



CITY PLANNING COMMISSION

October 19, 2009/Calendar No. 14

C 090433 ZMM

IN THE MATTER OF an application submitted by RG WRY LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 8b:

1. changing from an M2-3 District to a C6-4 District property bounded by West 33rd Street, Eleventh Avenue, West 30th Street, and Twelfth Avenue; and
2. establishing a Special Hudson Yards District bounded by West 33rd Street, Eleventh Avenue, West 30th Street, and Twelfth Avenue;

as shown on a diagram (for illustrative purposes only) dated May 18, 2009, Borough of Manhattan, Community District 4.

This application (C 090433 ZMM) for an amendment to the Zoning Map was filed by RG WRY LLC on May 14, 2009. The zoning map amendment, along with the related actions, would facilitate the development of the Western Rail Yard project in Manhattan's Community District 4.

RELATED ACTIONS

In addition to the zoning map amendment which is the subject of this report (C 090433 ZMM), implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

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| C 090408 MMM | Amendment to the City Map involving a change in grade to West 33 rd Street, between Eleventh and Twelfth avenues |
| C 090422 HAM | UDAAP designation, project approval and disposition of City-owned property |

- C 090423 HAM UDAAP designation, project approval and disposition of City-owned property
- N 090429 ZRM Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District)
- C 090430 ZMM Zoning Map Amendment establishing a C1-5 district within an existing R8 District
- N 090434 ZRM Zoning Text Amendment concerning Article IX, Chapter 3 (Special Hudson Yards District) relating to the addition of a Western Rail Yard Subdistrict F and the expansion of the Special Hudson Yards District
- C 090435 ZSM Special Permit pursuant to Sections 93-052 as amended and 13-561 for an attended accessory parking garage
- C 090436 ZSM Special Permit pursuant to Sections 93-052 as amended and 13-561 for an attended accessory parking garage

BACKGROUND

The Department of City Planning, the Department of Housing Preservation and Development, and RG WRY LLC propose several land use actions to facilitate the development of the Western Rail Yard project which includes a 5.7 million square foot mixed-use project on a platform to be built above the western portion of the Metropolitan Transportation Authority’s John D. Caemmerer West Side Yard (Western Rail Yard Site) and two permanently-affordable housing locations on City-owned property in Manhattan’s Community District 4 (DEP Site and MTA Site). The project proposes to transform a 13-acre open rail storage yard into a vibrant, high-density mixed-use development containing residential, commercial, and retail space, a new

public school, accessory parking for residents and workers, and over five acres of publicly accessible open space. In making this transformation, the project will become a major component of the redevelopment of Manhattan's Hudson Yards area. In addition, the project proposes the development of permanently affordable housing at two City-owned sites.

Project History

The Western Rail Yard Site and vicinity has been the subject of major planning and redevelopment efforts by the City, the MTA, and other entities for decades. Most recently, in 2005, the City adopted the Hudson Yards rezoning, a comprehensive proposal to realize the development potential of an underutilized 50-block area in the Far West Side of Midtown Manhattan and to help secure New York City's economic future by expanding job and housing opportunities in the area adjacent to the Midtown central business district. The rezoning allowed for a greater mix of land uses and densities, the creation of new public open spaces, and the extension of New York City Transit's No. 7 Subway line. The area of rezoning was generally west of Eighth Avenue between West 30th and West 43rd Streets.

As part of the Hudson Yards rezoning, the Eastern Rail Yard - across Eleventh Avenue from the Western Rail Yard Site - was rezoned from a low-density manufacturing district to a high-density commercial district. The Western Rail Yard Site, a prominent waterfront development site in the area, was envisioned to be a major component of the Hudson Yards transformation, but was not included in the 2005 rezoning. At that time, it was ESDC's proposed location for a new NY Jets Stadium/Multi-Use Facility. The stadium project, however, was not approved by the Public Authorities Control Board and the proposal was withdrawn.

In order to create a new plan for the Western Rail Yard Site, the MTA, Hudson Yards Development Corporation and the Department of City Planning held a year of workshops, forums, presentations and meetings in consultation with various City and State agencies, civic groups, and other organizations, including the Hudson Yards Community Advisory Committee, a Technical Advisory Committee, New York City Police Department, New York City Fire Department, New York City and New York State Departments of Transportation, New York City Department of Parks and Recreation, Community Board 4, the Manhattan Borough President, the Hell's Kitchen Neighborhood Association, the Real Estate Board of New York, Friends of the High Line, Friends of the Hudson River Park Trust, the American Institute of Architects, the American Planning Association, the Regional Plan Association, and the Convention Center Development Corporation.

This process established a series of guidelines to steer development on the Western Rail Yard Site. These included several urban design principles such as: the development should contain a mix of uses, the buildings should be organized around at least five acres of open space, tower heights should be varied to help ensure a dynamic contribution to the city skyline, the streetscape should be active and pedestrian-friendly, the site should be connected to the High Line and have views to the Hudson River. The guidelines contemplated a density of 10 FAR for the site, plus a density bonus for the provision of on-site permanent affordable housing and a floor area exemption for the inclusion of a public school on the Western Rail Yard Site.

On July 11, 2007, the City Administration and the MTA entered into a Memorandum of Understanding (MOU) concerning various matters relating to the development of the Western Rail Yard Project. Pursuant to the MOU, the City Administration agreed that it would support an application for rezoning of the Western Rail Yard Site that complied in all substantial respects with the design guidelines, and included the density bonus for on-site permanent affordable housing, and a floor area exemption for a public school. In order to address the costs of construction over the active rail yard and provide much-needed affordable housing, the City also agreed to contribute \$40 million dollars toward the development of two City-owned sites located north of the Western Rail Yard Site in Community District 4 for permanently-affordable housing.

The two City-owned sites that were identified are (1) a site controlled by the Department of Environmental Protection (the DEP Site) on the western side of Tenth Avenue between West 48th and West 49th Streets (Block 1077, p/o Lot 29), and (2) an additional site controlled by the MTA (the MTA Site) on the eastern side of Ninth Avenue between West 53rd and West 54th Streets (Block 1044, p/o Lot 3). These sites were to be made available through a future RFP process administered by HPD at such time as they were made available for development.

The MOU was accompanied by a letter from the local City councilmember supporting the development of the Western Rail Yard Site in accordance with the provisions of the design guidelines and the MOU. The MOU recognized that adoption of the proposal would be subject to the discretionary review and approval of the CPC and the City Council.

Later that month, the MTA issued a Request for Proposals (RFP) for the lease of, with an option to purchase, air space and related real property interests for development over the Western Rail Yard Site, as well as a separate RFP for the adjacent Eastern Rail Yard site. The primary objectives articulated by the MTA were to maximize revenue for its capital plan and to assure safe, uninterrupted LIRR service at the project site. A further goal was to promote excellence in architecture, urban design, and sustainability in keeping with the City's vision of the economic development and revitalization of the Hudson Yards Area.

In October 2007, the MTA received proposals from five real estate development firms. Four out of five teams submitted supplemental proposals in February 2008. In May 2008, the MTA reached a conditional designation agreement with the team led by the RG WRY LLC to serve as developer of the Western Rail Yard Site. The MTA and RG WRY LLC are expected to close on the transaction in Spring 2010.

Project Site and Area Descriptions

Western Rail Yard Site

The Western Rail Yard Site is a 13-acre site located on the far west side of Midtown Manhattan, near the Hudson River. The site occupies the entire area bounded by Eleventh and Twelfth Avenues, and West 30th and West 33rd Streets. The site is roughly equivalent to three city blocks, with approximately 712 feet of frontage along the avenues and approximately 800 feet of frontage along the side streets. The entire site is one zoning lot with approximately 570,000 square feet of lot area and is currently within an M2-3 zoning district.

The site is the western half of what is more formally known as the John D. Caemmerer West Side Yard which extends to Tenth Avenue on its eastern end. The area of the West Side Yard between Eleventh and Tenth avenues, known as the “Eastern Rail Yard”, was the subject of previously approved land use actions for the Hudson Yards Rezoning. The West Side Yard - the Western Rail Yard and Eastern Rail Yard taken together - is an electrified and signalized train yard used by the Long Island Rail Road (LIRR) for daily train storage and other rail related uses. There are 30 storage tracks with capacity for 386 railcars that allow for trains arriving to and departing from Manhattan to be held midday near Penn Station for more efficient movement of trains during peak hours. The West Side Yard also houses other rail related uses such as railcar interior cleaning, yard management, emergency facilities, and other equipment storage.

The southern portion of the project site, between West 30th Street and the approximate extension of West 31st Street, is not occupied by tracks. This portion of the site is “terra firma” and is occupied on a month-to-month basis by a private bus operator and by the NYC Department of Sanitation. These tenants would vacate the premises prior to construction of the proposed development.

The High Line, an unused freight railroad viaduct, runs along the western edge and southern edge of the project site along Twelfth Avenue and West 30th Street respectively. The High Line extends from Gansevoort Street at its southern end to West 34th Street at its northern end. The portions of the High Line south of the West 30th Street have been acquired by the City of New York and are in the process of being renovated into a new public park.

The topography of the project site varies dramatically. The street elevation at the northeast corner of the site, at Eleventh Avenue and West 33rd Street, is nearly 30 feet higher than elevations along Twelfth Avenue and other parts of the project site. These significant differences in grade create the potential for a platform to be constructed at the height of Eleventh Avenue while maintaining LIRR operations underneath.

Development of the space above the entire West Side Yard has been a long-standing goal of the MTA. In 1986, when the site was redeveloped by the Triborough Bridge and Tunnel Authority for use by the LIRR, the tracks were spaced to allow for future columns to support development above the tracks. At approximately 570,000 square feet, the project site comprises one of the largest open sites in Manhattan.

While much of the area surrounding the WRY site is characterized by storage, auto-related, small manufacturing and convention center uses, several new high-rise residential developments have been constructed in the area during the past few years and significant commercial and residential development is expected to occur in the next decade. Major public improvements underway are the construction of the No. 7 Subway line extension from Times Square to a new Hudson Yards station at West 34th and Eleventh Avenue and the first phase of the Hudson Park and Boulevard, a midblock open space located between Tenth and Eleventh avenues.

DEP Site

The portion of the DEP Site proposed for the development of permanently-affordable housing takes up approximately 22,220 square feet of an approximately 47,632 square-foot zoning lot (Block 1077, Lot 29).

The DEP Site is located approximately 125 feet west of Tenth Avenue and includes a rail cut for the Amtrak Empire Line railroad right-of-way. The other portions of Lot 29 along Tenth Avenue are currently being used by the NYC Department of Environmental Protection as a staging area for the construction of New York City's Water Tunnel No. 3, which will remain in City ownership. Construction of Water Tunnel No. 3 should be complete in the Summer of 2013, after which the southern half of the Tenth Avenue block front of Lot 29 will have a permanent easement and infrastructure associated with the City's Water Tunnel No. 3 and therefore continue to be controlled by DEP. The northern half of the Tenth Avenue block front of Lot 29 will be transferred to NYC Department of Parks and Recreation jurisdiction by DEP for the creation of public open space. This open space will be planned in coordination with DEP, as it will be subject to certain limitations to allow future access for required maintenance and operations of Water Tunnel No. 3.

The DEP Site is located partially in an R8 zoning district with a C2-5 commercial overlay (12,344 square feet) and partially in an R8 zoning district without a commercial overlay (9,875 square feet). The DEP Site is partially within the Preservation Area of the Special Clinton District (the same portion not within a C2-5 overlay) and partially in the Other Area of the Special Clinton District (the same portion with the C2-5 overlay).

The current land uses west of the DEP Site, comprise a mix of industrial uses, parking lots, six multiple dwelling buildings along West 48th Street, and several commercial uses along Eleventh Avenue. The American Red Cross in Greater New York's headquarters is located directly west of the DEP Site at 520 West 49th Street. This facility includes office space, an Emergency Communications Center, classroom and training space, a garage for storing emergency vehicles, and a gift shop. A Salvation Army building is located on the same block at 535 West 48th Street. The Clinton Family Inn Community of Opportunity building is located across the street from the DEP Site at 517 West 49th Street. Mixed-use buildings are located along Tenth Avenue directly south and east of the DEP Site. The surrounding blocks east of Tenth Avenue are predominantly residential. Located directly southeast of the Site is Hell's Kitchen Park, which is located on Tenth Avenue between West 47th and West 48th streets. The Clinton Community Garden is located further east in the mid-block of West 48th Street between Ninth and Tenth Avenues. The High School of Graphic Communication Arts is located on the mid-block northeast of Lot 29 on West 49th Street between Ninth and Tenth Avenues.

MTA Site

The portion of the MTA Site proposed for the development of permanently-affordable housing takes up approximately 21,500 square feet of an approximately 85,000 square foot zoning lot (Block 1044, Lot 3).

The MTA Site is located along Ninth Avenue between West 53rd and West 54th Streets and extends approximately 150 feet eastward into the block and is currently used as an accessory

parking lot for the adjacent five-story MTA-New York City Transit Authority (NYCT) office building which occupies the majority of Lot 3.

The rest of Block 1044 is occupied by a mix of multi-family residential buildings and mixed-use buildings. Directly south of the MTA Site are nine mixed-use and multi-family residential buildings between four and eight stories. Directly east of Lot 3 facing West 54th Street is the Midtown North Precinct of the New York City Police Department. The easternmost portion of the block contains a 25-story mixed-use building. The rest of the area surrounding the MTA Site contains a similar mix of uses, including residential, office and neighborhood retail uses.

The MTA Site is located in an R8 district with a portion of the site within a C1-5 overlay (16,760 sq. ft.). The MTA Site is also located within the Preservation Area of the Special Clinton District.

Proposed Development

Western Rail Yard Site

RG WRY LLC's proposal for the Western Rail Yard Site is for an ensemble of eight high-rise buildings organized around a network of open spaces. The proposed 5.7 million square-foot mixed-use development would contain approximately 3.8 to 4.8 million square feet of residential space (roughly 4,600 – 5,700 dwelling units), 1.5 to 2.2 million square feet of commercial office and/or hotel space, 210,000 square feet of retail space, a 120,000 square-foot public school, 1,600 accessory parking spaces, and approximately 5.4 acres of publicly-accessible open space. Of the eight towers, seven are envisioned to be wholly or primarily residential, and one would be

a commercial office and/or hotel space. A new public school would be located in the base of one of the residential buildings.

The towers are proposed to range between 450 feet and 900 feet tall. Following a guiding principle in the RFP, the building heights would “cascade,” with the tallest building at the northeast corner of the site where the commercial tower would be located, and the shortest building at the southwest corner of the site, at the curve of the High Line. The proposed massing includes five orthogonally-shaped towers located at the perimeter of the site and three sinuous buildings forms located in the center of the Site. The shape of these three buildings reflects their location within the Site’s open spaces.

A major organizing principle of the proposed site plan is the introduction of two new private streets into the Western Rail Yard superblock. The new private streets are equivalent to the westerly extensions of West 31st Street and West 32nd Street, and would be included to help establish neighborhood scale and connectivity to the surrounding area. They would break up the interior of the superblock as well as the Eleventh Avenue frontage which spans the equivalent of three blocks. Both private streets are proposed to be two-way roads which would each end in cul-de-sacs at the western portion of the site. A connector road would link the two private streets at a location near the cul-de-sacs, and allow passage for pedestrians and emergency vehicles only.

In addition to the new private streets, the proposed site plan is organized around six development parcels (Sites 1 through 6) and multiple publicly accessible open spaces. Sites 1 and 2 are located along the northern portion of the site, between West 33rd Street and the northern private street.

Site 1 is contemplated to have two residential towers on a shared base. Site 2 is the location for the commercial office/hotel tower. Sites 3 and 4 are located between the two new private streets, within the site's open space. Site 3 is proposed to have a limited floor plate size at the base of the building to allow for maximum visibility through the open space, while Site 4 sits between the site's Eleventh Avenue frontage and the Site's central open space. Sites 5 and 6 are located along the southern portion of the site, between the new southern private street and West 30th Street. Site 5 is proposed to straddle the High Line and would have a limited floor plate size at its base, like Site 3, due to its location within an open space and over the High Line. Site 6 is contemplated to have two residential towers and a new public school in its base.

The network of publicly-accessible open areas contains spaces that would vary in scale and purpose. The network includes a regional destination open space overlooking the Hudson River and connecting to the High Line, a large neighborhood park with children's playground in the center of site, a continuation of the High Line elevated park, a plaza-like space to provide relief for congestion in the base of the building on Site 2, a gateway entry space visible from Hudson River Park, and various paths and connections to bring pedestrians into and through the site. Extensive landscaping, seating, planting, and other public amenities would be provided throughout the open areas.

DEP Site

The DEP Site is proposed to be the subject of a future RFP issued by HPD. The site is currently envisioned to be a mixed-use development that would include approximately 204 units of permanently-affordable housing for low-, middle- and moderate-income levels and

approximately 10,800 square feet of ground floor retail. In order to maximize the amount of affordable housing on the site, the development is envisioned to rise to a maximum of 99 feet through a future application for a special permit pursuant to ZR 96-104 to increase the height of the building above the current maximum height of 66 feet.

MTA Site

The Site is proposed to be the subject of a future RFP issued by HPD. The site is currently envisioned to be a mixed-use development that would include approximately 108 units of permanently-affordable housing for low-, middle- and moderate-income levels, 6,750 square feet of ground floor retail, and 30,000 square feet of NYCT office space and below-grade NYCT emergency vehicle parking spaces. In order to maximize the amount of affordable housing on the site, the development is envisioned to rise to a maximum height of 115 feet along the Ninth Avenue frontage through a future application for a special permit pursuant to ZR 96-104 to increase the height of the building above the current maximum height of 85 feet.

REQUESTED ACTIONS

To facilitate the proposed Western Rail Yard project, the following actions are required:

Western Rail Yard Site

C 090433 ZMM – Zoning Map Amendment

RG WRY LLC is requesting a map amendment to Zoning Map 8b to rezone an existing M2-3 zoning district to a C6-4 zoning district, and to extend the Special Hudson Yards District to include the Western Rail Yard Site.

The existing M2-3 zoning district is a mid-level manufacturing zoning district that accommodates light to heavy industrial uses and some commercial and community facility uses. The M2-3 allows a maximum FAR of 2.0. On this 570,000 square foot site, the maximum floor area allowed is 1,140,000 square feet. The M2-3 has limited height and setback controls and does not require retail continuity, transparency, sidewalk widenings, and other urban design elements that foster quality pedestrian streetscapes.

RG WRY LLC proposes to rezone the underlying zoning district to C6-4. The C6-4 district permits a wide range of high-bulk commercial uses requiring a central location including corporate headquarter buildings, large hotels, entertainment facilities, retail stores and high-rise residences, as well as community facilities. Manufacturing uses would not be allowed. The maximum FAR allowed in a C6-4 is 10.0. With the rezoning, the allowed maximum floor area would be 570,000 square feet x 10.0 FAR, or 5.7 million square feet. Additional floor area provisions would apply and are discussed as part of the proposed text amendment below.

N 090434 ZRM – Zoning Text Amendment

RG WRY LLC proposes to amend the Special Hudson Yards District (Article IX, Chapter 3) in order to incorporate the project site, as a new subdistrict (“Subdistrict F”), into the special district and to establish controls to ensure that future development on the site will occur in a manner that corresponds to the site plan and massing as proposed by the applicant. Broadly speaking, those controls relate to density, building locations and bulk, streetscape, and open space. These are described below, as certified:

Bulk and Parking

As described above, the project is proposed to be rezoned from M2-3 to C6-4 and included in the Special Hudson Yards District. The proposed text amendment makes three special provisions for the C6-4 district in Subdistrict F:

- **Mix of Uses:** While the maximum overall density for the site would be 10.0 FAR, the maximum allowed density for residential, commercial, and community facility use would be limited to encourage a mix of uses. Residential and commercial uses would each have a maximum of 8.0 FAR. Community Facility use would have a maximum of 2.0 FAR.

- **Bonus for Permanent Affordable Housing:** The floor area of any building containing residential use on the Western Rail Yard Site may be increased by a maximum of 5% if at least 20% of the residential units in that building are permanently-affordable housing. The 8.0 FAR maximum for residential use and the 10.0 FAR maximum for total use in Subdistrict F may be increased pursuant to this bonus.

- **Exemption for Public School:** Floor area occupied by a NYC public school would be exempted from the definition of floor area for purposes of calculating the maximum permitted community facility floor area and the total maximum floor area allowed on the site.

- **Parking:** Instead of the underlying Hudson Yards Special District's parking regulations, the regulations of Article I, Chapter 3 would apply.

Height and Setback Regulations

In order to ensure that future development of buildings occurs in a manner that corresponds with the plan and massing as proposed by RGY WRY LLC, a number of regulations related to site planning, height, setback, and other bulk controls would apply to individual building locations.

The proposed text would designate areas on the Western Rail Yard Site where buildings may be located. Regulations regarding base heights, setbacks, maximum tower dimensions, and maximum tower floor plate sizes would then also be provided for each site. Site 3 and Site 5 would have limitations on the floor plate sizes of the lower and upper portions of the tower, in order to maximize views through the open space and around the High Line. Sites 3, 4, and 5 would have special alternative rules that incentivize non-orthogonal floor plates and their orientation by increasing the maximum width of the towers if they are oriented at an angle that maximizes sunlight in the open spaces. Sites 1, 2, 4 and 6 would have streetwall articulation requirements in order to create defined edges to the project's various open spaces and the Eleventh Avenue frontage.

The proposed text mandates that the building heights “cascade” downward from the northeast corner of the site to the southwest corner height, with minimum height differences required between certain buildings. The purpose of the cascade requirement is to ensure that the ensemble of the Site's multiple towers makes a dynamic contribution to the City's skyline. The maximum building height for Site 5, the building that is proposed to straddle the High Line, would be 450

feet above the level of the High Line bed. Except for this site, there would be no other maximum building height limits on the site.

