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: Paul D. Selver, Esq.

and Bryan Cave LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Attention: Kenneth K. Lowenstein, Esq.

- (b) if to the Commission: Chair

City Planning Commission of the City of New York  
22 Reade Street  
New York, New York 10007  
(or the then official address)

with a copy to: Department of City Planning  
Office of the Counsel  
22 Reade Street  
New York, New York 10007  
(or the then official 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 8.03

(d) if to a Mortgagee:

at the address provided in writing to the Commission in accordance with this Section 8.03

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8.03, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission has notice ("Named Mortgagee"), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

Section 8.04 **Certificates.** The City will at any time and from time to time upon not less than thirty (30) days' prior notice by Declarant or a Named Mortgagee execute, acknowledge and deliver to Declarant or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of any Obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, (c) whether or not, with regard to a particular Building, Declarant must comply with any additional construction-related PCRE not stated in this Declaration, as provided in 3.07 hereof, in order to obtain a Temporary or Permanent Certificate of Occupancy for such building, and (d) as to such further matters as Declarant or such Named Mortgagee may reasonably request. In connection with issuing such statement, the City may request that the Declarant provide an update report regarding compliance with Article 3 of this Declaration. If the City fails to respond within such thirty (30) day period, Declarant may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: "**SECOND NOTICE PURSUANT TO SECTION 8.04 OF THE PARCEL LMN DECLARATION**"). If the City fails to respond within ten (10) business days after receipt of such second notice, it shall be deemed to have certified (i) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as Declarant or such Named

Mortgagee had requested, and such deemed certification may be relied on by Declarant or such Named Mortgagee.

Section 8.05 **Successors of Declarant**. References in this Declaration to “Declarant” shall be deemed to include any Successor Declarant, as defined in Section 6.02, provided that if all or substantially all of the Subject Property is leased pursuant to a ground lease to another person or entity by Declarant, then the lessee under such lease shall be deemed included as a “Declarant” for all purposes of this Declaration. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the “Declarant” hereunder unless such holder commences to develop the Subject Property in accordance with the terms of Section 2.01 hereof or has acquired its interest from a Party who has done so.

Section 8.06 **Parties-in-Interest**. Declarant shall provide the City with an updated Certification of Parties-in-Interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

Section 8.07 **Governing 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.

Section 8.08 **Severability**. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severed and the remainder of this Declaration shall continue to be of full force and effect.

Section 8.09 **Applications**. Declarant shall include a copy of this Declaration as part of any application pertaining to the Subject Property (as to which the provisions of this Declaration are applicable) submitted to the Buildings Department or any other interested governmental agency or department having jurisdiction over the Subject Property.

Section 8.10 **Incorporation by Reference**. Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

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

**CRP/EXTELL PARCEL L, L.P.**

**By: CRP/Extell Parcel L GP, L.L.C.  
General Partner**

By: \_\_\_\_\_  
Name: Andrew Chung  
Title: Vice President

**CRP/EXTELL PARCEL N, L.P.**

**By: CRP/Extell Parcel N GP, L.L.C.  
General Partner**

By: \_\_\_\_\_  
Name: Andrew Chung  
Title: Vice President





**SCHEDULE OF EXHIBITS**

## SCHEDULE OF EXHIBITS

<b><u>EXHIBIT A</u></b>	Metes and Bounds Description of Parcel LM
<b><u>EXHIBIT B</u></b>	Metes and Bounds Description of Parcel N
<b><u>EXHIBIT C</u></b>	Zoning Lot Certification
<b><u>EXHIBIT D</u></b>	Parties-in-Interest Waivers
<b><u>EXHIBIT E</u></b>	LMN Parcel Plan
<b><u>EXHIBIT F</u></b>	Plans
<b><u>EXHIBIT G</u></b>	Wind Reduction Tree Plan
<b><u>EXHIBIT H</u></b>	Sample Floor Area Calculations for Section 2.02
<b><u>EXHIBIT I</u></b>	Design Guidelines and Key Architectural Features for Smaller Buildings
<b><u>EXHIBIT J</u></b>	SCA Letter of Intent
<b><u>EXHIBIT K</u></b>	Operating Rules for LMN Public Space
<b><u>EXHIBIT L</u></b>	Child Care Study Area