The proposed text would also ensure a varied skyline through provisions mandating the articulation of tower tops. All buildings that exceed a height of 300 feet would be required to provide tower top articulation for a minimum of 40 feet below the top of the building, on all sides. The maximum lot coverage for the uppermost 40 feet of the tower must be 50% to 80% of the floor immediately below the required 40 feet.

The proposed text contains a provision whereby the City Planning Commission Chairperson may modify height and setback regulations in order to accommodate above-grade ventilation equipment needed to support the below-grade rail operations. Application for such change requires a Mechanical Plan explaining the below-grade conditions and a letter from the MTA describing the need for the modification.

The chart below provides a summary of the principal bulk controls for Sites 1 through 6.

	Base Height & “Stem” Controls	Tower Setback	Floor Plate	Tower Dimensions	Cascade & Max Height
Site 1 (2 towers)	Along Northern St: 60-90’ Along W. 33 rd : max 120’ Along Western Open Space: max 90’	Northern St & 33 rd Street: 15’	Max aggregate of 24,000 sf in 2 towers	E-W: 110’ N-S: 160’ 60’ separation between towers	Eastern tower must be min 100’ taller than western tower
Site 2	Along 11 th Ave: 120-150’ Along Northern St: 90-120’ Along W 33 rd : max 150’	11 th Ave & Northern St: 15’. Portion along 33 rd allowed to rise sheer.	Above height of 250’: 40,000 sf	E-W: 250’ below height of 400’ E-W: 225 above height of 400’	-

Site 3	Below 40': max floor plate 6,000 sf. Remaining area must be open or contain active uses.	-	Max 12,000 sf	145' max horiz. dimension, or 160' if oriented SW-NW	Must be at least 100' taller than Site 5
Site 4	Along 11 th Ave: 90-120'	11 th Ave: 15'	Max 12,000 sf	145' max horiz. dimension, or 160' if oriented SW-NW	Must be at least 100' taller than Site 3
Site 5	Below 60' above the High Line: max floor plate 5,000 sf Min 60' x 60' open "box" between the High Line and building	-	Max 12,000 sf	145' max horizontal, or 160' if oriented SW-NW	Tower Height Max 450'
Site 6 (2 towers)	Along 11 th Ave: 60-90' Along Southern St: 60-90' Above the High Line: 50-60'	11 th Ave: 15'. the High Line: 20' including mandatory 5' separation from the High Line	Max aggregate of 24,000 sf in 2 towers	E-W: 160' N-S: 110' 60' separation between towers	Eastern tower must be taller than or equal to western tower

Streetscape

The proposed text includes a number of controls to help ensure a safe, active, and high quality pedestrian environment on the perimeter streets, the internal private streets, and along the High Line.

- Retail Continuity and Transparency: Along Eleventh Avenue, all ground-floor building frontages must provide transparency and retail continuity. Along the Northern and Southern Streets, at least 70 percent of the frontage of Sites 1, 2 and 6 must provide transparency and contain retail or community facility use. Non-residential portions of the base of Site 3 must be 70% transparent and contain retail or other use that is accessible to the public.

- Sidewalk Widening: Along Eleventh Avenue, the sidewalk is required to be widened by five feet.

- Signage: Throughout Subdistrict F, no flashing or advertising signs are allowed. Accessory signs are allowed up to a maximum height of 20 feet for residential uses, and up to 40 feet for commercial uses. Within 50 feet of the High Line, no sign may exceed a height of 20 feet above the level of the High Line bed, and no signs may be affixed to or rest upon the High Line except as authorized by the City Planning Commission.

Public Access Areas

In order to ensure that future development of the open spaces occurs in a manner that corresponds with the plan as proposed by RG WRY LLC, the proposed zoning text sets forth a number of regulations related to location, character, size, mandatory features, and standards for amenities for each public access areas.

Public access areas in Subdistrict F would be comprised of publicly-accessible open spaces, private streets, and pedestrian ways. Their proposed characters and requirements are briefly described below:

- The Western Open Space is located at the western end of the Site and is designed to serve as the culmination of the Hudson Yards open space network and as a primary connection point to the High Line. The Western Open Space has a minimum easterly boundary measured 225 feet east of the Twelfth Avenue street line. The main features of this space would be a lawn of at least

1 acre in size and a connection to the High Line between 75 to 150 feet in aggregate length. Hours of access would be 6:00 am to 1:00 am.

- The Central Open Space is located at the center of the Site, between the two internal private streets, and serves as a major neighborhood park. Its main features would be lawn areas and a playground, each at least 10,000 square feet in size. Seating, pedestrian paths, tree and other planting would be required. Hours of access would be 6:00 am to 1:00 am.

- The Southwest Open Space, located in the southwest corner of the Site, is intended to serve as a gateway to the site from Twelfth Avenue and Hudson River Park. It is envisioned to be a tiered open space that mediates the steep grade change between Twelfth Avenue and the platform level. Seating, tree and other plantings would be required. Hours of access would be 6:00 am to 1:00 am.

- The High Line viaduct on the Western Rail Yard Site would serve as a continuation of the High Line public open space south of West 30th Street.

- The Northeast Plaza is intended to be a 2,600 square foot POPS-type space located at Eleventh Avenue and West 33rd Street. It would provide additional circulation space to relieve pedestrian congestion traveling to/from the Hudson Yards subway station and public amenities such as seating at the base of the large commercial building. The requirements for Public Plazas would apply for this space.

- The Midblock Connection is intended to provide pedestrian access to West 33rd Street from the midblock portion of the site, between building Sites 1 and 2. It would have a minimum width of 60 feet and contain seating and plantings. Hours of access would be 6:00 am to 1:00 am.

- The Northern Street is intended to serve as a pedestrian and vehicular connection into the site from Eleventh Avenue. It would provide an experience similar to a public street. It would be required to be paved with asphalt and lined with sidewalks and street trees. An allee, a path flanked by trees and benches, would run along the edge between the Northern Street and the Central Open Space, providing a unique and shaded path from Eleventh Avenue toward the Hudson River.

- The Southern Street has similar requirements to the Northern Street except that no allee is required. Both the Northern Street and Southern Street would be required to be open 24 hours daily.

- A Connector path would link the Northern and Southern Streets for pedestrians and emergency vehicles. It would be designed to meet FDNY standards for emergency egress.

- The West 30th Street Corridor is envisioned to serve as a transition space between the High Line and the West 30th Street sidewalk. It would provide a sidewalk widening and views of the High Line at street level. A pedestrian area of at least 10 feet in width would be required along the full length of the corridor linking Eleventh Avenue to the Southwest Open Space. It would be required to be open 24 hours daily.

Seating, landscaping, tree planting, paving, and a number of other amenities would be required throughout the public access areas. Where they are required, their dimensional standards would have to meet design criteria included in the text which are predominantly based on the requirements set forth under Section 37-70 "Public Plazas." In addition, no gates or fences would be allowed anywhere in the open areas, except as required for playgrounds. Maintenance for all the open areas would be the responsibility of the owner.

The final design for all public access areas listed above would be subject to future approval by the CPC Chairperson. Before a building permit may be issued for any development, the Chairperson must certify to the Buildings Commissioner that a Site Plan and a Landscape Plan, the latter prepared by a registered landscape architect, show compliance with the standards for dimensions, purpose, and amenities of the public access area as set forth in the text. The Chairperson may allow phased development of the public access areas provided that site and landscape plans have been submitted that provide for completion of public access area(s) in association with the development of the building(s) within each phase.

The Chairperson shall approve the Site Plan and Landscape Plans for public access area phases provided that certain criteria have been met, including:

- The plans show areas that are sufficient in size, provide a valuable amenity, and promote site access benefiting residents and/or workers in the buildings of the phase;
- The space is appropriately sited and in suitable proximity to the building in the phase;

- The plans show consistency with the purposes and core elements as described in the text;
- The level of amenity proposed is equal to or exceeds those developed under Section 37-70 “Public Plazas”; and
- A maintenance plan has been established.

The application for certification must include a report to the CPC Chairperson that the proposed design has been reviewed by Community Board 4, the local City Council Member, and Borough President for a minimum of 45 days, and that their comments have been considered and addressed by the applicant. In addition, no Temporary Certificate of Occupancy could be issued for any portion of a development within a phase until the Chairperson certifies that the public access areas associated with such phase are substantially complete and that they are open and available for use by the public. No permanent Certificate of Occupancy could be issued until the Chairperson certifies that the public access areas associated with such phase are fully complete. However, the Chairperson may allow modifications to the requirements of the open spaces upon determining that change is necessary to accommodate unforeseen ventilation demands of the operational rail yard below.

C 090435 ZSM and C 090436 ZSM – Special Permits for Accessory Parking

RG WRY LLC is also requesting two special permits to allow two accessory parking garages with a combined maximum of 1,600 spaces. A maximum of 270 of the spaces would be accessory to commercial uses. Given its size and mixed-use nature, the as-of-right allowance for accessory spaces on the Western Rail Yard site is 225 spaces. The special permit is necessary to

allow for the accessory spaces in excess of the as-of-right allowance. There is no public parking proposed.

Access to the parking areas would be located along West 30th Street and West 33rd Street, and from the internal Southern and Northern Streets. Vehicles accessing the accessory commercial spaces would enter the garage from West 33rd Street, while residents would be able to access the parking via either West 30th Street or the internal streets. The distribution of parking entrances will help assure that no congestion will occur at one garage entry, and will also separate the most active entry (for commercial users) from the open space network on the project site. In order to allow some flexibility to address site construction contingencies, the northern garage could contain up to approximately 1,100 spaces and the southern garage could contain up to 800 spaces. Collectively, however, the total capacity in the two garages would not exceed 1,600 spaces. Overall, a total of 90 reservoir spaces will be provided in the two garages. Fifty reservoir spaces will be provided at the northern garage, with 34 reservoir spaces provided at the West 33rd Street entrance for commercial users, and 16 reservoir spaces provided at the residential entry. Forty reservoir spaces will be provided for the southern garage with 26 of these spaces to be located at the West 30th Street entrance and 14 spaces at the Southern Street entrance.

C 090408 MMM - City Map Change to West 33rd Street

In addition to the applications by RG WRY LLC for the Western Rail Yard Site, the Department of City Planning requests an amendment to the City Map which would establish new legal grades on West 33rd Street between Eleventh and Twelfth Avenues. This built street segment is approximately 800 feet in length and has a mapped width of 60 feet (including sidewalks). It is

an improved one-way street that is City-owned and open to westbound traffic. At its eastern end near Eleventh Avenue, there is an existing bridge structure, which supports the street on columns that formerly had allowed the passage of railcars underneath the street on tracks (currently nonfunctional). Portions of this bridge structure would be demolished and replaced with fill where feasible. The portion of the bridge (just west of Eleventh Avenue) which spans over the Amtrak vent and emergency egress building for the Empire Line tunnel will remain in place.

The proposed legal grades would establish the grade for access, zoning, etc. for the proposed buildings on West 33rd Street. The maximum change in legal grade would be 4(+/-) feet occurring at approximately 225 feet west of Eleventh Avenue. The proposed legal grade changes would tie into existing grade at the western end where there is an entrance to the Jacob K. Javits Convention Center truck marshalling area on the north side of West 33rd Street. The grade (slope) of the street would change from 3.5 percent to 4.846 percent for this segment. In addition, grades on the corner of Twelfth Avenue would be established to reflect new grades which resulted from the reconstruction of Route 9A.

A polling letter was issued to all affected City and State agencies and utility companies on May 4, 2009. No agency or company expressed objections to the proposal.

DEP Site

C 090422 HAM - UDAAP designation, project approval and disposition of city-owned property

HPD requests UDAAP designation and project approval to facilitate the disposition of city-owned property for the construction of a mixed-use building containing permanently-affordable housing on the DEP Site. The city-owned DEP Site consists of underutilized vacant property.

N 090429 ZRM – Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District)

In order to maximize the amount of permanently affordable housing that could be constructed on the DEP Site, the Department of City Planning proposes a zoning text amendment that would move the entirety of the DEP Site's Lot 29 from the more-restrictive Preservation Area of the Special Clinton District into the Other Area of the district. The Other Area allows for higher lot coverage (70%) for the portion of a lot more than 100 feet from an avenue than the Preservation Area (60%). In addition, the rear yard requirements of the Preservation Area would force two separate buildings to be constructed on the site, while the Other Area would allow for a single larger building that could front onto the Tenth Avenue open space since it includes greater flexibility in the location of rear yards.

The proposed text change would modify the Special Clinton District zoning text map so that the Other Area would extend across all of Lot 29, so the portion of Block 1077 covered by the Other Area would extend from Tenth Avenue to Eleventh Avenue on the north side of the block (currently it extends from 100' west of Tenth Avenue to Eleventh Avenue) and from Tenth Avenue to a point 225' west of Tenth Avenue (currently it extends from 450' west of Tenth Avenue to Eleventh Avenue).

Necessary Future Actions

HPD will issue a Request for Proposals (RFP) for the DEP Site. After the RFP is awarded, the chosen developer will have to seek a special permit pursuant to ZR 74-681 to allow for construction over the Amtrak railroad right-of-way. To maximize the amount of permanently-affordable housing on the DEP Site, it is also envisioned that the chosen developer will seek a special permit pursuant to ZR 96-104 to increase the height of the building to rise from the current maximum height of 66 feet to a possible maximum height of 99 feet.

MTA Site

C 090423 HAM - UDAAP designation, project approval and disposition of city-owned property

HPD requests UDAAP designation and project approval to facilitate the disposition of city-owned property for the construction of a mixed-use building containing permanently-affordable housing on the MTA Site. The City-owned site consists of underutilized vacant property.

C 090430 ZMM – Zoning Map Amendment

In order to maximize the amount of permanently affordable housing that could be constructed on the MTA Site, the Department of City Planning proposes a zoning map amendment that would extend the existing C1-5 overlay over the entirety of the MTA Site's Lot 3. This would permit the MTA Site to be the subject of a future special permit application as a General Large Scale Development pursuant to ZR 74-74 to waive certain Preservation Area bulk regulations that limit the creation of affordable housing on the MTA Site given the lot coverage and configuration of the existing NYCT facility.

The zoning map change would extend the C1-5 overlay across all of Lot 3, so the portion of Block 1044 covered by the overlay would extend from Ninth Avenue to a point 125 feet west of Eighth Avenue on the south side of the block (as it currently is) and from Ninth Avenue to a point 525 feet east of Ninth Avenue (currently it extends to within 100 feet of Ninth Avenue) on the north side of the block.

Necessary Future Actions

HPD will issue a Request for Proposals (RFP) for the MTA Site. After the RFP is awarded, the chosen developer will have to seek a special permit pursuant to ZR 74-74 to create a General Large Scale Development. To maximize the amount of permanently-affordable housing on the MTA Site, it is also envisioned that the chosen developer will seek a special permit pursuant to ZR 96-104 to increase the height of the building to rise from the current maximum heights of 85 feet within 100 feet of Ninth Avenue and 66 feet beyond that, to possible maximum heights of 115 feet and 99 feet respectively.

ENVIRONMENTAL REVIEW

The application (C 090433 ZMM), in conjunction with the applications for the related actions (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, N 090434 ZRM, C 090435 ZSM and C 090436 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91

of 1977. The designated CEQR number is 09DCP007M. The co-lead agencies are the City Planning Commission and the Metropolitan Transportation Authority.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on September 2, 2009, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on September 2, 2009. A public scoping meeting was held on the Draft Scope of Work on October 2, 2009. A Final Scope of Work, reflecting the comments made during the scoping process, was issued on May 8, 2009.

The co-lead agencies prepared a DEIS and a Notice of Completion for the DEIS was issued May 15, 2009. Pursuant to SEQRA regulations and CEQR procedures, a joint public hearing was held on the DEIS on September 9, 2009 in conjunction with the Uniform Land Use Review Procedure (ULURP) applications (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, C 090433 ZMM, N 090434 ZRM and C 090436 ZSM). The Final Environmental Impact Statement (FEIS) was completed, and a Notice of Completion of the FEIS was issued on October 9, 2009. The FEIS identified significant adverse impacts and proposed mitigation measures that are summarized in the Executive Summary of the FEIS attached as Exhibit A hereto. On October 19, 2009, a Technical Memorandum was issued which describes and analyzes modifications to the Proposed Actions, adopted herein. The Technical Memorandum concluded that the Proposed Actions with the modifications would not result in any new or different significant adverse environmental impacts not already identified in the FEIS.

UNIFORM LAND USE REVIEW

This application (C 090433 ZMM), in conjunction with the applications for the related actions (C 090408 MMM, C 090422 HAM, C 090423 HAM, C 090430 ZMM, C 090435 ZSM and C 090436 ZSM), was certified as complete by the Department of City Planning on May 18, 2009, and was duly referred to Community Board 4 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related actions (N 090429 ZRM and N 090434 ZRM) which were referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this application and related actions (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, N 090434 ZRM C 090435 ZSM and C 090436 ZSM) on July 22, 2009, and on that date, adopted resolutions on these applications. The resolutions adopted by Community Board 4 are shown in the following table:

ULURP	Recommendation	In Favor	Opposed	Abstain	Present but not eligible to vote
C 090408 MMM	Approval with conditions	34	0	0	1
C 090422 HAM	Disapproval with conditions	22	10	0	1
C 090423 HAM	Disapproval with conditions	22	10	0	1

N 090429 ZRM	Disapproval with conditions	22	10	0	1
C 090430 ZMM	Disapproval with conditions	22	10	0	1
C 090433 ZMM	Approval with conditions	34	0	0	1
N 090434 ZRM	Disapproval with conditions	34	0	0	1
N 090435 ZSM	Disapproval	34	0	0	1
C 090436 ZSM	Disapproval	34	0	0	1

Community Board 4 provided a recommendation that sets forth their overall concerns about the Western Rail Yard Project, as well as individual comments and recommendations with respect to each application. Their overall concerns were grouped into the following categories:

1. Excessive Density: The degree of proposed density on the WRY presents many severe difficulties in creating a successful urban environment.
2. The need for a Commitment to a Comprehensive Affordable Housing Plan.
3. Include sufficient, defined and well-managed open space both on and off site.
4. Commitments both in siting and funding must be made to Public Infrastructure.
5. Historic Resources
6. Traffic and Transit
7. Commitment to Sustainability
8. Environmental Concerns
9. Restrictive Declaration

The Community Board’s recommendations on the various applications were as follows:

Western Rail Yard Site

C 090433 ZMM – Zoning Map Amendment

“- Board recommends approval of the proposed map change for the WRY, provided that the permitted density on the Development Site is moderated by eliminating the open space and streets from the calculation of floor area.”

N 090434 ZRM – Zoning Text Amendment

“- 93-16, which allows public parking facilities, should not apply in Subdistrict F. That provision should be modified in the same way as 93-17(a), with a lead-in that says “Within Subdistricts A through E . . .”

- 93-233(c) This ratio allows total floor area to be increased by 0.4, which is 40%. Clarify that this text to note this ratio refers to lot area as a base not floor area.

- 93-56 First paragraph: The first sentence should be changed for clarity, [changes underlined] to say “Buildings may be developed, subject to the height and setback regulations set forth in this Section 93-56, inclusive, only within the boundaries of the specific sites identified as Sites 1 through 6 on Map 6 (Subdistrict F Site Plan) in Appendix A of this Chapter.” Otherwise there’s nothing in here that clearly limits development to the Site Plan. You can get to that conclusion by extrapolation from the Public Access Area Plan in Map 7, but this is no place for extrapolation.

- 93-56 Fifth paragraph (and throughout): The publicly-accessible private streets should be called the “W. 32nd Street Extension” and the “W. 31st Street Extension.”

- 93-56 Last paragraph: This allows the CPC Chair to modify the height and setback regulations to accommodate ventilation requirements. CB 4 requests being included in this consultation process similar the open space review provision.

- 93-565(a) This section pertains to Winter Garden on Site 3. Since it is not really what will be built at this location, CB4 request that that the view corridor to the river be maintained and the space ensure maximum public accessibility.

- 93-751 Public restrooms should be required.

- 93-76 The publicly accessible private streets should have standard NYC regulations re: signage, traffic enforcement, on-street parking, etc. The city should be given an easement for the streets, so they function as city streets.

- 93-77(b) This section’s requirements are totally inadequate for the maintenance obligation for the publicly accessible open space. The requirements should be similar to those required in the Section 4.04 of the Restrictive Declaration for the ConEd Site on the east side. An Open Space Program Management Organization should be set up to establish rules and regulations for use, manage programming and monitor the owner’s compliance with the maintenance requirements. See Section 4.05 of the ConEd Site Restrictive Declaration.

- 93-78(b)(3)(i) The Site Plan must be presented to the Community Board, Council Member and MBP along with the Landscape Plan and the review period should be 60 days not 45 days.

- 93-78(c) typo: add “Commission” after “City Planning.””

C 090435 ZSM and C 090436 ZSM – Special Permits for Accessory Parking

“- The application for special permits for accessory off-street parking spaces in excess of that allowed as-of-right should be denied.

- The capacity of the Southern Garage should be limited to a maximum of one-fourth of the total number of parking spaces provided by the two garages, and access to the Southern Garage should be restricted to one entrance on the Southern Road.

- If the special permits are granted, the total number of parking spaces should be limited to 1,330, which would fulfill both residential and commercial demand.

- During build-out of the proposed development, the number of parking spaces available should be proportionate to the degree of completion of the development. For example, if the two garages were allowed a total of 1,330 parking spaces, when 50% of the residential units and commercial space had been completed, one-half of the total number of parking spaces, 665 spaces, would be allowed to operate.
- The garages should not be allowed to operate as public parking garages at any time; all parking spaces should be accessory off-street parking.
- Both garages should include sufficient bicycle parking to accommodate both residential and commercial demand, including people working in building maintenance and in the ground floor commercial operations.
- Both garages should be built with the necessary infrastructure to accommodate currently envisioned electrical vehicles, and with sufficient flexibility to enable the reasonable installation of entirely new, unanticipated infrastructure.”

C 090408 MMM - City Map Change to West 33rd Street

“- The incline of the West 33rd Street grade should be consistent with a maximum sidewalk incline for compliance with the Americans with Disabilities Act.

- The street interface to the rail yards and sub-platform activities along West 33rd Street and 12th Avenue should be fully planted or provide shallow booths for portable businesses like a farmers market or similar vendors.
- Should the LIRR passenger platforms be extended to West 33rd Street, train platforms should be accessed from the street.”

DEP Site

C 090422 HAM - UDAAP designation, project approval and disposition of city-owned property

“- A restrictive declaration be filed that restricts development of the site for affordable housing in perpetuity as follows:

- 20% of the units be affordable to those earning 80% Area Median Income;
- 40% of the units be affordable to those earning 125% Area Median Income; and
- 40% of the units be affordable to those earning 165% Area Median

- At least 50% of the developed units must be family-sized i.e. two bedrooms or larger.
- A permanent easement is granted for unobstructed light and air from the DEP water access tunnel site to the east. Because of the peculiarities of this development site, fronted by a park and/or undeveloped DEP water tunnel access along its eastern border and being situated over the railroad cut, CB4 is not opposed to a future special permit to reduce the lot coverage requirement and to reduce the rear yard depth. However, light and air, including operational windows along the eastern façade cannot be obstructed by the DEP water tunnel structures or subsequent security measures.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must not exceed a proposed 76 feet total in height. CB4 arrived at the 76 foot height limitation as a compromise between the City and the strongly held principles of community residents who care deeply

about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment U).

- No retail and/or commercial use shall be included in the development. The community strongly opposes the proposed use to include street level retail on West 49th Street. Retail commercial uses on the residential side streets are a growing problem now exacerbating an already problematic bar/club use on residential blocks, which is negatively impacting the character of the neighborhood.

- DEP release the portion of the site not being used by DEP (that portion over the rail cut and a strip of terra firma to the west) by 2010 in order to allow affordable housing development to proceed prior to 2013.

- The City's prior commitment to use public funds to develop this project must be codified in a Follow-Up Corrective Actions ("FUCA") memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.

- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110.

- Comfort stations for public use in conjunction with the DEP open space be included in the affordable housing development.

- The RFPs to select a developer for this site be developed in consultation with CB4.

- Resolution of the exact dimensions of the publicly-accessible open space in relation to the portion of the site needed by DEP for access to the water tunnel, must be codified in writing by DEP.

- A clear written timeline for acquisition and development of this open space must be included in the overall WRY development plan and be codified in writing by DEP.

- The identification by the Mayor's office of a DEP or other agency controlled site for replacement open space to be located within a sub-area of CB4 (West 34th to West 57th Streets and West of Eighth Avenue), equal to that open space lost due to DEP's expanded site usage for water tunnel maintenance (currently approximated at 120 by 200 feet in dimension).

- A written commitment from DEP for the hiring of a landscape architect to plan the landscaping and use of both the undisputed northern portion of open space and the southern portion maintenance area. A further written commitment for the funding of such open space improvements with the agreement to continue to include CB4 and the surrounding community in its development process."

N 090429 ZRM – Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District)

“- The boundaries of the Preservation Area are not changed and that modifications as necessary to expand both rear yard requirements and lot coverage are accomplished through subsequent text amendments.”

MTA Site

C 090423 HAM - UDAAP designation, project approval and disposition of city-owned property

“- A restrictive declaration be filed that restricts development of the site for affordable housing, in perpetuity, as follows:

- 20% of the units be affordable to those earning 80% Area Median Income;
 - 40% of the units be affordable to those earning 125% Area Median Income; and
 - 40% of the units be affordable to those earning 165% Area Median Income;
- At least 50% of the units developed must be family-sized i.e. two bedrooms or larger.
- The elimination of the 30,000 square feet reserved for the MTA office/training space; additional MTA needs can be accommodated at the existing MTA Control Center (“Control Center”) to the east or on the 7,000,000 square feet to be developed on-site at the WRY. It is outrageous to expect MTA needs to be accommodated within the small lot area dedicated to affordable housing.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must maintain a building height of 85 feet along Ninth Avenue frontage, and on West 54th Street, beginning 50 feet east of Ninth Avenue and through the midblock backing against the existing MTA Control Center, the building height must be no greater than 99 feet. CB4 arrived at the 85 and 99 foot height limits at this site as a compromise between the City and strongly held principles of community residents who care deeply about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment Y).
- Eliminate the 15 MTA parking spaces planned for the site.
- MTA release the city owned site from the NYCTA master lease upon approval of the WRY ULURP by the City Council, not a release contingent upon construction start at the WRY. The off-site housing is mitigation under the DEIS for the Proposed Actions, namely the rezoning from an FAR of 2.0 to an FAR of 10.0. Therefore, when the zoning is approved the mitigation is required.
- The RFP to select a developer for this site be developed in consultation with CB4.
- The City’s prior commitment of public financing to develop this project be codified in a FUCA memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.
- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the CSD District Harassment Cure requirements pursuant to ZR § 96-110.
- The designation of two potential landmarks identified in the WRY DEIS: (Attachments Z, AA and BB)
1. Tenement Blockfront (781-795 Ninth Avenue) – S/NR-eligible This collection of Hell’s Kitchen tenements serves as a reminder of the late 19th century residential character of Ninth Avenue. The Renaissance inspired stone, brick, terra cotta, and metal ornamentation and largely extant cornices present a valuable collection of tenement architecture.
 2. St. Benedict the Moor Church, 342 West 53rd Street – NYCL- and S/NReligible: Erected in 1869 and designed by R.C. McLane & Sons, the church has seen various congregations and parishioners over its more than 100-year history, yet most famously served as the first black Roman Catholic Church north of the Mason Dixon line. In 1921, due to African American migration to the north, the congregation moved to Harlem and the church was reassigned to the

Spanish Order of Franciscans in 1954 who have occupied the site ever since. The church stands as a vestige of the days when the neighborhood of Clinton/Hell's Kitchen was a thriving African-American neighborhood.”

C 090430 ZMM – Zoning Map Amendment

“- C1-5 map amendment covering the entire zoning lot be denied; the City and/or future developers commit to not filing a Large Scale Residential Plan for the site and instead accomplish desired modifications as necessary to rear yard requirements and lot coverage through subsequent text amendments. If a C1-5 map amendment is approved against our objections then the commercial FAR be limited to one (1) FAR.”

Borough President Recommendation

This application (C 090433 ZMM), in conjunction with the related actions (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, N 090434 ZRM, C 090435 ZSM and C 090436 ZSM), was considered by the Manhattan Borough President. On August 26, 2009, the Manhattan Borough President issued recommendations on the various actions as follows:

Western Rail Yard Site

C 090433 ZMM – Zoning Map Amendment and N 090434 ZRM – Zoning Text Amendment

“The Borough President recommends conditional approval, conditioned on RG WRY LLC’s agreement to:

- Commit to a minimum LEED Silver rating for all building, and pursue a minimum LEED Silver rating for Neighborhood Development;
- Consult with the community on a construction mitigation plan and participate in a construction taskforce with the community;
- Mitigate neighborhood open space impacts by ensuring the private open space will be operated and managed like public open space through a governance agreement that includes community representation;
- Explore new access points for the High Line with the City both on West 30th Street and on West 33rd Street;
- Improve site planning by providing locally-oriented retail and the main school entrance on West 30th Street;
- Improve the streetscape and pedestrian environment, especially along West 30th Street and West 33rd Street;
- Ensure that any privately owned streets on the site read as near as possible to public streets in treatment as well as name;
- Endeavor to avoid installation of sidewalk obstructions to maximize street tree planting at the perimeter of the site; and
- Commit to construct the public school as party of the first phase of construction.

These commitments significantly improve the project and with them the project warrants positive treatment. However, despite these commitments, significant work must continue to improve the project. Specifically RG WRY LLC should:

- Increase on-site and off-site affordable housing;
- Mitigate impacts on community infrastructure, particularly daycare services and a new FDNY facility; and
- Increase the total amount of cultural space provide.

In addition, the City and HYDC should work to:

- Ensure that the existing High Line structure is acquired and converted to a public park, including public reviews;
- Take necessary steps to improve the streetscape by implementing the community's street greening plan;
- Follow through on commitment to enact demolition restrictions in the Special Hudson Yards District;
- Enhance West 33rd Street as a pedestrian corridor to Penn Station;
- Protect neighborhood character by studying and landmarking historic resources;
- Prohibit the transfer of any unused development rights off of the WRY site; and
- Ensure the PS 51 expansion project serves primarily elementary school students and that the DOE and SCA undertake all necessary preparation to ensure timely construction of the proposed public school."

C 090408 MMM - City Map Change to West 33rd Street

"The Borough President recommends approval of the application."

C 090435 ZSM and C 090436 ZSM – Special Permits for Accessory Parking

"The Borough president recommends conditional disapproval of the applications for Special Permits, provided that the garages not exceed the total number of as-of-right spaces allowed under the Zoning Resolution, and eliminating the proposed entrance/egress from West 30th Street."

DEP Site

C 090422 HAM - UDAAP designation, project approval and disposition of city-owned property and N 090429 ZRM – Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District)

"The Manhattan Borough President recommends conditional approval, with the conditions that the DEP staging area is transferred to DPR as soon as possible and is mapped as parkland; a light and air easement is obtained from the DEP water access tunnel site; and that HPD adequately consults with the community to ensure the project meets local development goals."

MTA Site

C 090423 HAM - UDAAP designation, project approval and disposition of city-owned property and C 090430 ZMM – Zoning Map Amendment

"The Manhattan Borough President recommends conditional approval, provided that the office space and parking are eliminated; and that HPD adequately consults with the community to ensure the project meets local development goals."

City Planning Commission Public Hearing

On August 19, 2009 (Calendar No. 14), the City Planning Commission scheduled September 9, 2009 for a public hearing on this application (C 090433 ZMM) and the related applications (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, N 090434 ZRM, C 090435 ZSM and C 090436 ZSM). The hearing was duly held on September 9, 2009 (Calendar No. 35), in conjunction with the public hearing on the applications for the related actions. A total of 32 speakers testified at the hearing. Seven speakers testified in support of the Western Rail Yard Project while 25 speakers testified in opposition.

Those speaking in favor of the applications included representatives of the Hudson Yards Development Corporation, the Metropolitan Transportation Authority and Department of Housing Preservation and Development, as well as representatives from RG WRY LLC and their attorney. The Director of Land Use for the Manhattan Borough President also spoke in favor of the Project, as did a representative from the Regional Plan Association.

Those speaking in opposition included representatives from Community Board 4, West Side Neighborhood Alliance, Hell's Kitchen Neighborhood Association, West 55th Street Block Association, the Hudson Yards Community Advisory Committee.

The representative from HYDC described the importance of the Western Rail Yard Site to the Hudson Yards area, explained the collaborative process that led to the mixed-use vision for the Project, as well as the 2007 Memorandum of Understanding between the City's Administration and the MTA regarding the Project. She also addressed the difficulties associated with the

provision of affordable housing on the Western Rail Yard Site, particularly the costs of constructing the platform over the rail yard.

The representative from MTA explained that use of the air space above the Western Rail Yard has been a long-standing goal of the agency. He also explained the agency's position that FAR on the Site should be calculated over the entire zoning lot and addressed the agency's need for office and parking space on the MTA Site saying the location would be beneficial to the adjacent NYCT facility's needs.

The first representative from RG WRY LLC described the urban design proposal for the Western Rail Yard Site, including the reintroduction of the street grid and the proposed open space network. He addressed how the High Line was treated in the site plan particularly in relation to Site 5, and explained that the location of the rail yard affected the ability to activate the 12th Avenue and West 33rd Street frontages. In addition, RG WRY LLC's attorney described some of the main features of the proposed zoning text, focusing on how the Site and Landscape Plan review process was tied to the phased build-out of the Site.

The second representative from RG WRY LLC addressed concerns raised by the Borough President and Community Board regarding the Project. He underscored RG WRY LLC's intention to create an advisory committee to oversee programming of the Site's open space and their commitment to provide on-site space for community or cultural organizations, and to a LEED silver rating for all buildings. He also explained RG WRY LLC's commitment that 20 percent of all on-site rental housing would be made affordable, if 80/20 financing is available. In

addition, he explained that the need for 1,600 accessory parking spaces was based on an assessment of demand given the amount of development on the Site and that the West 30th Street entrance was necessary to provide access from 12th avenue in an efficient manner. Finally, the speaker submitted written testimony asking for a series of amendments to the originally-proposed zoning text based on additional studies of building efficiency and marketability. These included changes to the lobby dimensions on frontages with ground floor requirements, the height of the transition portions of Sites 1 and 6, and the maximum tower dimensions and signage requirements of Site 2.

A representative from HPD described the agency's role in the Western Rail Yard Project, in particular its work to create permanent affordable housing on the MTA Site and the DEP Site. She also described the future RFP processes for the sites which are expected to be awarded in 2013. She also noted that HPD plans to engage with the Community Board during the RFP process and that the income targets for the sites are expected to be 80 to 165 percent of area median income.

The Director of Land Use for the Manhattan Borough President reiterated the Borough President's recommendation and spoke in favor of the Project with the exception of the special permit applications for the accessory parking garages, stating that he believed RG WRY LLC had not met all the required findings.

Others in favor of the Project - including a representative from the RPA - focused on the beneficial effect of creating a transit-oriented mixed-use neighborhood on the rail yard site, the reintroduction of the street grid on the Site and the appropriateness of the overall site plan.

Those objections of those speaking against the Project - including representatives from Community Board 4 and the West Side Neighborhood Alliance – reiterated comments from the Community Board’s recommendation, including that the proposed density and number of accessory parking spaces for the Western Rail Yard Site were excessive, that the amount of affordable housing both on-site and as part of the larger Western Rail Yard Project was too limited, that the public nature of the Site’s open spaces was not certain, and that additional public infrastructure was necessary to accommodate the growth expected in the surrounding area and should be required on the Site. There was also concern that the inclusion of office space for the MTA on the MTA Site limited the amount of affordable housing that could be provided there, and that the expansion of the C1-5 overlay over the entirety of the Site would set a bad precedent in the Clinton area. Many of these concerns were also reiterated by the New York State Assembly Member from the 75th District, a representative of the New York State Senate Member from the 29th District and a representative of the Congress Member from the 8th Congressional District.

Representatives of the Friends of the High Line testified that the Commission should not approve the Western Rail Yard Project until a specified timeline for the site selection and acquisition of the High Line has been provided. In addition, they noted concerns with the proposed zoning text for the Western Rail Yard Site including that required access points should be more specifically

located, that additional access points should be required, that the design of the High Line on the Site be consistent with the structure south of West 30th Street, and that an adequate maintenance facility should be provided on the Site.

A representative of the 55th Street Block Association testified that the use of the Clinton Special District's special permit for a height increase for the future building on the MTA Site would create a building that was too tall and didn't fit in with the surrounding neighborhood.

A representative of the HYCAC advocated the landmark designation for historic buildings around the Site as a way to mitigate impacts of the development.

A representative of the Institute for Rational Mobility urged the Commission to postpone its decision on the Western Rail Yard Project until the Project's full impact on the region's commuter rail network could be ascertained.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application (C 090433 ZMM), in conjunction with the related applications (C 090408 MMM, C 090422 HAM, C 090423 HAM, N 090429 ZRM, C 090430 ZMM, N 090434 ZRM, C 090435 ZSM and C 090436 ZSM), 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 22, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resource Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 08-094.

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

CONSIDERATION

The Commission believes that the zoning map amendment (C 090433 ZMM) in conjunction with the related applications (C 090408 MMM; C 090422 HAM; C 090423 HAM; N 090429 ZRM, as modified; C 090430 ZMM, as modified; N 090434 ZRM, as modified; C 090435 ZSM; and C 090436 ZSM), are appropriate.

Western Rail Yard Project

The Commission believes the Western Rail Yard Project, as modified herein, is appropriate.

The redevelopment of approximately 13 acres in Manhattan's West Side presents a remarkable opportunity to enhance an area that, while performing an important regional transportation function in its current use as a rail yard, contributes little to the future growth of the emerging Hudson Yards area and the quality of life of its residents, workers, and visitors. The Commission recognizes that development of the Western Rail Yard Site has been a goal of the MTA since the opening of the Caemmerer rail yard in 1986, and that its redevelopment will both provide much needed support from the MTA Capital Plan and be consistent with the MTA's transit oriented

development strategies. The Commission notes that the Site represents a major component of the City's plans for the Hudson Yards area, and has been a focus of the City since the Hudson Yards rezoning in 2005. The Commission further notes that the Western Rail Yard Project will capitalize on the additional transit access being provided to the area by the extension of the No. 7 subway line, complement the rezoning of the Eastern Rail Yard across Eleventh Avenue, and strengthen connections to the Hudson Yards area to the north and east, and West Chelsea to the south.

The Commission recognizes that the current proposal stems from the extensive public outreach process led by the MTA and the Hudson Yards Development Corporation to create a new plan for the Western Rail Yard Site after the proposal for the Multi-Use Facility was withdrawn in 2005. The Commission notes that this process involved numerous meetings with the public, other stakeholders, and technical teams to establish a new vision for the Site. The Commission also notes the high level of interaction with the public during the RFP process, including presentations and exhibits of the various proposals for the Site. The Commission is also pleased with the high level of interaction between various city and state governmental agencies, the community, elected officials and the private sector throughout the planning and public review process for the Western Rail Yard Project.

The Commission recognizes that the Western Rail Yard Project is intended to balance a number of competing goals. It is intended to facilitate a mixed-use development with a superior site plan on the Western Rail Yard Site, including more than five acres of publicly accessible open space that will be integrated into the Hudson Yards area. It is also intended to provide financial

support to the Site's public-sector owner, the Metropolitan Transportation Authority. Finally, it must promote the goal of economic integration on the redeveloping West Side. In pursuing this goal, the City, HYDC, and MTA have been cognizant of the high cost of providing affordable housing on a platform developed over an active rail yard; thus, the two permanently-affordable housing locations have been included in the Project, as set forth in the Administration-MTA Memorandum of Understanding. Given the conjoined nature of development of the Western Rail Yard Site itself with the development of the two permanently-affordable housing locations in Community District 4, the Commission has considered these elements of the Project together, as a whole. The Commission believes that as modified, the Western Rail Yard Project achieves its goals and demonstrates a reasonable balance among potentially competing considerations.

This consideration first discusses the Western Rail Yard site and the actions proposed by the private applicant, RG WRY LLC, to facilitate development at that location, then discusses the actions proposed by the City to facilitate future development on the two off-site locations for affordable housing.

Western Rail Yard Site

The Commission believes that the applicant, RG WRY LLC, has proposed an exciting mixed-use plan that meets the criteria established in the Request for Proposals issued by the MTA in 2007, and in several respects, improves upon the urban design guidelines set forth as part of the City Administration and MTA Memorandum of Understanding regarding future development on the Western Rail Yard Site. These guidelines included provision for a mix of uses on the site, the development of five acres of open space, the creation of a dynamic addition to the City's skyline,

an active and pedestrian-friendly streetscape, and connections to the High Line open space. The proposed development plan for the Western Rail Yard meets the guideline objectives and improves in substantial respects upon the earlier version of the developer's site plan.

The site plan features eight new high rises totaling 5.7 million square feet of floor area arranged around over five acres of new public open space and connected to surrounding network of streets and open spaces. The Commission notes that a major organizing principle of the new site plan is the introduction of two new private streets into the Western Rail Yard superblock. While privately owned, these private streets will be open and accessible to the public, as required in the Restrictive Declaration. The Commission commends RG WRY LLC for introducing the two new private streets in part in response to comments from the community seeking better integration of the Site with the existing street network of Hudson Yards. The private streets are equivalent to the westerly extensions of West 31st Street and West 32nd Street, and are intended to establish neighborhood scale and connectivity to the surrounding area. As provided for in the zoning text, these private streets are also intended to look and feel like city streets to the greatest extent possible, and will serve to draw the public into the site to the network of public open spaces that are central to the proposal.

The Commission is pleased with the open space network for the Western Rail Yard Site. The Commission notes that the open spaces on the Site vary in scale and purpose, including a major regional destination lawn overlooking the Hudson River, a neighborhood park with a children's playground in center of the site, a public plaza to provide pedestrian relief at the intersection of Eleventh Avenue and West 33rd Street, as well as a gateway entry visible space at the

intersection of Twelfth Avenue and West 30th Street. In addition, the Commission is pleased with the Site's integration with the High Line which runs along its southern and western edges. The Commission notes that extensive landscaping, seating, planting and other public amenities would be provided throughout the open spaces. The Commission believes this 5.4 acre open space network will be a major attraction in the Hudson Yards area.

The Commission is further pleased with the building massing, as modified, for the Western Rail Yard Site. The Commission notes that the buildings would "cascade," with the tallest building at the northeast corner of the Site and the shortest building located at the southwest corner, at the bend of the High Line. The proposed massing includes five orthogonally-shaped towers located on three well-defined streetwall bases at the perimeter of the Site, and three non-orthogonal buildings located within the Site's open space network – reflecting their unique location. The Commission notes that this mix of streetwall buildings with tower-in-the-park-type buildings set amid open space produces a unique site plan with few precedents. The non-orthogonal building forms allow for more expansive views across the open space network.