## EXHIBIT A

### Metes and Bounds Description of Parcel LM

#### **Parcel L (Block 1171 Part of Lot 155):**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly line of West 61st Street with the easterly line of Riverside Drive:

- 1) RUNNING THENCE due east, along the southerly line of West 61st Street 182 feet 7-114 inches;
- 2) THENCE due south, 236 feet 0 inches;
- 3) THENCE due west, 234 feet 1-114 inches to a point in the easterly line of Riverside Drive;
- 4) THENCE north 9 degrees 36 minutes 13 seconds east, along the easterly line of Riverside Drive, 38 feet 8-518 inches to a point of curvature;
- 5) THENCE northerly, still along the easterly line of Riverside Drive, on the arc of a circle curving to the right having a radius of 1548 feet 0 inches and an included angle of 4 degrees 41 minutes 14 seconds, 126 feet 7-5/8 inches to a point of tangency;
- 6) THENCE north 14 degrees 17 minutes 27 east, still along the easterly line of Riverside Drive, 76 feet 4 inches to the point or place of BEGINNING.

#### **Parcel M (Block 1171 Part of Lot 155):**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of West 59th Street with the easterly line of Riverside Drive:

- 1) RUNNING THENCE due north, along the easterly line of Riverside Drive, 30 feet 0 inches to a point of curvature;
- 2) THENCE northerly, still along the easterly line of Riverside Drive, on the arc of a circle curving to the right having a radius of 1097 feet 10-3/4 inches and an included angle of 9 degrees 36 minutes 13 seconds, 184 feet 0-1/4 inches to a point of tangency;
- 3) THENCE north 9 degrees 36 minutes 13 seconds east, still along the easterly line of Riverside Drive, 9 feet 7-518 inches;
- 4) THENCE due east, 234 feet 1-114 inches;
- 5) THENCE due south, 222 feet 8 inches to a point in the northerly line of West 59th Street;
- 6) THENCE due west, along the northerly line of West 59th Street, 251 feet 1-114 inches to the point or place of BEGINNING.

## EXHIBIT B

### Metes and Bounds Description of Parcel N

#### **Parcel N (Block 1171 Lot 165):**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of West 59th Street with the westerly line of West End Avenue:

- 1) RUNNING THENCE due west, along the northerly line of West 59th Street, 548 feet 10-3/4 inches;
- 2) THENCE due north, 458 feet 8 inches to a point in the southerly line of West 61st Street;
- 3) THENCE due east, along the southerly line of West 61st Street, 548 feet 10-3/4 inches to the corner formed by the intersection of the southerly line of West 61st Street with the westerly line of West End Avenue;
- 4) THENCE due south, along the westerly line of West End Avenue, 458 feet 8 inches to the point or place of BEGINNING.

EXCLUDING THEREFROM all that portion of the below described parcel lying below an upper limiting plane drawn 18 feet 4 inches above top of rail, bounded and described as follows:

BEGINNING at a point in the westerly line of West End Avenue, distant 27 feet 11-7/8 inches northerly from the corner formed by the intersection of the northerly line of West 59th Street with the westerly line of West End Avenue;