Finally, the Commission is pleased with the mixed-use character of the Western Rail Yard Site, and believes the development will be a major positive contribution to the development of Hudson Yards. The Commission notes the proposed 5.7 million square-foot development contains approximately 3.8 to 4.8 million square feet of residential space, 1.5 to 2.2 million square feet of commercial office/hotel space, 210,000 square feet of retail space and a public school. The Commission believes this mix of uses will bring a high level of pedestrian activity to the Site's open spaces and private streets throughout the day.

A number of approvals are necessary to facilitate development on the site: a map amendment, a text amendment, parking special permits, and a City map change. This project is unlike a General Large Scale Plan proposal in which buildings have been designed and the Commission approves a specific set of waivers for those building. While a rezoning of the existing M2-3 zoning district is the baseline requirement to allow for high density mixed-use development, the centerpiece zoning action is a comprehensive text amendment to the Special Hudson Yard District regulations. The proposed text includes detailed controls that serve to ensure that future development on the site occurs in a manner that corresponds to the project as proposed by the applicant in response to the RFP and its subsequent refinements. Detailed consideration of each action is provided below.

C 090433 ZMM – Zoning Map Amendment

The Commission believes the C6-4 zoning district is an appropriate district for the Western Rail Yard Site.

The Commission notes that the C6-4 zoning district normally allows a base maximum FAR of 10.0, bonusable to 12.0 through the provision of privately-owned public space or inclusionary housing. Unlike the standard C6-4, the maximum density for the Western Rail Yard Site would be limited to 10.0 FAR through the related zoning text amendment. In comparison, blocks in Lincoln Square, Downtown Brooklyn, and other locations are zoned to permit development at an FAR of 12.0. In addition, much of Midtown and Lower Manhattan are zoned to permit development at FARs of 15.0 to 18.0. Further, the Commission notes that if the Western Rail

Yard Site were divided into typical Manhattan blocks (200 feet by 800 feet), the effective FAR of the Site would only equal approximately 12.0 FAR. In addition, the Commission notes the Eastern Rail Yard superblock immediately to the east is zoned for an onsite FAR of 11.0, more than is proposed for the Western Rail Yard Site.

While the Commission heard testimony stating that the level of density for the Site was too high, the Commission believes the density is consistent with the planning goals of Hudson Yards and, further, is not unprecedented for a Central Business District location, which the Hudson Yards area is planned to become.

The Commission heard testimony from Community Board 4 recommending that only the building parcels on the Western Rail Yard Site be allowed to generate floor area and not the private streets and open spaces included on the site plan. The Commission notes that comparable large-scale developments include the floor area generated by privately-owned streets and privately-owned open spaces provided on their site plans. For example, two recent large-scale plans adopted by the Commission, Fordham University Campus Redevelopment and East River Realty Corporation's First Avenue Project, include floor area generated by the open spaces and private streets on the zoning lot. While the Western Rail Yard site is not being developed pursuant to a large scale permit, the zoning text amendments provide a similar level of site plan control to ensure that the site is developed as an integrated whole.

Finally, the Commission believes it is appropriate to incorporate the Western Rail Yard Site into the Special Hudson Yards District. The Commission notes that the Site comprises the western

half of the John D. Caemmerer West Side Yard which gives the District its “yards” designation. Further, the Commission notes that the eastern half of the Caemmerer West Side Yard was rezoned as part of the 2005 Hudson Yards rezoning and that it would be appropriate to incorporate the western half of the site into the same district. Finally, the Commission notes General Purpose (a) of the Special Hudson Yards District which states the District intends to “facilitate and guide the development of (an) environmentally beneficial, transit-oriented business and residence district...” that coordinates “high density development with expanded mass transit facilities, and extended and improved subway lines.” The Commission believes the planning goals for the Western Rail Yard Project are in keeping with this General Purpose and that inclusion in the Special Hudson Yards District is therefore appropriate.

N 090434 ZRM – Zoning Text Amendment

The Commission believes the zoning text amendment, as modified herein, is appropriate.

The Commission believes the zoning text which incorporates the Western Rail Yard Site into the Special Hudson Yards District as Subdistrict F guarantees the main features of the proposed project while still allowing for appropriate future program, design and construction flexibility. More specific comments are grouped below in four sections (General Provisions, Use Regulations, Height and Setback Regulations, and Public Access Area Requirements) which consider in more detail the features of the text.

General Provisions

The Commission believes the two new General Purposes added to the Special Hudson Yards District are appropriate. The addition of the Western Rail Yard Site marks the first time the District reaches Twelfth Avenue and the Commission therefore believes it appropriate to include a goal relating to how the District transitions to the Hudson River to the west. The Commission also believes it appropriate to include a goal relating to the restoration and reuse of the High Line given its important relationship to the Western Rail Yard site plan.

The Commission therefore also believes it is appropriate to include definitions for the High Line and the High Line bed in the Special Hudson Yards District, as modified. The Commission recognizes the importance of the High Line in the open space network of the Western Rail Yard Site, as well as to the surrounding area including the Eastern Rail Yard to the east, the Javits Marshalling Yard site to the north, and West Chelsea to the south. In addition, the Commission notes the importance of considering the entirety of the elevated rail line as a singular space and adopt herein a modification to the zoning text so that the definition of the High Line listed in the Special Hudson Yards District takes into account the entirety of the elevated rail structure from Gansevoort Street to West 34th Street in the north-south direction, and between Washington Street and Twelfth Avenues in the east-west direction. However, the requirements included as part of this text amendment would only govern development on the Western Rail Yard Site.

The Commission also believes it is appropriate for the underlying provisions of Article I, Chapter 3 to be applied to the Western Rail Yard Site, instead of the Hudson Yards parking regulations. A further discussion of the Site's parking proposal is included below.

Finally, the Commission adopts herein a modification to the zoning text to require that the Restrictive Declaration for the Western Rail Yard Project be recorded before any construction on the Site can occur. This provision is intended to ensure that the environmental and other provisions of the Restrictive Declaration will become effective following the MTA disposition of the site to the RG WRY LLC. A further description of the Restrictive Declaration is included below.

Use Regulations

Floor Area Regulations

The Commission believes the minimum and maximum use ranges are appropriate since they will guarantee the Site will contain a mix of different programs while still affording an appropriate range of development scenarios as the Site is built out over time. The Commission notes that while the maximum FAR for development on the Site is 10.0 FAR, the maximum FAR for residential and commercial uses are both limited to 8.0 FAR and community facilities uses are limited to 2.0 FAR. The floor area exemption for a public school constructed on the Site is appropriate since it will encourage the development of this important public facility on the Western Rail Yard Site. Finally, the Commission believes the provision for a five percent floor area bonus for residential buildings that contain permanently-affordable housing subject to the requirements of the Inclusionary Housing program is an appropriate incentive given the high costs of construction on the Site.

Ground Floor Level Requirements

The Commission believes the special ground floor level requirements, as modified, are appropriate given the site's unique ground floor conditions. The Commission understands that the Eleventh Avenue frontage will have ground floor level requirements similar to other designated streets in the Special Hudson Yards District with the exception that banks cannot take up more than 25 feet of any Eleventh Avenue frontage. This provision will ensure a lively pedestrian experience along the main pedestrian access to the Western Rail Yard Site.

The Commission also believes the special ground floor level requirements for West 30th Street and the internal private streets are appropriate given their length and the predominantly-residential development envisioned on the Western Rail Yard Site. These include allowances for certain community facility uses like schools and community centers, as well as limits on the lengths of banks and accessory parking garage entrances.

During the public review process, the Commission received testimony from RG WRY LLC requesting an increase of the maximum aggregate lobby width included in the ground floor level requirements from 60 feet to 80 feet. The Commission believes this request is appropriate as the lengths of these three building frontages, measured along the private streets and West 30th Street, are approximately 400 feet which is equivalent to two short blocks along an Avenue. The underlying Special Hudson Yards District's active ground floor requirements would permit two 40 foot lobbies along those two short blocks. Given this, the Commission adopts herein a modification to the zoning text to increase the maximum aggregate lobby width along these street frontages to 80 feet, subject, however, to the further requirement that any two lobbies be

separated by a minimum of 120 feet to ensure a lively pedestrian experience along these frontages.

The Commission notes that ground floor level requirements, which include both active use and glazing requirements, are included for all the frontages on Eleventh Avenue, along West 30th Street, the northern private street and the southern private street and along certain open space frontages. The Commission understands the desire of Community Board 4 and the Manhattan Borough President that frontages along the Western Rail Yard Site should be activated to the greatest extent possible but notes that the location of existing MTA facilities do not allow for active ground floor uses along West 33rd Street or Twelfth Avenue. In order to address the potential for blank walls along these facades, the Commission adopts herein a modification to the zoning text to require that any non-transparent wall on the Western Rail Yard Site longer than 40 feet be treated with decorative elements or planting to provide visual relief.

The Commission believes that it is essential to allow for some flexibility in the text's requirements given that there may be ventilation needs for the active rail yard beneath the development platform. While the Commission believes some flexibility is warranted, it believes that the flexibility provided for in the proposed certification to allow for waiver of any height and setback regulation due to ventilation needs is too far reaching. The Commission agrees with the Community Board's concern that the level of flexibility allowed by the text as certified is too great, and believes that the certification should be limited to the ground floor level requirements. Therefore, the Commission adopts herein a modification to the zoning text to only allow for the modification by certification of the ground floor level requirements on the Western Rail Yard

Site. The Commission further notes that any requirement to modify the public access area requirements because of ventilation infrastructure needs will be reviewed as part of the future Site and Landscape Plan review process, which includes the participation of Community Board 4, the Manhattan Borough President and the local City Councilmember.

Signage

The Commission believes the signage requirements, as modified herein, are appropriate, and benefit the mixed-use character of the Western Rail Yard Site and the location of the High Line along its southern and western edges. The Commission believes using the Special West Chelsea District's High Line signage regulations for those portions of the Western Rail Yard Site within 50 feet of the High Line is appropriate to ensure a continuous character of the pedestrian experience along the entirety of the elevated rail structure.

The zoning text as certified provided that beyond 50 feet of the High Line, the underlying signage regulations of a C6-4 zoning district would apply with the limitation that flashing signs would not be allowed. During the public review process, the Commission received testimony from RG WRY LLC requesting a modification to permit all signage regulations of the proposed underlying C6-4 district to apply on Site 2 along its Eleventh Avenue frontage and its West 33rd Street frontage within 200 feet of Eleventh Avenue, which would allow the building to have flashing signs similar to other commercial buildings in the Hudson Yards area. The Commission notes that none of these frontages face directly onto any public open spaces or residential buildings. The result is would thus be similar to that under the regulations governing other portions of the Special Hudson Yards District, which prohibit flashing signs from fronting onto

Hudson Park and Boulevard and the Eastern Rail Yard Plaza. The Commission also notes that the signage regulations for privately-owned public spaces would apply to that portion of the building frontage along the Northeast Plaza. Therefore the Commission adopts herein a modification to the zoning text so that flashing signs would be allowed on Site 2 along its Eleventh Avenue frontage and within 200 feet of Eleventh Avenue along West 33rd Street. Flashing signs would continue to be prohibited at other locations on the Site.

Height and Setback Regulations

The Commission believes the Height and Setback Regulations, as modified, for the Western Rail Yard Site are appropriate. The Commission believes the regulations effectively control the distribution of bulk on the Site while allowing for future design and construction flexibility. The Commission's discussion of the height and setback regulations first discusses the general requirements of the height and setback regulations for the Site and then considers the requirements of each building site individually.

General requirements

The Commission believes it is appropriate to define certain locations where buildings can be located on the Western Rail Yard Site. In doing so, the Commission believes the zoning text effectively guarantees the applicant's proposed site plan while allowing an appropriate level of dimensional flexibility to deal with future design evolution, construction requirements, and programmatic needs. The Commission agrees with Community Board 4's recommendation that the text more clearly state that buildings can only be constructed on the various defined building sites. Therefore, the Commission therefore adopts herein a modification to the zoning text to

further clarify and reinforce that buildings within the Western Rail Yard Site can be built only within these designated locations.

The Commission believes the 5 foot sidewalk widening required along Eleventh Avenue is appropriate. The Commission notes the Western Rail Yard Project envisions a high level of pedestrian activity on Eleventh Avenue since it is the major gateway for the Site. The required widening would mirror the requirements on the east side Eleventh Avenue along the Eastern Rail Yard.

The Commission also believes the 5-foot separation, unobstructed and open to the sky, between the High Line and adjacent buildings is appropriate. The Commission believes this requirement will guarantee the integrity of the High Line as a stand-alone structure. However, the Commission adopts herein a modification to the zoning text to clarify this requirement for Site 5, where the High Line can be covered by a building above the High Line Bed, and at Site 6, where a building could be constructed below the High Line. The Commission also adopts a modification to permit adjustment of this requirement pursuant to an approved Site and Landscape Plan for the High Line, in order to provide access to the elevated rail structure.

The Commission believes the streetwall requirements for the Western Rail Yard Site are appropriate. The Commission believes these requirements will guarantee well-defined streetwalls along many of the Site's street and open space frontages while also providing for streetwall articulation to ensure variety in the pedestrian experience on the Site.

Site 1

The Commission notes Site 1's unique location fronting onto the Western Open Space, the northern private street and West 33rd Street. The zoning text deals effectively with these varying conditions. The Commission notes that the zoning text requires a minimum 60 foot and maximum 90 foot streetwall along the private street to continue the streetwall from Site 2 while also transitioning to a more appropriate height at this location. The Commission also believes it is appropriate to not require a streetwall on West 33rd Street given the limited pedestrian activity and constructability issues on this side of the Site. If streetwalls are provided in either of these two locations, they are subject to appropriate maximum heights (90 feet and 120 feet, respectively) to ensure they are in scale with the surrounding spaces.

The Commission has considered the recommendation of Community Board 4 to require a 15 foot setback along the entirety of Site 1's West 33rd Street frontage. However, the Commission believes the setback requirements included in the zoning text are appropriate. The below-grade railroad tracks are located right up to the property line along West 33rd Street and allowing towers to rise sheer without setback in this area makes for more efficient tower construction. The Commission notes that requiring a tower at this location to set back from West 33rd Street would push it into the Western Open Space, which would limit the size of this highly-important public space. Finally, the Commission notes that a tower at this location will be set back at least 40 feet from Twelfth Avenue due to the High Line and the required 5-foot separation from the elevated rail structure, which will minimize the impact of the tower's bulk along the street.

The Commission believes that the tower requirements for Site 1, as modified herein, are appropriate. Two towers are envisioned to be built on Site 1 subject to maximum north/south and east/west dimensions and a maximum total aggregate floorplate size of 24,000 square feet at any level that would allow the two towers to vary in size. The Commission believes that a slight increase in the maximum aggregate floorplate size would allow for shorter buildings overall on the Western Rail Yard Site; the maximum tower dimensions would still apply. Therefore, Commission adopts herein a modification to the zoning text so that the maximum aggregate floorplate for Site 1's towers is 25,000 square feet.

The Commission believes the regulations for the transition portion of the building on Site 1 are appropriate. The text as certified allowed for a portion of the building to rise above the maximum base height, as long as minimum setback requirements were met along the Western Open Space (30 feet) and West 33rd Street (20 feet). The maximum height of this transition portion was 135 feet, or one-half the height of the streetwall along the Western Open Space, whichever is less.

During the public review process, the Commission received testimony from RG WRY LLC requesting an increase in the maximum height of the transition portion on Site 1 from 135 feet to 250 feet. The Commission recognizes this would allow for shorter towers overall on the Western Rail Yard Site since more floor area could be developed in the transition portion. However, the Commission believes that a height of 250 feet would be excessive and would effectively create a wall along the northern edge of the Western Open Space, while blocking views of the site from the north. For these reasons, the Commission believes that the maximum height of the transition portion for Site 1 should remain at 135 feet.

Site 2

The Commission notes that Site 2 fronts onto Eleventh Avenue and the northern private street. The Commission believes the proposed streetwall heights are appropriately configured, with the highest heights along Eleventh Avenue and within 100 feet of Eleventh Avenue, with lower heights beyond 100 feet of the Avenue, along the northern private street. The zoning text does not require a streetwall along West 33rd Street given the limited pedestrian activity and construction issues on this side of the Site. However, if streetwalls are provided at this location, they are subject to a maximum height limit of 150 feet to ensure the building remains in scale with the adjacent street. The Commission also believes the minimum setback requirements above the maximum base heights are appropriate.

The Commission believes that the tower requirements, as modified herein, are appropriate. Site 2 is envisioned to be the location of a major commercial building. The zoning text as certified contained a series of maximum tower dimensions as the building increased in height. The maximum tower dimension below 400 feet would be limited to 250 feet, while the maximum dimension above 400 feet would be limited to 225 feet. In addition, the maximum floorplate size would be limited to 40,000 square feet. However, for the portion of a building below 250 feet, the text as certified allowed the building to exceed these maximum dimensions, provided certain minimum setbacks were included.

During the public review process, the Commission received testimony from RG WRY LLC requesting an increase in the maximum tower dimension for Site 2 to 300 feet while maintaining

a maximum tower floorplate of 40,000 square feet. RG WRY LLC stated this change would allow for more-efficient tower floorplates.

The Commission, however, believes the 300 foot tower dimension would be excessive given the building's location. Coupled with the towers on Site 1 to the west, more than 500 feet of the 800-foot-long blockfront would be taken up by building towers, effectively creating a wall on the Site's northern edge. Further, the Commission notes the tower regulation for other Subdistricts within the Special Hudson Yards District limit tower dimensions to a maximum width of 250 feet above 500 feet. The Commission recognizes, however, that the maximum tower dimensions in the zoning text as certified for portions of the building above 400 feet would not allow a 40,000 square foot maximum floorplate size to be achieved. Therefore the Commission adopts herein a modification to the zoning text so that the maximum tower dimension for all portions of the building above the base is 250 feet. The Commission believes this will allow for the creation of efficient office floorplates without creating a wall condition along West 33rd Street. The Commission further adopts herein a modification to the zoning text to remove the provision for the transition portion below 250 feet, since the Commission believes the base of the building already provides for large floorplates.

Site 3

The Commission recognizes the significant role the building on Site 3 plays in the site plan as it sits in between three of the major publicly-accessible areas on the Western Rail Yard Site. The Commission believes the requirements for Site 3, as modified herein, are appropriate.

The proposed zoning text requires that a publicly-accessible space would be provided on Site 3's ground floor, in excess of 6,000 square feet reserved for residential uses. This accessible space can be either open or enclosed but must be a minimum of 40 feet high, in order to maximize visibility through the space. The text requires that the space be included as part of the Central Open Space's supplemental area and be subject to future Site and Landscape Plan review if open, or provide active ground floor uses, similar to those required along the ground floor street frontages of the private streets and West 30th Street, if enclosed.

Community Board 4 expressed concerns that the view corridor to the river be maintained in this location and that the space ensure maximum public accessibility. However, the Commission believes the minimum height and glazing requirements appropriately guarantee views through this space to the maximum extent possible. The zoning text appropriately requires public accessibility from the surrounding publicly-accessible areas and active ground floor uses if the space was enclosed and appropriate requirements if it remained open.

However, the Commission recognizes that the zoning text as certified did not contain requirements for an enclosed space without active ground floor uses, such as if a winter garden were provided in this location. The Commission believes this use would be an important addition to the publicly-accessible areas on the site and should be allowed, subject to the future Site and Landscape Plan review process. Therefore, the Commission adopts herein a modification to the zoning text to require that any enclosed space that does not include active ground floor uses be considered part of the Central Open Space's Supplemental Area and be reviewed as part of the future Site and Landscape Plan review for this space.

The Commission believes the requirements for a building on Site 3 above this ground-floor portion are appropriate, as modified herein. Taken together, the Commission believes these regulations will encourage unique non-orthogonal building forms appropriate to Site 3's location within the Central Open Space. The Commission is pleased with the allowance in the zoning text to increase this horizontal dimension from 145 feet to 160 feet if the building is aligned to maximize views within - and sunlight into - the surrounding publicly-accessible areas. The Commission has further considered this provision and adopts herein a modification to the zoning text to ensure that towers utilizing this provision are angled correctly in relation to the Manhattan grid.

Site 4

The Commission notes Site 4's unique location fronting onto Eleventh Avenue on its eastern edge and within the Central Open Space. The Commission believes the zoning text effectively deals with this dual nature. The Commission notes that the zoning text requires a minimum 90 foot and maximum 120 foot streetwall along Eleventh Avenue to continue the streetwall from Site 2 while also transitioning down to a more appropriate height at this location as Eleventh Avenue decreases in grade heading south. The Commission further notes that beyond 50 feet of Eleventh Avenue no other streetwalls are required for Site 4 in order allow for greater flexibility on how to best integrate development on Site 4 with the Central Open Space. The Commission is pleased that no portion of a building on Site 4 can be within 15 feet of the pedestrian allee, required as part of the northern private street, so that the building does not overwhelm this important site plan feature. Further, the Commission is pleased that minimum 15 foot ground-

level setbacks are required along both the northern and southern private streets for portions of Site 4 beyond 100 feet of Eleventh Avenue in order to ensure that the Central Open Space is visible to pedestrians along that street.

The Commission believes the requirements for the tower portion of a building on Site 4 above the maximum base height are appropriate, as modified herein. Taken together, the Commission believes these regulations will encourage unique non-orthogonal building forms appropriate to Site 4's location within the Central Open Space. The Commission is pleased with the allowance in the zoning text to increase this horizontal dimension from 145 feet to 160 feet if the building is aligned to maximize views within - and sunlight into - the surrounding publicly-accessible areas. The Commission has further considered this provision and adopts herein a modification to the zoning text to ensure that towers utilizing this provision are angled correctly in relation to the Manhattan grid.