- 1) RUNNING THENCE north 19 degrees 37 minutes 20 seconds west, 226 feet 7-7/8 inches to a point of curvature;
- 2) THENCE northerly, on the arc of a circle curving to the right, having a radius of 128 feet 2-3/4 inches and an included angle of 12 degrees 13 minutes 03 seconds, 27 feet 4-1/8 inches to a point of tangency;
- 3) THENCE north 7 degrees 24 minutes 17 seconds west, 151 feet 9-3/4 inches to a point of curvature;
- 4) THENCE northerly, on the arc of a circle curving to the left, having a radius of 451 feet 8 inches and an included angle of 5 degrees 10 minutes 3 seconds, 40 feet 8-7/8 inches to a point in the southerly line of West 61st Street;
- 5) THENCE easterly, along the southerly line of West 61<sup>st</sup> Street, 56 feet 2-3/8 inches;
- 6) THENCE southerly, on the arc of a circle curving to the right, having a radius of 506 feet 8 inches and an included angle of 3 degrees 47 minutes 03 seconds, 33 feet 5-1/2 inches to a point of tangency;
- 7) THENCE south 7 degrees 24 minutes 17 seconds east, 151 feet 9-3/4 inches to a point of curvature;
- 8) THENCE southerly, on the arc of a circle curving to the left, having a radius of 73 feet 2-3/4 inches and an included angle of 12 degrees 13 minutes 03 seconds, 15 feet 7-3/8 inches to a point of tangency;
- 9) THENCE south 19 degrees 37 minutes 20 seconds east, 72 feet 4-3/4 inches to a point in the westerly line of West End Avenue;
- 10) THENCE due south, along the westerly line of West End Avenue, 163 feet 9-3/8 inches to the point or place of BEGINNING.

**EXHIBIT C**

Zoning Lot Certification

**EXHIBIT D**

Parties-in-Interest Waivers

**EXHIBIT E**

LMN Parcel Plan

**EXHIBIT F**

Plans

**EXHIBIT G**

Wind Reduction Tree Plan

## **EXHIBIT H**

### Sample Floor Area Calculations

# **EXHIBIT I**

## Design Guidelines and Key Architectural Features

**EXHIBIT J**

SCA Letter

**EXHIBIT K**

Operating Rules for LMN Public Space

**RULES AND REGULATIONS FOR PUBLIC USE**  
**OF LMN PUBLIC SPACE EASEMENT (“PSE”)**

1. No person shall throw or deposit any litter within a PSE.
2. No persons shall affix or post any commercial or non-commercial handbill, poster or notice in or upon a PSE, unless authorized by Declarant in writing.
3. No person shall engage in the commercial or non-commercial distribution of products and/or material in or upon PSE (other than non-commercial printed or similar expressive material), unless authorized by Declarant in writing.
4. No peddler, solicitor or street vendor shall be permitted to operate within a PSE unless it receives the written permission of Declarant and is in compliance with all applicable laws, rules and regulations of the City of New York (collectively, “Applicable Laws”).
5. No persons shall drive, stop, stand or park a motor vehicle within a PSE (except to the extent required for persons with disabilities or Declarant employees performing security, maintenance or repair work).

6. No persons shall engage in any illegal activity in or upon a PSE, or conduct any activity that would obstruct pedestrian traffic or be detrimental or injurious to public safety.
7. No person shall deface, injure, destroy, displace or carry away any property, structure, ornament or landscaping.
8. No person, corporation, organization or other entity shall hold or sponsor any meeting, exhibition, musical, theatrical or other performance, or other scheduled or unscheduled event in a PSE, unless authorized in writing by Declarant and open to the public.
9. The following shall be prohibited:
  - excessive noise, including from radio and other music playing, noxious odors, objectionable vibrations, or any other use constituting a nuisance;
  - nudity;
  - cooking or alcohol (other than as may be served, in accordance with Applicable Laws, by any restaurant or food facility located in the PSE or in connection with any scheduled event authorized in accordance with Paragraph 8. );
  - illegal drugs;
  - obscenity;
  - prostitution or any other conduct for immoral purposes;

- uses in violation of Applicable Laws;
- use or possession of dangerous, flammable, or combustible objects or materials; and explosives, firearms and weapons.

**EXHIBIT L**

**Child Care Study Area**