Site 5

The Commission believes the height and setback regulations for Site 5, as modified herein, are appropriate. The Commission believes the Site 5 building requires the most sensitive site and massing regulations due to its highly-important position over the High Line. The Commission notes the Site 5 building is the only structure allowed to straddle the High Line and that the zoning recognizes this by including special rules to ensure the building does not overwhelm the elevated rail structure. The Commission notes these requirements include special regulations for the portion of the tower below a minimum height of 60 feet measured from the High Line bed to create a clear open space, or portal, above the bed. These regulations also include a 5,000 square

foot maximum floorplate for the portion of the building below this height inboard of the High Line and a 30 foot maximum horizontal dimension for the portion of the building below this height outboard of the High Line.

The Commission believes the requirements for the portion of a building on Site 5 above the High Line portal are appropriate, as modified herein. Taken together, the Commission believes these regulations will encourage unique non-orthogonal building forms appropriate to Site 5's location above the High Line and within the Southwest Open Space. The Commission is pleased with the allowance in the zoning text to increase this horizontal dimension from 145 feet to 160 feet if the building is aligned to maximize views within - and sunlight into - the surrounding publicly-accessible areas. The Commission has further considered this provision and adopts herein a modification to the zoning text to ensure that towers utilizing this provision are angled correctly in relation to the Manhattan grid.

The Commission also notes Site 5's integral role in creating the "cascade" effect of buildings on the Western Rail Yard Site, where the tallest building would be located at the northeast corner of the site and the shortest on the southwest corner. The Commission notes that the design guidelines included in the original RFP for the Site recognized this and included a maximum height of 350 feet for the Site – the only height limit for a building on the site.

The 450 foot height of the building on Site 5 as proposed in the certified zoning text was raised as an issue at the public hearing. In considering this issue, Commission has examined for purposes of comparison the Standard Hotel, a significant new structure which straddles the

recently-opened southern section of the High Line at West 13th Street. The Commission notes that the hotel rises to only 208 feet measured from the High Line bed, less than half the proposed maximum height for Site 5. The Commission also notes, however, the sheer-rising nature of the hotel above the High Line.

In view of the above, the Commission believes the proposed maximum height of 450 feet is too tall for this location on the Western Rail Yard Site and therefore adopts herein a modification to the zoning text to limit the maximum height of Site 5 to 350 feet, consistent with the height limit established in the design guidelines for the Site. The Commission believes a building at this height would be more in keeping with the scale of the High Line and provide a more-appropriately-scaled terminus for the cascade of buildings on the Site. The Commission further adopts herein a modification to the text to remove the tower top articulation requirements for this site to allow a sheer-rising tower, similar to the Standard Hotel.

The Commission also notes the 30 foot height of the portal between the High Line bed and the Standard Hotel above. While the zoning text as proposed required a 60 feet portal at Site 5, the Commission believes the height of this portal can be lowered and still provide an ample pedestrian gateway at this narrow section of the High Line as it bends from West 30th Street toward the north. The Commission therefore adopts herein a modification to the text to lower the height of the High Line portal to 50 feet. The Commission notes this would still be 20 feet higher than the High Line portal at the Standard Hotel, which is appropriate given the narrower width of the High Line at the Western Rail Yard than under the Standard Hotel. In addition, the

Commission notes this change would allow for some of the floor area from the building's top to be made up lower to the ground.

Finally, the Commission amends the requirements for the outboard portion of the High Line portal. The Commission notes that the zoning text as certified only allowed for a single piece of structure on this side of the High Line, with a maximum horizontal dimension of 30 feet. The Commission notes this requirement would not allow for multiple pieces of structure in this area, such as a series of building columns. The Commission recognizes the structural needs of the building are undetermined at this time and that additional flexibility should be incorporated into the zoning text. Therefore, the Commission adopts herein a modification to the text to allow multiple pieces of structure outboard of the High Line as long as, in the aggregate measured along their longest dimensions, they meet the width requirements of the 30 foot maximum horizontal dimension in the originally-proposed zoning text and, in addition, the aggregate gross area of these structural pieces is less than 700 square feet – the approximate area of a 30-foot diameter circle.

Site 6

The Commission notes that Site 6 fronts onto Eleventh Avenue, the southern private street and the High Line. The Commission believes the zoning text effectively deals with these various conditions. The Commission notes that the zoning text requires a minimum 60 foot and maximum 90 foot streetwall along Eleventh Avenue, within 100 feet of Eleventh Avenue along the High Line, and along the entirety of the southern private street frontage. Along 11th Avenue, the requirements for Site 6 continue the streetwall from Site 4 while also transitioning down to a

more appropriate height at this location as Eleventh Avenue decreases in grade heading to the south. The Commission further notes that the zoning text requires a minimum 50 foot and maximum 60 foot streetwall measured from the High Line bed along the elevated rail structure beyond 100 feet of Eleventh Avenue, which the Commission believes is an appropriate streetwall height given its location next to the High Line.

The Commission believes that the provision of the zoning text that would allow Site 6, by certification, to expand an additional 40 feet west to accommodate a public school is appropriate. This expansion, which would impact the size of the Southwest Open Space, would only be utilized if the public school needs the space and a plan for the Southwest Open Space has been approved pursuant to the Site and Landscape Plan review process in tandem with the certification

During the public review process, the Commission heard testimony from the Community Board and the Borough President requesting that the location of the entrance for the public school contemplated for Site 6 be designated in the zoning text. The Commission, however, notes that the design of the school, including its entrance, will take place in the future pursuant to School Construction Authority procedures.

The Commission believes that the tower requirements for Site 6 are appropriate, as modified herein. The Commission notes that two towers are envisioned to be built on Site 6 subject to maximum north/south and east/west dimensions and that, in order to further maximize the amount of sunlight which enters into the Western Rail Yard Site's open spaces, the maximum

aggregate width of the towers within 40 feet of the southern private street and the High Line is 220 feet. In addition, the Commission notes that the zoning text allows for a maximum total aggregate floorplate size of 24,000 square feet at any level, in order to permit the two towers to vary in size. The Commission has considered this maximum aggregate floorplate size in relation to the maximum tower dimensions and believes the aggregate size can be increased with no negative visual impact, since the maximum widths would still apply. The Commission believes this increase in the maximum aggregate floorplate size would allow for shorter buildings overall on the Western Rail Yard Site. Therefore, the Commission adopts herein a modification to the zoning text so that the maximum aggregate floorplate for Site 6's towers is 25,000 square feet.

During the public review process, the Commission received testimony from RG WRY LLC to permit a transition portion between the proposed maximum 90 foot base height and the two towers to be built above. In considering this request, the Commission was concerned that a transition portion above the maximum base height on Site 6 would limit the amount of sunlight that would reach the Central Open Space. Therefore the Commission adopts herein a modification to the zoning text to allow a transition portion above the maximum base height , provided the maximum east-west dimension for the two towers is limited to 110 feet each. Under this massing scenario, the Commission believes that any sunlight lost by the increased height of the base would be compensated via the increased separation between the towers above it. The Commission further modifies the zoning text so that the maximum height for this transition portion is 150', or two-thirds the height of the streetwall along the southern private street, whichever is less. Finally, the Commission adopts herein a modification to the zoning text so that minimum setbacks of 30 feet are required on both the north and south sides of the

building to limit the transition portion's impact when viewed from the southern private street or the High Line. The Commission believes this change would result in lower total heights for the buildings sitewide since more floor area could be constructed lower to the ground.

Tower Top Articulation

The Commission believes that tower top regulations are important for the Western Rail Yard site due to its prominent waterfront location and visibility on the Midtown Manhattan skyline.

The Commission has considered the tower top articulation requirements proposed at the time of certification, which are similar to those in recently-approved Special Districts, such as Coney Island and St. George, and believes that a more refined yet flexible set of regulations would be more appropriate for the Western Rail Yard site, which will include several towers.

The Commission believes the tower top articulation requirements, as modified herein, will guarantee what the Commission considers to be appropriate articulation requirements for the buildings, allow for a great deal of design and programmatic flexibility by incorporating mechanical areas, and ensure a dynamic signature addition to the City's skyline.

The Commission notes that the certified text required all buildings on the Site to provide tower top articulation for the top 40 feet of their usable floors, while there were no requirements for the mechanical areas above. Given the great variety of possible building sizes that could be built on the Site, the Commission believes the requirements should instead be proportional to each building's size. In addition, the Commission believes that mechanical areas play a great role in

the tower tops of many City skyscrapers and should be considered in the Site's regulations. The Commission therefore modifies the text so that buildings that exceed a height of 350 feet must include a 'tower top zone' made up of a minimum of the top 15 percent of the building, including its mechanical area. The Commission notes that this is the average proportion for tower tops on skyscrapers built in New York over the last decade.

The Commission further notes that the certified text did not contain provisions that ensured integration between the usable floors and the mechanical areas at the tops of buildings, which the Commission believes is necessary to create well-proportioned tower tops. Thus, the Commission modifies the text to require that the 'tower top zone' must include a 'lower zone' that contains tower stories and must take up a minimum of 50 percent of the 'tower top zone's' height and an 'upper zone' that must contain a minimum of one story which is predominantly composed of floor area and any mechanical areas above. Furthermore, to ensure the mechanical areas are in proportion with the rest of the building, the Commission modifies the text to require that the maximum width reduction between the uppermost portion of usable floors and the lowermost portion of mechanical areas above shall not exceed 50 percent.

The Commission also notes that the certified text did not contain requirements for building material continuity within the 'tower top zone', which the Commission believes is necessary for an integrated tower top design. The Commission therefore modifies the text to include a requirement whereby a minimum of 10 percent of the façade's surface area within the 'tower top zone' must be composed of a single material and must extend from the bottom to the top of the 'tower top zone.'

The Commission notes that the certified text contained requirements for profile change in the usable floors of the building, including minimum setback dimensions and maximum floorplate sizes. However, the Commission believes these provisions offered little flexibility in how a building could design its tower top. The Commission therefore modifies the text so that the ‘tower top zone’ must provide a minimum amount of profile change - 10 percent of area of the ‘lower zone’ and 20 percent for the ‘upper zone’ – while allowing such profile changes to occur in any fashion, as long as some amount of the profile change begins at the bottom of the ‘tower top zone.’ The Commission also modifies the text so that the 80 percent maximum floorplate size requirement within the ‘tower top zone’ is taken as an average - which allows for smoother, less-rigidly-shaped buildings. In addition, the Commission modifies the text so that the floorplate used as the basis for the maximum ‘tower top zone’ floorplate need not be located directly below the zone, but can instead be the largest floorplate in the building between 350 feet and the beginning of the ‘tower top zone’ - which allows changes in the building’s profile below the ‘tower top zone’ to be taken into account and therefore encourages more-dynamically-shaped buildings.

Public Access Areas

The Commission believes the public access area regulations for the Western Rail Yard Site, as modified herein, are appropriate. The Commission notes that the public access areas encompass all publicly-accessible open spaces, pedestrian ways and private streets required on the Site. The Commission believes the regulations effectively ensure high standards for the various spaces on the site, while allowing for future design and construction flexibility. The Commission’s

consideration first addresses the general requirements of the public access areas regulations for the Site, then considers the requirements for each open space individually, and finally considers the design requirements and future public review process for the public access areas.

General Requirements

The Commission believes it is appropriate to define certain requirements for individual public access areas on the Western Rail Yard Site. In doing so, the Commission believes the zoning text effectively guarantees RG WRY LLC's proposed site plan while allowing an appropriate level of design flexibility to deal with future construction and programmatic needs.

The Commission recognizes the importance of the private streets to the site plan. The Commission believes the private streets will serve to break up the large scale superblock and provide a dimensional rhythm similar to the surrounding street grid. Further, the Commission notes that the requirements for these two private streets are intended to ensure they look and function as much as possible as public streets, taking into account their private nature. In response to public comment, the Commission adopts herein a modification to the zoning text to change the name of the 'Northern Street' and 'Southern Street', as described in the zoning text as certified, to the 'West 32nd Street Extension' and the 'West 31st Street Extension', respectively.

The Commission believes the hours of public access for the various public access areas are appropriate. The Commission notes the requirement that the Western Open Space, Central Open Space, Southwest Open Space and Midblock Connection must remain open from 6 am to 1 am is similar to public parks, such as Hudson River Park to the west of the Site. In addition, the

Commission notes that the Northeast Plaza must remain open pursuant to the requirements for Public Plazas, since it is considered one in the zoning text. Further, the Commission notes that no hours of access are included for the High Line since the hours of operation for this open space have yet to be decided and will be determined at a later date. Finally, the Commission notes that the private streets and public ways including the West 32nd Street Extension, the West 31st Street Extension, the Connector and the West 30th Street Corridor must remain open to the public 24 hours per day.

Western Open Space

The Commission believes the requirements for the Western Open Space, a major open space that joins the northern portion of the High Line open space network on its west to the open space networks leading to the Eastern Rail Yard Outdoor Plaza and Hudson River Park and Boulevard to the east, are appropriate.

The Commission notes that a major feature of the Western Open Space is an open lawn area with a minimum size of one acre overlooking the Hudson River. The Commission believes the requirements for this Core Element are appropriate.

The Commission notes a major feature of the Western Open Space is a connection to the High Line. The Commission believes the requirements related to this Core Element are appropriate. The Commission believes the minimum 75 foot and maximum 150 foot length of such unobstructed connection is appropriate. The Commission notes this connection need not be

continuous. Further, the Commission notes this access need not be opened to the public until the High Line is reconstructed as a public open space.

The Commission understands Community Board 4's recommendation to require that any space on Site 1 that is not occupied by building be considered part of the Western Open Space. The Commission notes that the certified zoning text required that any space on Site's 3, 4 and 5 not covered with a building be considered part of their surrounding open space. The Commission believes this is warranted in those cases because the buildings sit squarely in the Western Rail Yard Site's open spaces. However, the same should not be required for Site 1, since this could produce incidental appendages to the Western Open Space that may not function as part of the open space and are thus less likely to feel public in nature.

The Commission also heard testimony advocating the inclusion of a pedestrian bridge to provide access between the Western Rail Yard Site and Hudson River Park. The likely location for such a bridge would be the Western Open Space. The Commission notes the Western Rail Yard site plan already provides an integrated pedestrian connection between the Site and Hudson River Park through the Southwest Open Space to the intersection of Twelfth Avenue and West 30th Street and then crossing the Avenue at grade. The proposed zoning text would not preclude a future bridge and any such bridge would require numerous additional public actions before it could be built.

Central Open Space

The Commission believes the requirements for the Central Open Space are appropriate. The Commission believes this space will be a neighborhood open space that will provide amenities for area residents, workers and the general public.

The Commission notes the major features of the Central Open Space are a Lawn Area with a minimum aggregate size of 10,000 square feet and a playground with a minimum area of 10,000 square feet. The Commission believes the requirements for these Core Elements are appropriate. The Commission believes the required 12 foot minimum separation between any portion of the lawn area and any adjacent building will ensure that structures do not overwhelm this public space.

The Commission also believes that the topographic controls for the Central Open Space are appropriate. The Commission notes that the maximum finished grade for the Central Open Space is 45 feet above the Manhattan Datum within 350 feet of Eleventh Avenue and is 47 feet above the Manhattan Datum beyond 350 feet. The Commission believes this will ensure that the Central Open Space's topography will not cut off views between the West 32nd Street Extension and the West 31st Street Extension. The Commission also believes the topography requirements of the Supplemental Area complement these maximum grade requirements. The Commission notes that maximum slope in the Supplemental Area will not exceed 7.5 degrees or a maximum of two feet within 15 feet of a required sidewalk or pedestrian access, and will not exceed 15 degrees beyond 15 feet of a required sidewalk or pedestrian access. The Commission further

notes the required sidewalks include the southern sidewalk of the West 32nd Street Extension and the northern sidewalk of the West 31st Street Extension.

Southwest Open Space

The Commission believes the requirements for the Southwest Open Space, as modified, are appropriate. The Commission believes this space will be an inviting pedestrian gateway to the Western Rail Yard from open space networks along the Hudson River that will offer a unique open space experience through the negotiation of the area's grade changes.

The Commission has considered the minimum seating requirements for the Southwest Open Space in the certified zoning text. In this area, 1 linear foot of seating was required for every 75 square feet of the total space, not including the area of the High Line and the ground floor area of the building on Site 5. The Commission notes that the Southwest Open Space is intended to be a transitional space between the other open spaces on the Western Rail Yard Site and Hudson River Park. The Commission, however, believes the amount of seating required for the Southwest Open Space in the zoning text as certified was too high given its transitional character. Therefore, the Commission adopts herein a modification to the zoning text to require that the minimum seating requirements of the Southwest Open Space be calculated based on the area of soft ground cover, which is required to make up a minimum of 50 percent of the space.

Northeast Plaza

The Commission believes the requirements for the Northeast Plaza are appropriate. The Commission notes that the Northeast Plaza must be developed in accordance with the standards

of a Public Plaza, with the exception of the required area dimensions, since the Western Rail Yard Site text already requires a minimum area for this space of 2,600 square feet and minimum street frontages of 40 feet along both West 33rd Street and Eleventh Avenue.

Midblock Connection

The Commission believes the requirements for the Midblock Connection are appropriate. The Commission notes this space will provide pedestrian access between West 33rd Street and the rest of the Western Rail Yard's publicly-accessible open spaces while providing amenities similar to a through block public plaza.

High Line

The Commission believes the requirements for the High Line as modified, are appropriate. The High Line on the Western Rail Yard Site will serve as a continuation of the High Line open space to the south of West 30th Street, and offer a similar pedestrian and passive open space experience through planting, materials and amenities, while taking into account the nature and character of the Site. The Commission understands that, as in the case of the High Line south of 30th Street, use of the High Line on the Western Rail Yard site for open space would be subject to federal laws requiring reinstatement of rail service under certain circumstances.

The Commission understands that while the zoning text establishes standards and guidelines to integrate the High Line into the site plan for the Western Rail Yard Site, the development of a detailed design for the High Line open space will require a significant collaborative process among involved stakeholders. The Commission believes that the zoning text provisions

governing the High Line both allow for and encourage the flexibility and design creativity which characterize the High Line south of West 30th Street . To further advance this objective, the Commission adopts herein modifications to three aspects of the zoning text as certified.

First, while the Commission believes that the Design Criteria of Section 93-77 included in the zoning text as certified, which are based on standards for Public Plazas, are appropriate for the other public access areas on the Western Rail Yard Site, such standards are not appropriate for the High Line open space, given its unique character. Instead, the Commission believes the design of the High Line on the Western Rail Yard Site should be guided by two general principles: First, that it be integrated with portions of the High Line south of West 30th Street in a manner that provides visual and pedestrian continuity along the High Line open space network; Second, that it provide amenities that complement and integrate the open space with portions of the existing elevated open space to the south by means planting, seating , lighting and similar measures. The Commission adopts herein modifications to the zoning text that would establish these general design principles for the High Line in lieu of the Public Plazas-based Design Criteria.

Second, the Commission understands the clear need for access points and potential need for a dedicated maintenance facility for the High Line, while recognizing that it would be premature to fix the number, size and location of these features of the open space's design at this time. Accordingly, the Commission adopts herein a modification to the proposed zoning text to require that the Site and Landscape Plan for the High Line make provision for appropriate points of access to and from the High Line and, subject to future agreement, include support facilities

necessary for its operation, maintenance and public enjoyment elsewhere on the Site or at other locations north of West 30th Street.

Third, the Commission believes it is important that the requirements of the zoning text governing other aspects of the Western Rail Yard Site should not constrain the future High Line design. Therefore, the Commission is adopting herein modifications to the zoning text to create a chair certification that would allow for the modification of certain ground floor level use, bulk and open space regulations for building and public access areas adjacent to the High Line if those changes are necessary to provide access to the elevated open space or to accommodate necessary facilities, as long as such change is compatible with the character of the High Line south of West 30th Street.

Finally, the Commission notes that the zoning text as certified required the owners of the building sites to maintain the various open spaces on the Western Rail Yard Site. However, the Commission notes that the 2007 Memorandum of Understanding between the City Administration and the MTA provides that the City will be responsible for costs of maintaining the High Line. Accordingly, any owner obligation to perform maintenance for the High Line open space is conditional upon the availability of City funding. Therefore, the Commission adopts herein a modification to the maintenance requirements in the zoning text such that maintenance of the High Line shall instead be governed by such agreements as are entered into with respect thereto.

West 32nd Street Extension and West 31st Street Extension

The Commission believes the requirements for the West 32nd Street Extension and the West 31st Street Extension are appropriate, as modified herein.

The Commission is pleased that the site plan for the Western Rail Yard Site contains these two private streets and notes that the intention of the zoning text is to have them provide experiences substantially similar to active public streets in other high-density, mixed-use districts.

The Commission believes it is appropriate that the two private streets will be constructed to minimum Department of Transportation and Fire Department standards for public streets and will be reviewed as part of the future Site and Landscape Plan process. Further, the Commission believes it is appropriate for the road bed to be required to be paved with asphalt, since this is the material used on most public streets in New York. The Commission notes that the required width of these road beds will be set by the Fire Department.

The Commission believes the required minimum sidewalk widths, street tree requirements and curb cut restrictions are appropriate given the level of pedestrian activity envisioned for these private streets. The Commission is pleased that the southern sidewalk along the West 32nd Street Extension will create a unique park-like experience to connect the Eastern Rail Yard plaza across Eleventh Avenue with the Western Open Space. The Commission believes the 25 foot minimum width of the pedestrian allee is appropriate given the amount of pedestrian traffic envisioned for this space. The Commission also believes the requirement for one tree every 20 feet on both

sides of the alley is appropriate since it will contribute to the intended park-like experience of the space.

The Commission understands the concerns raised by Community Board 4 and the Borough President regarding the need to ensure the public nature of the site plan's internal private streets. These private streets are integral to the project's success as they will be the main public gateway to the Site from Eleventh Avenue and will provide access to the buildings and various open spaces provided as part of the site plan. The Commission stresses that the zoning text requires these private streets look and feel as much as possible like other public streets, and that these private streets will be subject to the future Site and Landscape Plan review process which will further ensure their design meets the public's goals for them. However, to further reinforce that these private streets 'look and feel' like other public streets, the Commission adopts herein a modification to the zoning text to include an additional general purpose for both private streets that requires they provide elements that are substantially similar to surrounding public streets. By doing so, the Commission believes the text more clearly describes the intention for these private streets to both appear and function as much as possible as public streets.

However, the Commission understands there are certain elements that cannot be featured on the private streets because of their private nature. These include street signage and traffic enforcement regulations. Public parking on the private streets would not be permitted under the regulations of Article I, Chapter 3 of the Zoning Resolution since it would be considered a public parking lot and would require an additional special permit approval which has not been requested.

Finally, the Commission understands that the Restrictive Declaration for the Project will provide for a public access easement over the private streets for pedestrian, general vehicular and emergency vehicle purposes. The Commission believes this, coupled with the requirements for 24-hour public access described in the zoning text, will guarantee public access to these areas of the Site.

West 30th Street Corridor

The Commission believes the requirements for the West 30th Street Corridor are appropriate. The Commission believes this space will serve as a transition between the High Line and the West 30th Street sidewalk and provide an overall streetscape that complements and provides views of the High Line along the street. The Commission is pleased that the West 30th Street Corridor ensures that buildings in this area must remain behind the southern structural columns of the High Line. The Commission believes this will guarantee the integrity of the High Line and encourage the integration of the structure with the required ground floor uses in an architecturally-interesting way. The Commission believes the requirement for the portion between the pedestrian access and the High Line to either be paved or landscaped will allow a great deal of flexibility and creativity in the final design for this space.

The Connector

The Commission believes the requirements for the Connector are appropriate. The Connector will serve as a connection between the West 32nd Street Extension and the West 31st Street Extension that provides emergency egress pursuant to Fire Department standards while

complementing the surrounding open spaces. The Commission notes that the Connector must be constructed to minimum Fire Department standards for an emergency egress connection between the two private streets, including but not limited to standards with respect to width, materials and permitted obstructions.

Design Criteria

The Commission believes the Design Criteria established for the Site's public access areas – except, as discussed above, for the High Line - are appropriate, as modified herein. In order to ensure that the public access areas will be of high quality, the Commission believes it is appropriate to include standards for these elements - based predominantly on the requirements for Public Plazas in the Zoning Resolution.

The Commission has considered Community Board 4's recommendation that the vegetation included in the Western Rail Yard Site's public access areas be shade tolerant given the number of buildings on the site. The Commission notes that the text includes provisions for amounts of plant material dimensional requirements for trees, but further notes that these public access areas will be subject to the future Site and Landscape Plan review process. The Commission believes the decisions as to the type of vegetation in the various open spaces should be made through this process when more is known about the final designs of these spaces.

The Commission has also considered the Community Board 4's recommendation that the enclosed sidewalk cafes be prohibited and that any other cafes not be placed below residential windows on the Western Rail Yards Site. The Commission notes that enclosed sidewalk cafes

are already prohibited by the current text since the Design Criteria established for all the public access areas on the Site only allow open-air cafes. Further, the Commission notes that any open-air cafes would be considered as part of the future Site and Landscape Plan review process. Finally, the Commission notes that the placement of open-air cafes on sidewalks below residential windows would be similar to sidewalk conditions on numerous City streets and should be left to the decision of the applicant.

The Commission has considered the Community Board 4's recommendation that the zoning text require appropriate open space signage for the various spaces on the Western Rail Yard Site. The Commission, however, notes that the Design Criteria already require the spaces to have standard Privately-Owned Public Space signage.

The Commission has considered the requirements for gates and fences on the Western Rail Yard Site. The Commission notes that the originally-proposed zoning text allowed these features only around playgrounds. The Commission believes there are additional situations where gates and fences are warranted as-of-right. Therefore, the Commission adopts herein a modification to the zoning text to permit gates and fences around dog-runs and tot-lots. This provision is similar to the allowances in the recently-approved Waterfront Areas zoning text. The Commission also believes there are additional locations on the Site where additional gates and fences may be warranted, subject to the future Site and Landscape Plan review for these spaces. Therefore, the Commission also adopts herein a modification to the zoning text to permit gates and fences in the Midblock Connection, Southwest Open Space and High Line open space if approved pursuant to the future review process. Finally, the Commission believes it is important to ensure that any

gates and fences provided on the Site be do not overwhelm the spaces they are in. Therefore, the Commission further modifies the zoning text to require that all gates and fences provided on the Site have a maximum height of 48 inches, and be at least 70 percent open, excluding solid curbs with a maximum height of 6 inches. In addition, no chain link or barbed or razor wire fence may be developed as part of the Site's open spaces.

The Commission has considered the concerns raised by Community Board 4 regarding the lack of public restrooms as part of the Western Rail Yard Site's various public access areas. Given the size and public nature of the Site's public access areas, the Commission believes that public restrooms are warranted and should be included. The Commission notes that decisions regarding the locations and dimensions of these facilities would be premature at this time and should instead be made as part of the future Site and Landscape Plan review process. However, in order to ensure that public restrooms are provided as the site develops over time, the Commission adopts herein a modification to the zoning text to require a public restroom be provided when an application for a Site and Landscape Plan review is filed for either the Western or Central Open Space, whichever is developed first, as they are among the largest spaces on the Western Rail Yard Site. The Commission believes this will guarantee a public restroom will be provided on the Site at an appropriate time to help to further encourage the public use of these spaces.

The Commission understands that development on the Western Rail Yard Site is expected to occur over a series of years and that construction phasing will likely create situations where portions of the platform are built but development on the building sites does not proceed immediately thereafter. While the Commission believes the various requirements set forth in the

text for each open space are appropriate for their final designs, the Commission also believes that the zoning text should make provisions for interim use of these spaces that encourage activity on the Site pending development on building sites. The Commission therefore adopts herein a modification to the zoning text to permit temporary publicly-accessible open uses to be built within the designated boundary of public access areas and building footprints on the Western Rail Yards Site, with the exception of the High Line. These interim uses, such as athletic fields and skating rinks, may continue in place until development of final open space designs pursuant to the Site and Landscape Plan review processes and may include temporary structures, provided they are appurtenant to the interim uses. The Commission understands that these interim uses could continue in place until development is ready to proceed and that admission fees could be charged for their use, such as in the case of a skating rink, as long as they remain accessible to the public.

Site and Landscape Plan Review Process

The Commission believes the Site and Landscape Plan review process is appropriate, as modified herein. The Commission notes that while the zoning text contains requirements for each of the open spaces on the Western Rail Yard Site, the final designs for these spaces are not known at this time. The Commission believes that the review process developed for these spaces is an appropriate method for ensuring a high quality of design, as the Site is developed over time.

The Commission notes that all public access areas on the Western Rail Yard will be subject to future approval by the Chairperson of the City Planning Commission; this includes the various

open spaces and the private streets and pedestrian ways. Given the size and complexity of the Site, development will likely occur over a period of many years in numerous phases. Phased development of the public access areas is allowed, provided that Site and Landscape plans have been submitted and approved that provide for completion of portions of the Site's network of public access areas in association with the development of specified buildings. The Commission believes the proposed certification process will guarantee that the proposed spaces will be of sufficient size in relation to their associated building phase, and ensure consistency with the requirements set forth in the text including the Design Criteria.

The Commission further notes that an application for approval of a Site and Landscape Plan would also have to include a report to the Chairperson showing that the proposed design had been reviewed by the affected Community Board, City Councilmember, and Borough President, and that their comments have been considered and responded to. The Commission has considered Community Board 4's comment that the 45-day period included in the original text for this review of the Site and Landscape Plan proposals would not provide enough time to fully consider the detailed design of these spaces. Therefore, the Commission adopts herein a modification to the zoning text to extend the review period to 60 days, as requested by the Community Board.

The Commission further notes that no Temporary Certificate of Occupancy can be issued for any portion of a development until the Chairperson certifies that the public access area associated with such development is substantially complete and that it is open and available for use by the

public. The Commission believes this will ensure the timely completion of the public access areas, as the Site is developed.

The Commission further notes that the Chairperson can make modifications to the requirements for the public access areas upon determining that change is necessary to accommodate ventilation demands of the rail yard below the Site. The Commission believes this appropriate since LIRR and RG WRY LLC are at a preliminary stage of understanding the ventilation requirements for a platformed rail yard. The Commission further notes that Community Board 4, the local City Councilmember and the Manhattan Borough President will consider these ventilation changes as part of the 60-day review process.

The Commission has also considered how to account for the complexities of construction phasing on the Western Rail Yard Site. The zoning text as certified requires that public access area approved pursuant to the Site and Landscape Plan review process contain all the core elements required for that space. However, the Commission notes that construction logistics may require that a public access area initially developed in association with one building be used for construction staging and logistics for another building developed at a later date. The Commission further notes that under these circumstances, the open space would need to be temporarily closed and the public access area's amenities removed for its period of use as a construction staging area.

The Commission believes that if, at the time an applicant seeks approval of a Site and Landscape Plan for an open space, it can demonstrate that the space will need to be used for construction staging at a later date in connection with a subsequent building, the zoning text should not

require the space to be built with all required amenities only to have them removed at a later date to accommodate future construction. Accordingly, the Commission adopts herein a modification to the zoning text to include a certification process that would allow an applicant to request approval of a temporary open space plan that would include fewer than the required core elements for a space. Following use of the open space for construction staging, the final design under the approved Site and Landscape Plan would be required to be implemented.

Finally, the zoning text as certified did not clearly stipulate that all public access areas on the Site have to be completed before all the buildings on the Site can receive certificates of occupancy. Therefore, the Commission adopts herein a modification to the zoning text to require that when a phase of development on the Site results in all building sites on the Western Rail Yard Site having been developed, the Department of Buildings cannot issue a certificate of occupancy for the last building of such a phase until the Chairperson of the City Planning Commission certifies that all public access areas within the Site are substantially complete and are open and usable by the public. An exception would address the situation where the City, as owner of the High Line, has not proposed and secured approval of a Site and Landscape Plan for the High Line by that time.

C 090435 ZSM and C 090436 ZSM – Special Permits for Accessory Parking

The Commission believes the special permits for accessory parking are appropriate. The Commission notes that the applications seek a maximum of 1,600 accessory parking spaces on the Western Rail Yard Site, with a maximum of 270 of these spaces allowed to be accessory to commercial uses only. The Commission also notes that two special permits were requested for

two separate garages. The Northern Garage would contain a maximum of 1,100 spaces - located within and below Sites 1, 2 and 3, as well as the Midblock Connection, the Western Open Space, the West 32nd Street Extension and the Central Open Space – and be built within the platform above the active rail yard. The Southern Garage would contain a maximum of 800 spaces - located within and below Site 6 – and be built on the terra firma portion of the Site. The Commission notes that as accessory parking garages , no space may be used for public parking .

In considering the availability of parking spaces from future residents, workers, customers, and visitors to the Site, the Commission notes the FEIS projected the midday parking utilization rate in the surrounding area is expected to be 134% at full build out in 2019. Accordingly, the Commission recognizes that parking capacity in the surrounding area will be insufficient to accommodate the parking demand generated by development on the Site.

The Commission heard testimony from both Community Board 4 and the Borough President that the maximum of 1,600 accessory parking spaces was too high and that the Site should only be allowed to provide the as-of-right amount of parking permitted under the regulations of Article I, Chapter 3. However, the Commission notes that under these regulations, the total amount of parking this mixed-use development could provide as-of-right would be limited to only 225 spaces. Given the size of the Western Rail Yard Site, the Commission believes this amount of accessory parking would be too low.

The Commission also heard testimony that the maximum number of spaces allowed on the Site should be 1330, which the Community Board believes would fulfill both residential and

commercial demand. However, the Commission believes a reasonable method for determining the appropriate amount of parking for the Western Rail Yard Site is to use the ratios developed for purposes of the *HKNA v. Bloomberg* litigation settlement, which are intended to become the governing parking regulations in the other subareas of the Special District, as per a City-sponsored application referred for public review on October 19, 2009. The Commission notes that the ratios in the settlement were based on analyses of existing residential and commercial parking usage in the surrounding area. These regulations would allow accessory parking spaces for 30 percent of the market-rate residential units, 8% of the affordable residential units, .16 spaces per 1,000 square feet of office uses, no spaces for retail uses, and the lesser of: 15 percent of hotel rooms, 225 or .16 per 1,000 square feet of floor area for hotels. As governed by the Restrictive Declaration, these ratios would be utilized to govern the number of permitted parking spaces, subject to the maximum number of accessory parking spaces requested by RG WRY LLC – 1,600 in total, of which not more than 270 would be accessory to commercial uses. With this change, the Commission therefore believes the proposed 1,600 spaces is appropriate.

The Commission is pleased that the Restrictive Declaration also includes measures to ensure that the amount of accessory parking provided on the Western Rail Yard Site will be proportional to the amount of built development over time. The Commission notes that the number of accessory parking spaces that can be utilized at any one time will be proportional to the floor area constructed, with a 25-space residual to account for constructability constraints, subject also to the car sharing requirements noted below. .

The Commission is also pleased that the Restrictive Declaration will contain sustainability measures regarding parking, including required minimum numbers of car sharing spaces and provisions governing installation of electric automobile battery charging stations.

The Commission believes the proposed garages would not result in serious traffic congestion or inhibit surface traffic or pedestrian movement since the parking entrances would be located on four separate frontages which would distribute vehicular traffic so that no congestion occurs at any one entry. Also, the parking facilities would provide the required minimum total of 90 reservoir spaces distributed at each entrance. The Northern Garage would provide 50 reservoir spaces, with 34 located at the West 33rd Street entrance to handle parking activity for the commercial spaces and 16 reservoir spaces at the entry along the West 32nd Street Extension. The Southern Garage would provide 40 reservoir spaces, with 26 provided at the West 30th Street entry, and 14 reservoir spaces at the West 31st Street Extension entrance. Finally, drivers utilizing the garages are expected to arrive and depart by way of Eleventh Avenue and Twelfth Avenue which are not local streets in residential areas.

The Commission heard testimony from Community Board 4 that the Southern Garage should be limited to one-quarter of the maximum accessory spaces allowed on the Site. The Commission, however, notes that the two proposed garages are in markedly different locations. The Northern Garage would be constructed over the active rail yard, while the Sough Garage would be built on the terra firma portion of the Site. The Commission notes that RG WRY LLC continues to work with the LIRR on engineering and security issues related to the Northern Garage and it is possible that limited or no parking will be possible in that locations, leaving the Southern Garage

only to provide accessory parking for the entire Site. Given this, the Commission believes it is inappropriate to constrain the Southern Garage to ¼ of the total allowed – approximately 400 spaces – and that the amount allowed should instead remain at its proposed 800-space maximum.

In addition, the Commission heard testimony from both Community Board 4 and the Borough President that the Southern Garage should not be accessible from West 30th Street. The Commission notes that access is proposed to the Southern Garage from two locations: West 30th Street and the West 31st Street Extension. The Commission believes that a garage on the scale of the proposed facility requires two access/egress points for operational efficiency. The Commission notes by way of example that the 499-space attended accessory parking garage approved as part of East River Realty's First Avenue project will have entrances on both East 38th Street and East 39th Street. Further, the Commission believes that limiting the garage to only one entrance will exacerbate traffic conditions around the Site, as drivers traveling north on Twelfth Avenue would have to drive up to West 34th Street and then travel back south down Eleventh Avenue to access the West 31st Street Extension entrance, instead of simply turning onto West 30th Street. The Commission, therefore, believes it is inappropriate to limit the Southern Garage to only one entrance and that it should continue to have two entrances as proposed.

C 090408 MMM - City Map Change to West 33rd Street

The Commission believes the City Map Change to West 33rd Street is appropriate. The Commission notes this change will allow the level of the future platform over the rail yard to better align with the level of West 33rd Street. The Commission also notes this change would

facilitate access between the street and the Western Rail Yard Site, in particular at its proposed loading and parking entrances on the eastern end of the block. The Commission further notes that the grade change rate of 4.846 percent which would be required for the portion of the street 225 feet west of Eleventh Avenue will comply with ADA standards. Finally, the Commission notes that this grade change will also benefit the existing and future use on the Javits Marshalling Area block on the north side of West 33rd Street.

Additional Features of the Restrictive Declaration

The Commission notes the provisions of the proposed Restrictive Declaration which incorporate a number of ‘Project Components Related to the Environment’, including a variety of sustainability measures, as well as those which address the environmental impacts identified in the EIS with respect to construction and operational period traffic and pedestrians; open space; public school enrollment; and day care facilities. The Commission further understands that a second Restrictive Declaration will be recorded against the Eastern Rail Yard in order to address the need for shadow-tolerant plantings on open spaces resulting from shadows cast by the Western Rail Yard buildings.

The Commission is particularly pleased with regard to the commitments set forth in the Restrictive Declaration with respect to achievement of LEED Silver Certification for the residential and commercial buildings, and the retention of an independent monitor designated to oversee compliance with the construction-period environmental conditions. The Commission is also pleased that the Restrictive Declaration establishes a process for the identification of access points and support facilities for the High Line by the City and the developer, in furtherance of a

Site and Landscape Plan for the High Line open space. Certain other provisions—those relating to Cultural Space and an Open Space Event Advisory Board—have been included in the Restrictive Declaration to reflect RG WRY LLC’s responses to specific Community Board requests.

DEP Site (Tenth Avenue Site)

C 090422 HAM - UDAAP designation, project approval and disposition of city-owned property

The Commission believes that the UDAAP application for the DEP Site is appropriate. The commission notes that approval of the UDAAP for the development site would facilitate the development of vacant city-owned land. The Commission believes that the project will address the need for permanent affordable housing and, along with the MTA Site, fulfill the requirement for off-site affordable housing as set forth in the Memorandum of Understanding between the City’s Administration and the MTA.

N 090429 ZRM – Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District)

The Commission believes the zoning text amendment for the DEP Site, as modified, is appropriate. In order to maximize the amount of permanently affordable housing that could be constructed on the DEP Site, the Department of City Planning proposed a zoning text amendment at the time of certification that would move extend the “Other Area” designation of the Clinton Special District to encompass the entirety of the DEP site, which is currently mostly located within the more restrictive “Preservation Area”. The Other Area allows for higher lot

coverage (70%) for the portion of a lot more than 100 feet from an Avenue than the Preservation Area (60%). In addition, the rear yard requirements of the Preservation Area would force two separate buildings to be constructed on the site, while the Other Area would allow for a single larger building that could front onto the Avenue open space since it includes greater flexibility in the location of rear yards.

The Commission has considered Community Board's concern that locating the entirety of the DEP Site's lot into the Other Area would set a negative precedent for future further expansion of this area in the Special Clinton District since it would be the first expansion of the 'Other Area' to Tenth Avenue. The Commission notes that the 'Other Area' at this location has the same FAR restrictions as the Preservation Area, and believes that use of the Other Area designation is an appropriate and optimal method for maximizing affordable housing on the DEP Site given the constraints on the lot. However, the Commission recognizes that the Other Area designation only has to cover the portion of the DEP Site proposed for housing development, not the entire lot, in order to maximize housing on the Site. Accordingly, the Commission adopts herein a modification to the original application to limit the extension of the Other Area to that portion of the lot beyond 100 feet of Tenth Avenue.

The Commission notes the numerous recommendations made by Community Board 4 regarding the development of the DEP Site. Development on the Site, however, will require future land use actions. The Commission therefore believes the best time to consider these recommendations will be when more is known about the DEP Site's final design and program. The Commission's

consideration for the DEP Site's actions is therefore limited to those actions currently before the Commission.

MTA Site/Ninth Avenue Site

C 090423 HAM - UDAAP designation, project approval and disposition of city-owned property

The Commission believes that the UDAAP application for the MTA Site is appropriate. The commission notes that approval of the UDAAP for the development site would facilitate the development of vacant city-owned land. The Commission believes that the project will address the need for permanent affordable housing and, along with the DEP Site, fulfill the requirement for off-site affordable housing as set forth in the Memorandum of Understanding between the City Administration and the MTA.

C 090430 ZMM – Zoning Map Amendment

The Commission believes the zoning map amendment for the MTA Site, as modified herein, is appropriate. In order to maximize the amount of permanently affordable housing that could be constructed on the MTA Site, the Department of City Planning proposed a zoning map amendment at time of certification to extend the existing C1-5 overlay over the entirety of the MTA Site's Lot 3. This would permit the MTA Site to be the subject of a future special permit application as a General Large Scale Development pursuant to ZR 74-74 to waive certain Preservation Area bulk regulations that limit the creation of affordable housing on the MTA Site given the lot coverage and configuration of the existing NYCT facility.

The Commission has considered the Community Board's concern that the requested C1-5 overlay over the full midblock portion of the MTA Site would set a negative precedent for future commercial overlay proposals in the Special Clinton District. The Commission recognizes that the commercial overlay is necessary to allow the future use of the General Large Scale Plan, which is the optimal method for maximizing affordable housing on the MTA Site given the constraints of the existing large-coverage NYCT facility on the lot. However, the Commission recognizes that the commercial overlay only has to cover the portion of the Site proposed for housing development, not the entire lot, in order to allow the future use of the General Large Scale Plan. Thus, the Commission adopts herein a modification to the original application to limit the expansion of the commercial overlay to only that area within 150 feet of Ninth Avenue.

The Commission notes the numerous recommendations made by Community Board 4 regarding the development of the MTA Site. The Commission, however, notes that development on the Site will require future land use actions. The Commission therefore believes the best time to consider these recommendations will be when more is known about the MTA Site's final design and program. The Commission's consideration for the MTA Site's actions is therefore limited to those actions currently before the Commission.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on October 9, 2009, with respect to this application (CEQR No. 09DCP007M), and the Technical Memorandum, dated October 19, 2009, 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 available , the action , as modified herein, is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
2. Adverse environmental impacts identified in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable, by means of, inter alia, the filing and recordation of restrictive declarations substantially in the forms set forth in Exhibit B and C hereto in accordance with the provisions of Section 93-06 of the Zoning Resolution.

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

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

RESOLVED, by the City Planning Commission pursuant to Section 200 of the New York City Charter, that based on the environmental determination and the consideration described in this

report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and subsequently amended, is further amended by changing the Zoning Map, Section 8b, by changing from an M2-3 District to a C6-4 District and establishing a Special Hudson Yards District on property bounded by West 33rd Street, Eleventh Avenue, West 30th Street, and Twelfth Avenue, Borough of Manhattan Community District 4, as shown in a diagram (for illustrative purposes only) dated May 18, 2009.

The above resolution (C 090433 ZMM), duly adopted by the City Planning Commission on October 19, 2009 (Calendar No. 14), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

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,
ANNA HAYES LEVIN, SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners

Exhibit A
Western Rail Yard

Final Environmental Impact Statement (FEIS)
Executive Summary

A. INTRODUCTION

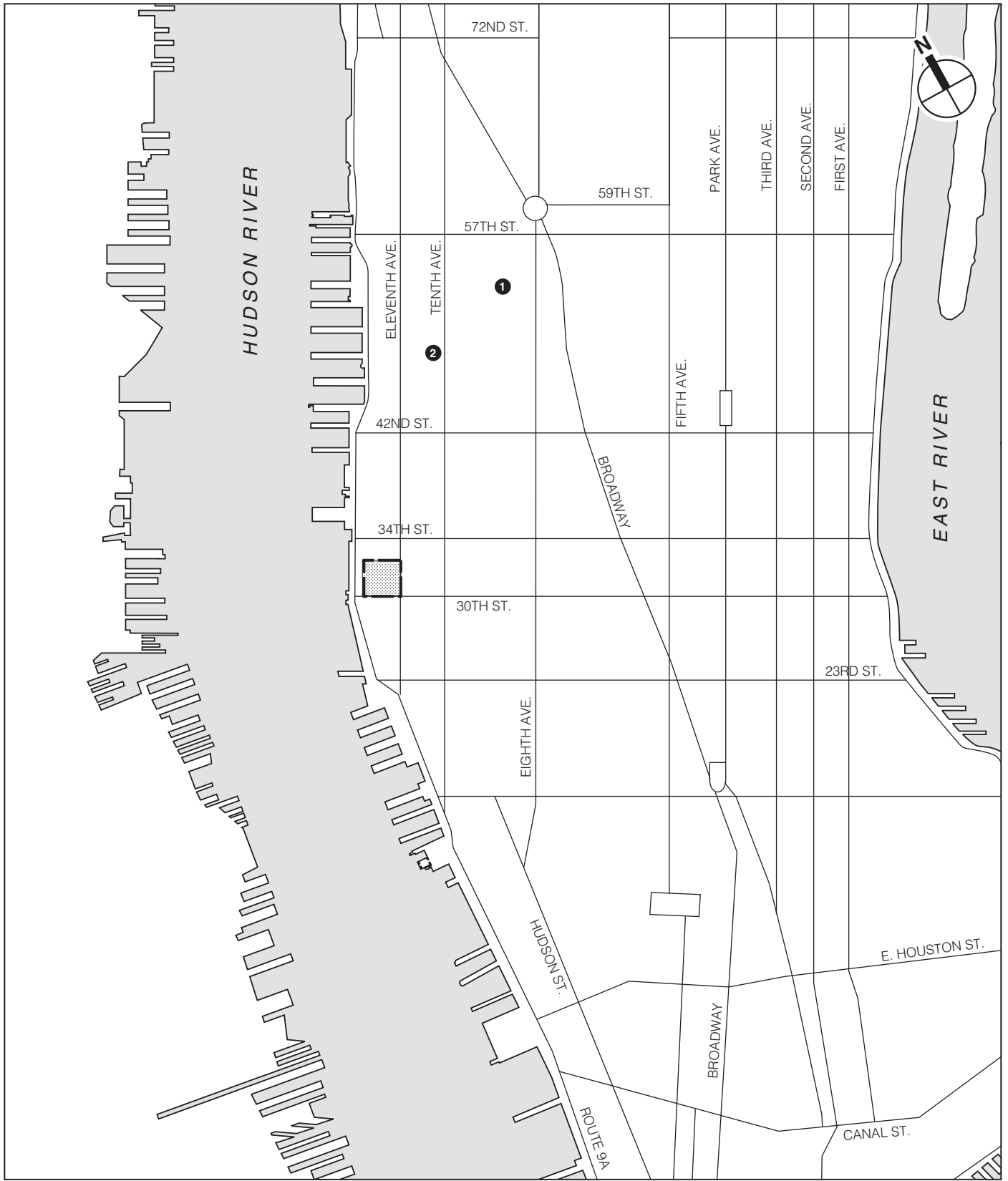
The Metropolitan Transportation Authority (MTA) and New York City Planning Commission (CPC) are serving as co-lead agencies for the environmental review of several actions (“Proposed Actions”) intended to facilitate development at three Manhattan project sites—a proposed mixed-use development over the western section (“Western Rail Yard”) of the MTA-Long Island Rail Road (LIRR) John D. Caemmerer Yard (“Caemmerer Rail Yard”), and permanently affordable residential development at two City-owned “Additional Housing Sites.” As shown on Figure S-1, the Western Rail Yard (“Development Site”) is bounded by Eleventh and Twelfth Avenues, West 30th and West 33rd Streets.¹ The mixed-use development on the Development Site (“Development Site Project”) is expected to include commercial space (retail and office or hotel), residential units, a public school, open space, and accessory parking. The two Additional Housing Sites (also shown in Figure S-1) are located near Tenth Avenue and West 48th Street (“Tenth Avenue Site”) and Ninth Avenue near West 54th Street (“Ninth Avenue Site”). Together, these three project sites comprise approximately 14 acres.

The Proposed Actions include: (1) the lease of, with option to purchase, the air space over the Western Rail Yard and related property interests by MTA to a development entity selected by MTA to carry out such mixed-use development; this entity is the conditionally designated developer, RG WRY LLC, a joint venture of the Related Companies and Goldman Sachs (“Developer”); (2) zoning map and text amendments, and accessory parking special permits by the City of New York pursuant to the Uniform Land Use Review Procedure (ULURP); (3) the establishment of new legal grades on West 33rd Street between Eleventh and Twelfth Avenues; (4) the site selection by the New York City School Construction Authority (SCA) for an elementary/intermediate public school (“PS/IS school”) on the Western Rail Yard; (5) the partial release of MTA’s interest in the Ninth Avenue Site; and (6) the disposition, zoning text map change, and zoning map change by the City of New York pursuant to ULURP for the Ninth and Tenth Avenue Sites to facilitate the development of permanently affordable housing at these two Additional Housing Sites.

This Environmental Impact Statement (EIS) has been prepared by the co-lead agencies pursuant to the requirements of the New York State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR).

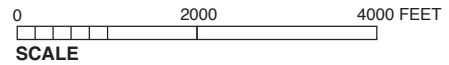
This Final EIS (FEIS) examines a full range of potential environmental impacts: land use, zoning and public policy; socioeconomic conditions; community facilities and services; open

¹ The easterly portion of the Caemmerer Rail Yard (“Eastern Rail Yard”) was zoned for mixed-use development when the Special Hudson Yards District was created in 2005. This site is not included in the actions addressed in this EIS and is included in the EIS analyses as a future background “No Build” project.



 *Western Rail Yard Development Site*

1 *Additional Housing Site Location*



space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; hazardous materials; waterfront revitalization; infrastructure; solid waste and sanitation services; traffic and parking; transit and pedestrians; air quality; noise; construction; and public health. As summarized below, and described in detail in this FEIS, the Proposed Actions would have significant adverse environmental impacts on public child care, open space, shadows, traffic, transit, and pedestrian conditions in the vicinity of the Development Site. With respect to schools, there could be a temporary significant adverse impact on elementary schools for an estimated two-year period. Despite these impacts, the Proposed Actions would have an overall beneficial effect on neighborhood character at the Development Site, Additional Housing Sites, and the areas surrounding them. Replacing a large, underutilized, and inaccessible site with a mix of uses, open spaces, (including the High Line, which would be preserved as passive open space on the Development Site) and streets would complement the emerging development in the Hudson Yards and West Chelsea neighborhoods, and would provide a link in the system of open spaces now under development. Construction of permanently affordable housing on the sites would support the Clinton neighborhood by emphasizing its residential character and helping to preserve its mixed-income character. Thus, the Proposed Actions would succeed in meeting project goals—to provide much-needed funds for MTA’s capital program, to create a transit-oriented development, to accommodate anticipated population and employment growth in Manhattan, to enhance the vitality of the Hudson Yards area, to add to the system of public open spaces now emerging in the Hudson Yards and West Chelsea areas, to help meet the need for affordable housing, and to expand the City’s tax base.

The FEIS also considers a range of alternatives to the Proposed Actions—No Action, No Unmitigated Significant Adverse Impact, Reduced Density, and Tri-Generation Energy Supply. Neither the No Action Alternative nor the No Unmitigated Significant Adverse Impact Alternative would meet the goals and objectives of the Proposed Actions. The Reduced Density Alternative would have most of the significant adverse environmental impacts of the Proposed Actions, but would not fully achieve the goals and objectives of the Proposed Actions. The Tri-Generation Energy Supply Alternative, while requiring somewhat greater initial investment, would meet the goals and objectives of the Proposed Actions and offer the opportunity to achieve modest increases in energy efficiency and somewhat reduced greenhouse gas emissions.

B. PROJECT DESCRIPTION

PURPOSE AND NEED OF THE PROPOSED ACTIONS

Productive use of the air space above the entire Caemmerer Rail Yard has been a long-standing goal of both MTA and the City. When the Yard was redeveloped in 1986, its facilities were organized to accommodate the columns that future development would require, the net proceeds from which were to help fund MTA’s mission to provide safe, reliable, and convenient public transportation in a cost effective manner. To advance this goal, the eastern portion of the Caemmerer Rail Yard (“Eastern Rail Yard”) was rezoned for commercial and residential development in 2005. The principal purpose of the Proposed Actions is to further advance this goal by allowing development of the Western Rail Yard as well. The LIRR’s operations in the Caemmerer Rail Yard are essential to the entire rail system and the proper functioning of New York City’s Pennsylvania Station (“Penn Station”). Accordingly, a related MTA objective is that the development of the Western Rail Yard must be planned carefully, so that a platform that includes building foundations can be built while keeping interruptions of yard operations to a minimum. Development over the Western Rail Yard would also improve and capitalize on new

transit access (the No. 7 subway line), provide new housing for current and future residents while making it more affordable and sustainable, utilize land already owned by the public, and provide new open spaces.

The City's policy to encourage development over the Western Rail Yard has several purposes: (1) to pursue transit-oriented development opportunities; (2) to accommodate projected long-term growth in population and employment in Manhattan; (3) to enhance the vitality of the Hudson Yards area by filling a prominent underutilized site with an active mix of urban land uses; (4) to create a new 24-hour neighborhood that complements the adjacent built-up areas of Midtown and Chelsea, and the emerging development in West Chelsea and the Hudson Yards area; (5) to add to the system of public open spaces now emerging in the Hudson Yards area; (6) to help meet the need for affordable housing for New York City residents and workers; and (7) to expand the City's tax base.

GOALS OF THE PROPOSED ACTIONS

Consistent with the purpose and need for the Proposed Actions, MTA and the City have set forth a number of goals for the development of the Western Rail Yard and the Additional Housing Sites. These goals for the Proposed Actions are to:

- Maximize value and revenue for MTA's capital financial plan;
- Maintain safe, continuous, and uninterrupted LIRR operations at the Development Site;
- Further the redevelopment and revitalization of the Hudson Yards area in accordance with sound planning objectives;
- Develop a mix of uses on the Development Site that will contribute to the economic, social, and recreational life of the Hudson Yards area and the City;
- Create affordable housing to support the future growth of the City as a place for residents of all economic levels;
- Provide new open space and enhanced connections to existing and proposed open space;
- Facilitate the redevelopment of the High Line as public open space;
- Develop the Development Site and the Additional Housing Sites in accordance with sustainable design principles;
- Provide opportunities for jobs and economic development;
- Provide opportunities for world class architecture; and
- Continue to expand the City's tax base.

PLANNING PROCESS

HISTORY OF THE SITE AND PLANNING BACKGROUND

The proposal to redevelop the Development Site culminates years of planning and proposals for redeveloping the entire Caemmerer Rail Yard. The Triborough Bridge and Tunnel Authority (TBTA), an affiliate of the MTA, acquired the site in 1980 and in 1986 redeveloped the Caemmerer Rail Yard as a storage and maintenance complex for the LIRR's electric commuter car fleet. During this same period, the TBTA and the New York State Urban Development Corporation developed the Jacob K. Javits Convention and Exposition Center ("Convention Center") just north of the Development Site.

Western Rail Yard

The first step towards future development over the Development Site was a proposal to relocate Madison Square Garden there. Although the Garden ultimately decided not to move, its planning effort identified a broad range of public benefits that could result from such development, including new housing, parks and waterfront recreation, support uses to enhance the then relatively new Convention Center's marketability, and office space to accommodate large employers who require large development sites.

More recently, the area near the Development Site has been the subject of various planning, rezoning, and redevelopment efforts by the City, MTA, and other entities. The 2005 Hudson Yards rezoning instituted a major rezoning of the entire Hudson Yards area, including the Eastern Rail Yard, to accommodate a mix of uses and densities throughout the Far West Side, provide new open space, and extend the No. 7 subway line. In connection with the Hudson Yards project, the Development Site, which was not rezoned, was the proposed location for a multi-use stadium for the New York Jets football team, a proposal that was ultimately not approved and was later withdrawn.

REQUESTS FOR PROPOSALS

In July 2007, the MTA issued a request for proposals (RFP) for development over the Development Site. (A separate RFP was also issued by the MTA for development of the Eastern Rail Yard in accordance with applicable zoning.) In addition to the public goals stated above, the RFP set forth a goal to promote excellence in architecture, urban design, and sustainability in keeping with the City's vision for the economic development and revitalization of the Far West Midtown/Hudson Yards area. The RFP contained Design Guidelines ("guidelines") for proposals for the Western Rail Yard, formulated by the City (including the New York City Department of City Planning [DCP]), the Hudson Yards Development Corporation (HYDC), and MTA. The guidelines contemplated a floor area of 10 times lot size (FAR 10), plus density bonuses for providing permanently affordable housing and a floor area allowance for a school. Several principles were to guide the proposed development: (1) include a variety of uses; (2) integrate the development into the surrounding neighborhoods; (3) organize the buildings around a central open space; (4) create visual connections to the High Line Park and to Hudson River Park; (5) vary the building heights; and (6) create a continuous streetscape to offer a varied pedestrian experience.

On October 11, 2007, MTA received five proposals for the Development Site. After a request to all proposers, MTA received supplemental submissions from four of the five proposers on February 26, 2008. A selection committee comprising representatives of the MTA and HYDC found that all the proposals adhered to the basic mix of uses (residential, commercial, retail, public school, and open space) specified in the RFP, and generally reflected its design guidelines. After negotiations with several of the proposers, the MTA reached a conditional designation agreement with the Developer for the development of plans for the Development Site on May 19, 2008.

PUBLIC OUTREACH

For a full year before issuing the RFP, MTA, and HYDC held workshops, forums, presentations, and meetings in consultation with various City and State agencies, civic groups, and other organizations, such as a Community Advisory Committee, a Technical Advisory Committee, New York City Police Department, New York City Fire Department, New York City and New York State Departments of Transportation, New York City Department of Parks and Recreation

(DPR), Community Board 4, the Manhattan Borough President, the Hell's Kitchen Neighborhood Association, the Real Estate Board of New York, Friends of the High Line, Friends of the Hudson River Park Trust, the American Institute of Architects, the American Planning Association, the Regional Plan Association, and the Convention Center Development Corporation.

After the RFP was issued, to ensure that public input informed the developer selection process, MTA hosted a public exhibition of the five proposals received from November 19, 2007 through December 3, 2007. The exhibit featured models and other presentation materials prepared by each of the five development teams. Public comments were accepted via comment cards at the exhibit and online at the MTA website, which also provided links to the development teams' websites, where additional material describing the proposals could be viewed. A broad range of comments were received from Community Board 4, elected officials, civic and community groups, and private individuals.

DESCRIPTION OF THE PROPOSED ACTIONS

As noted above, the Proposed Actions would result in development at three project sites—the Development Site on the Western Rail Yard, and two Additional Housing Sites primarily for affordable housing, as described below.

DEVELOPMENT SITE

Current Conditions

The Development Site comprises approximately 13 acres and occupies Block 676, Lot 3, in Community District 4. It is zoned M2-3 (see Figure S-2) for medium intensity industrial use, with a maximum FAR of 2.0. As noted above, the site is part of the Caemmerer Rail Yard, which provides midday storage for 35 commuter trains daily, with a capacity of 386 train cars on 30 tracks. The Development Site also contains several LIRR facilities including a railroad interior cleaning facility with a raised platform, a yard operations building, a transportation building, an emergency facilities building, and storage. The LIRR must have continuous access to the LIRR train yard and its facilities. In addition, Amtrak's Hudson River and Empire Line tunnels lie beneath the Development Site.

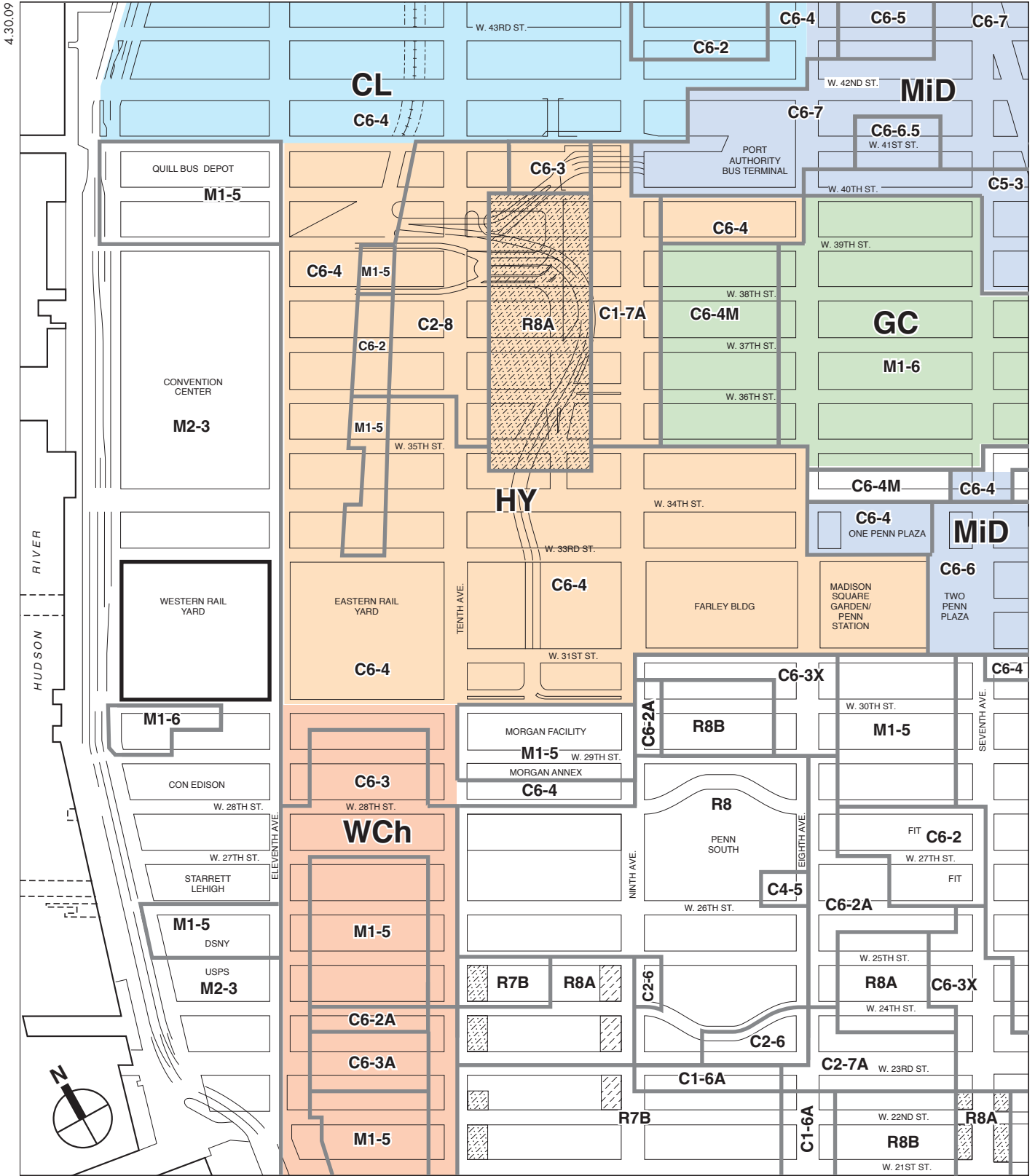
The southern section of the Development Site, between West 30th Street and the approximate location of West 31st Street, includes land ("terra firma") not occupied by LIRR operations. A private bus operator rents a portion of the terra firma and the New York City Department of Sanitation (DSNY) uses the rest for special waste drop-off, vehicle storage, truck fueling, a storage shed, and a trailer office. These tenants would vacate the Development Site prior to construction of the Development Site Project.

The High Line runs along the western and southern boundaries of the Development Site (i.e., Twelfth Avenue and West 30th Street). The High Line is currently being adaptively reused to provide a new linear public open space extending south from West 30th Street to Gansevoort Street, primarily between Tenth and Eleventh Avenues.

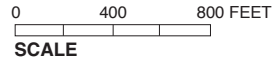
Proposed Actions

Zoning Actions

The existing M2-3 zoning does not permit residential use on the Development Site and greatly limits the density of any use that could be built there. MTA, as a State agency, is not bound by



- Development Site
- MiD Special Midtown District
- HY Special Hudson Yards District
- GC Special Garment Center District
- CL Special Clinton District
- WCh Special West Chelsea District
- Zoning District Boundary
- C1-5 Overlay
- C2-5 Overlay



Development Site
Existing Zoning
Figure S-2

Western Rail Yard

local zoning, but has agreed that redevelopment of the Development Site will proceed pursuant to rezoning and other related land use actions, subject to the City's land use review procedures and policies.

If approved, the Development Site would become a new subdistrict ("Subdistrict F") of the Special Hudson Yards District (see Figure S-3) in a New York City Zoning Resolution, with an underlying zoning of C6-4. Rezoning to a C6-4 district would allow for a mixture of commercial, residential, and community facility uses at a maximum FAR of 10.0. Special provisions of Subdistrict F would include a floor area bonus of five percent for each residential building, if permanently affordable housing is provided, and a floor area exemption for construction of a PS/IS school on the Development Site.

Zoning controls established specifically for Subdistrict F would regulate building envelopes, publicly accessible open space areas, streetwall controls, retail continuity, and transparency. (The proposed zoning text is provided in Appendix A.) Specifically, within the commercial building on the northeast corner of the Development Site, floor plates located above 250 feet could not exceed 40,000 square feet. Floor plates located above the tower base in residential buildings could not exceed 12,000 square feet. Tower top rules would govern tower heights based on the location of a building on the Development Site, as well as its location in relation to other buildings on the site. Specific streetwall height requirements would be established for key frontages on Eleventh Avenue, West 30th and West 33rd Streets, and along the internal roadways on the north side of the northern internal roadway and the south side of the southern internal roadway.

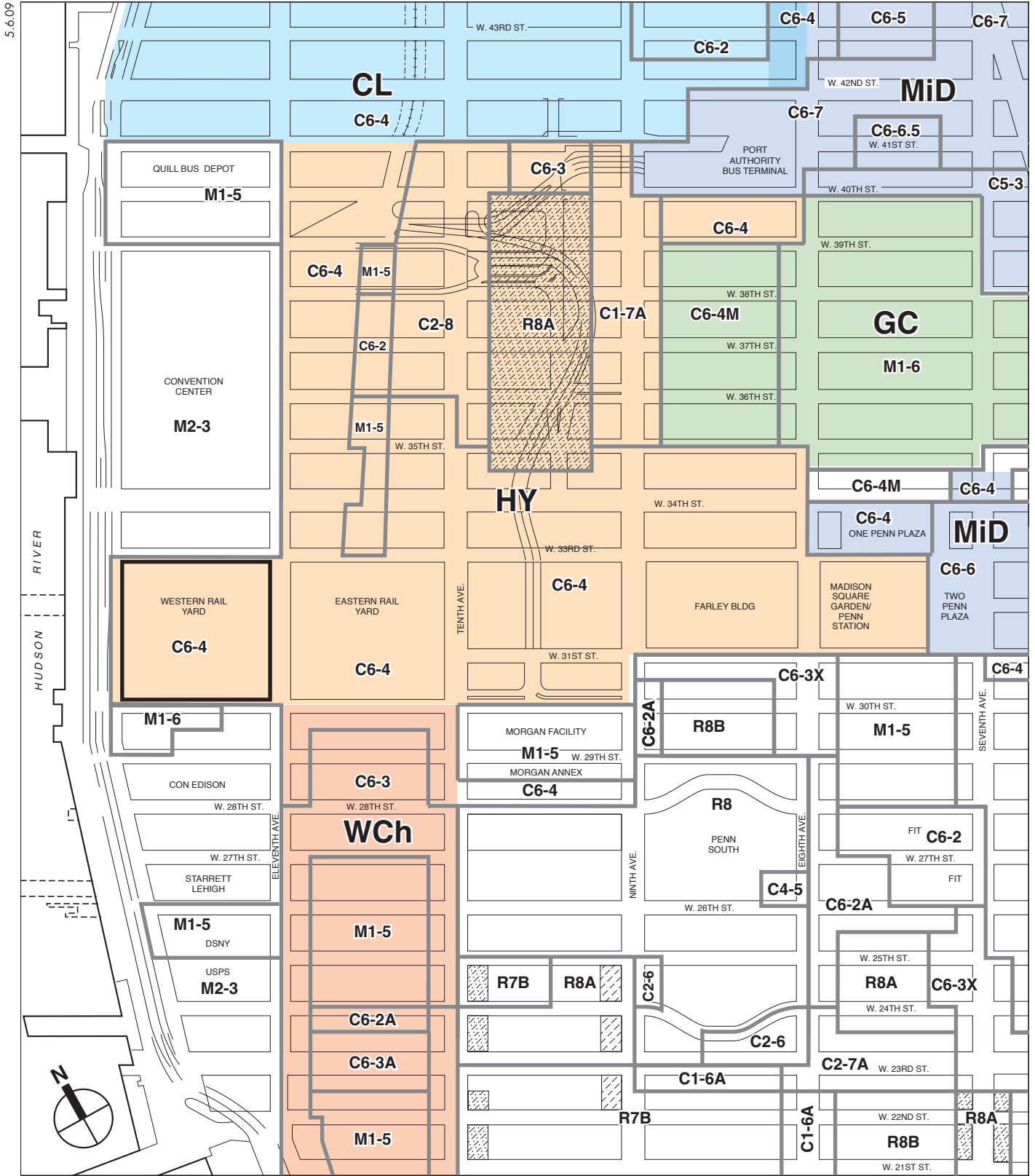
The proposed zoning controls would require ground-floor retail and transparency along specific portions of the Development Site, including Eleventh Avenue and West 30th Street and on the northern side of the proposed northern roadway and along the southern side of the proposed southern roadway. Sidewalk widths would be regulated for the proposed roadways within the Development Site, ranging from 15 to 25 feet.

The proposed zoning controls would divide the open space on the Development Site into a number of zones as follows: Western Open Space; Southwest Open Space; Central Open Space; the High Line; the Midblock Connection; and the Northeast Plaza. Specific features and core elements would be mandated for each zone and connections between zones would be required. Amenities in the open spaces would need to generally meet the privately owned public plaza standards of the Zoning Resolution. Design regulations would also be established for the private roadways and pedestrian ways on the site.

Parking regulations on the Development Site would be governed by the terms of Article I, Chapter 3 of the Zoning Resolution, which applies to Community Districts 1 through 8 in Manhattan. Based on these regulations, special permits are required to allow for the proposed 1,600 on-site accessory parking spaces.

Restrictive Declaration

The Developer would also enter into a Restrictive Declaration with the City which would incorporate commitments associated with the design and construction of the Development Site Project, including environmental controls during construction, noise attenuation, restrictions on fuel use and location of air intakes for ventilation systems, procedures for addressing hazardous materials on site, and commitments to sustainable development.



- Development Site
- Zoning District Boundary
- MiD Special Midtown District
- HY Special Hudson Yards District
- GC Special Garment Center District
- CL Special Clinton District
- WCh Special West Chelsea District
- C1-5 Overlay
- C2-5 Overlay

0 400 800 FEET
SCALE

WESTERN RAIL YARD

Development Site
Proposed Zoning
Figure S-3

ADDITIONAL HOUSING SITES

Current Conditions

In addition to the affordable housing proposed at the Development Site, the Proposed Actions would also provide for the development, by sponsors to be selected by the City at a later date, of permanent affordable housing for low- to moderate-income families at the Tenth Avenue and Ninth Avenue Sites. Both of these sites are zoned R8, which permits residential use and certain community facilities up to an FAR of 6.02, and are both located within the Special Clinton District Preservation Area (see Figure S-4), which has specific requirements for lot coverage, yard, and building height. Also, a portion of the Tenth Avenue Site is located within the Other Area of the Special Clinton District.

The Tenth Avenue Site is located between West 48th and West 49th Streets, approximately 125 feet west of Tenth Avenue, which is approximately $\frac{3}{4}$ -mile north of the Development Site. The approximately 20,000-sf development parcel occupies the western portion of Block 1077, Lot 29. Along its West 49th Street frontage, the development parcel is mapped with a C2-5 overlay, which permits local neighborhood commercial uses plus some additional uses, such as funeral homes and local repair services. The Tenth Avenue Site is occupied by a below-grade Amtrak railroad right-of-way for the Empire Line. The remainder of Lot 29 along its Tenth Avenue frontage is in use by the New York City Department of Environmental Protection (DEP) for construction of Water Tunnel No. 3; when that work is complete, the northern half of the Tenth Avenue frontage will be developed as public open space and the southern half will contain a permanent easement necessary for the operations and maintenance of DEP's Water Tunnel No. 3.

Under the regulations of the Preservation Area, the Tenth Avenue Site is subject to the 60 percent maximum lot coverage and 66 foot maximum height regulations for portions of lots beyond 100 feet on a wide street (a street 75 feet or more in width). However, under the regulations CPC may grant a special permit to modify the height restriction up to a maximum height of 99 feet.

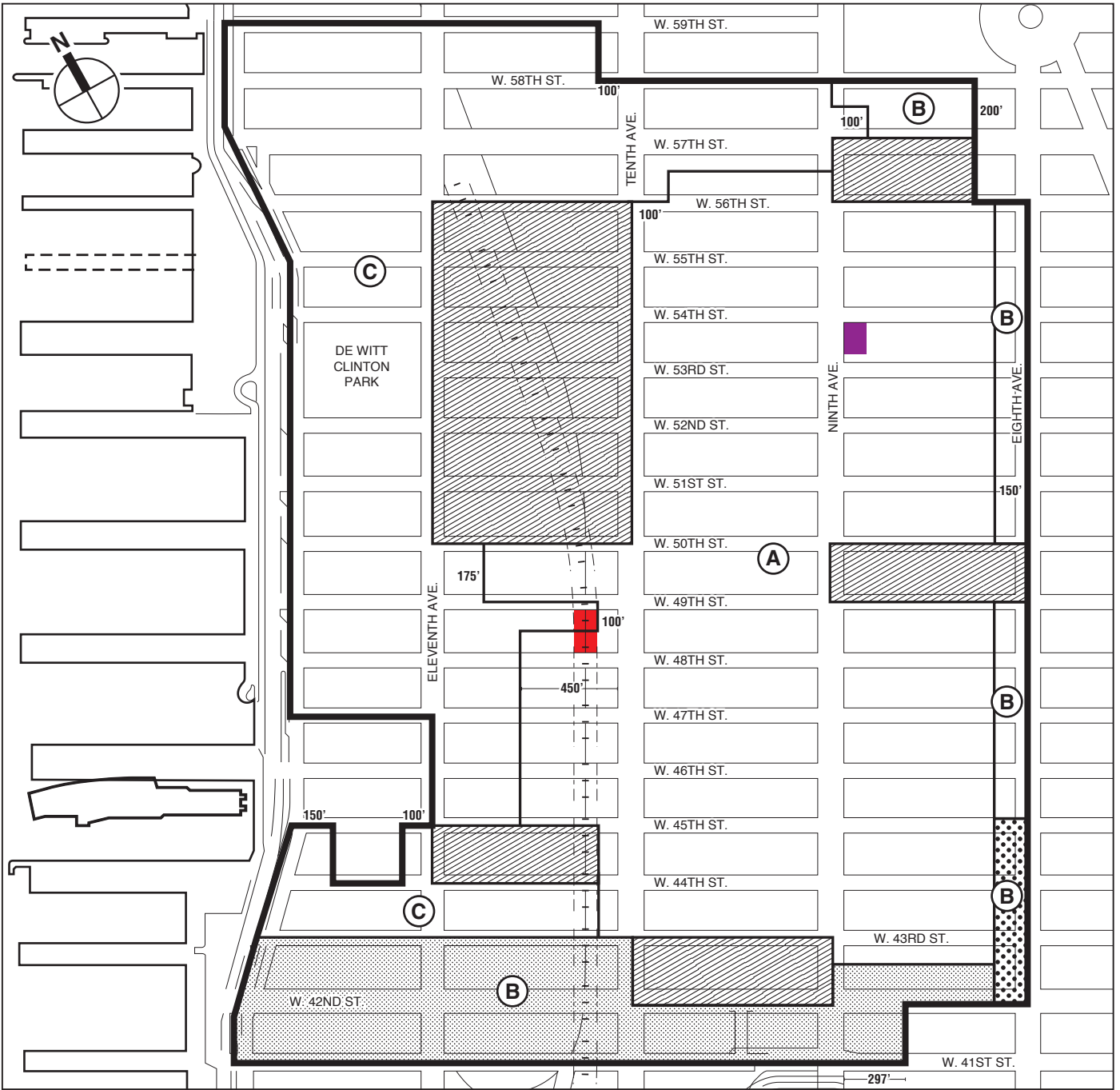
The Ninth Avenue Site is located on the southeast corner of West 54th Street and Ninth Avenue, approximately one mile north of the Development Site and $\frac{2}{3}$ -mile north of the Tenth Avenue Site. It occupies the Ninth Avenue frontage of Block 1044, Lot 3, which is currently a gravel parking lot for the adjoining MTA-New York City Transit (NYCT) building that occupies the rest of Lot 3, extending approximately 150 feet eastward along West 54th Street.

The 16,875-sf parcel is mapped with a C1-5 overlay on part of the site, which permits local neighborhood commercial uses in the underlying R8 district to an FAR of 2.0. Under the regulations of the Preservation Area, the Ninth Avenue Site is subject to the 70 percent maximum lot coverage and 85 foot maximum height regulations for portions of lots within 100 feet of a wide street and subject to the 60 percent maximum lot coverage and 66 foot maximum height regulations for portions of lots beyond 100 feet of a wide street. However, under the regulations CPC may grant a special permit to modify the height restriction up to a maximum height of 115 feet along the avenue frontage.

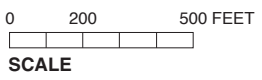
Proposed Actions

Zoning Actions

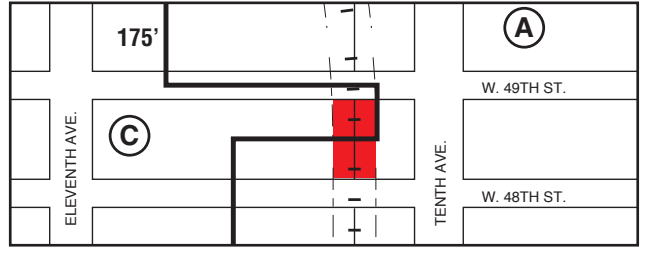
The Proposed Actions would include a zoning text map amendment to the Special Clinton District to include the Tenth Avenue Site and the lot area extending to Tenth Avenue in the Special Clinton District Other Area (see Figure S-5). In addition, the future developer (selected



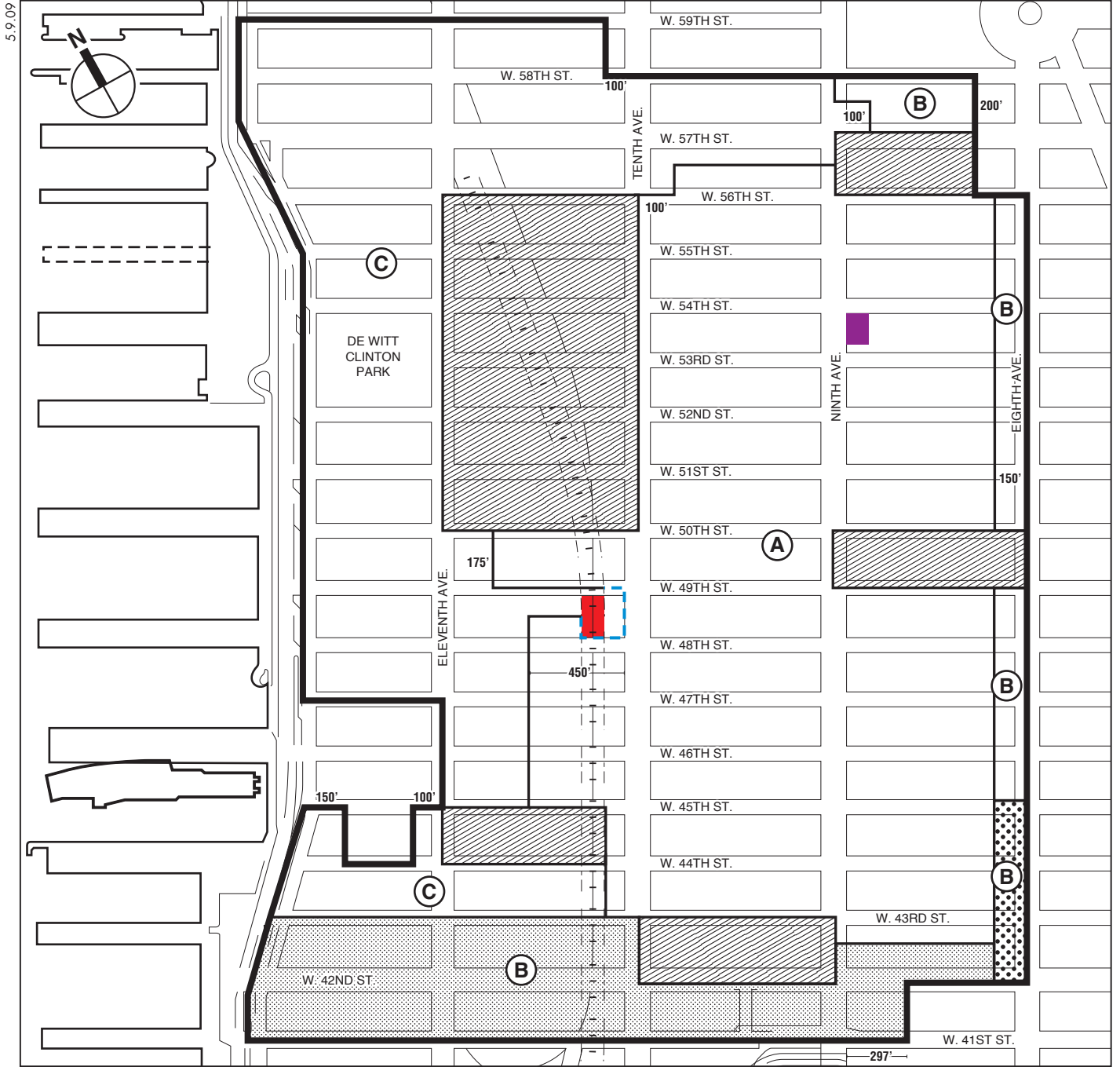
- Tenth Avenue Site
- Ninth Avenue Site
- Special Clinton District Boundary
- Area Boundary
- A Preservation Area
- B Perimeter Area
- B Portion of Perimeter Area B also subject to additional 42nd Street Perimeter Area regulations
- B Portion of Perimeter Area B also subject to Article VIII, Chapter I (Special Midtown District)
- C Other Area
- Excluded Area



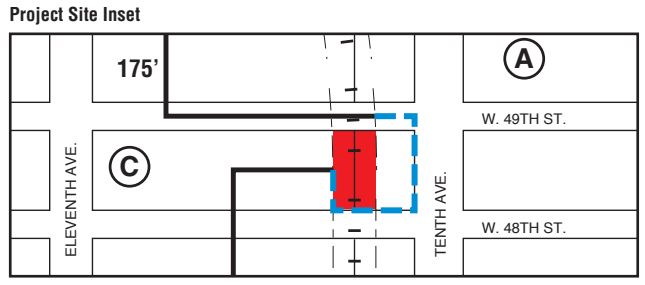
Tenth Avenue Site Inset



Additional Housing Sites
Existing Special Clinton District
Figure S-4



- Special Clinton District Boundary
 - Area Boundary
 - Preservation Area
 - Perimeter Area
 - Portion of Perimeter Area B also subject to additional 42nd Street Perimeter Area regulations
 - Portion of Perimeter Area B also subject to Article VIII, Chapter I (Special Midtown District)
 - Other Area
 - Excluded Area
 - Ninth Avenue Site
 - Tenth Avenue Site
 - Proposed Boundary of Other Area
- 0 200 500 FEET
SCALE



Tenth Avenue Site
Proposed Special Clinton District
Figure S-5

Western Rail Yard

through an RFP process as described below) would have to seek a special permit to build over the Amtrak railroad right-of-way and a special permit to allow the height of the building to rise from the Special Clinton District's as-of-right 66 feet to 99 feet.

For the Ninth Avenue site, the Proposed Actions would include a zoning map change to extend the C1-5 commercial overlay to within approximately 275 feet of Eighth Avenue (see Figure S-6). Development on the Ninth Avenue Site would require that the future developer seek a special permit to modify height requirements of the Special Clinton District Preservation Area, so that the full permitted FAR and full program of affordable housing and NYCT facilities could be constructed.

Memorandum of Understanding

A Memorandum of Understanding (MOU) between DCP, the New York City Department of Housing Preservation and Development (HPD), and DEP will incorporate commitments associated with the design and construction of the Additional Housing Sites, including environmental controls during construction, noise attenuation in the new buildings, and procedures for handling hazardous materials on site.

DEVELOPMENT PROGRAM

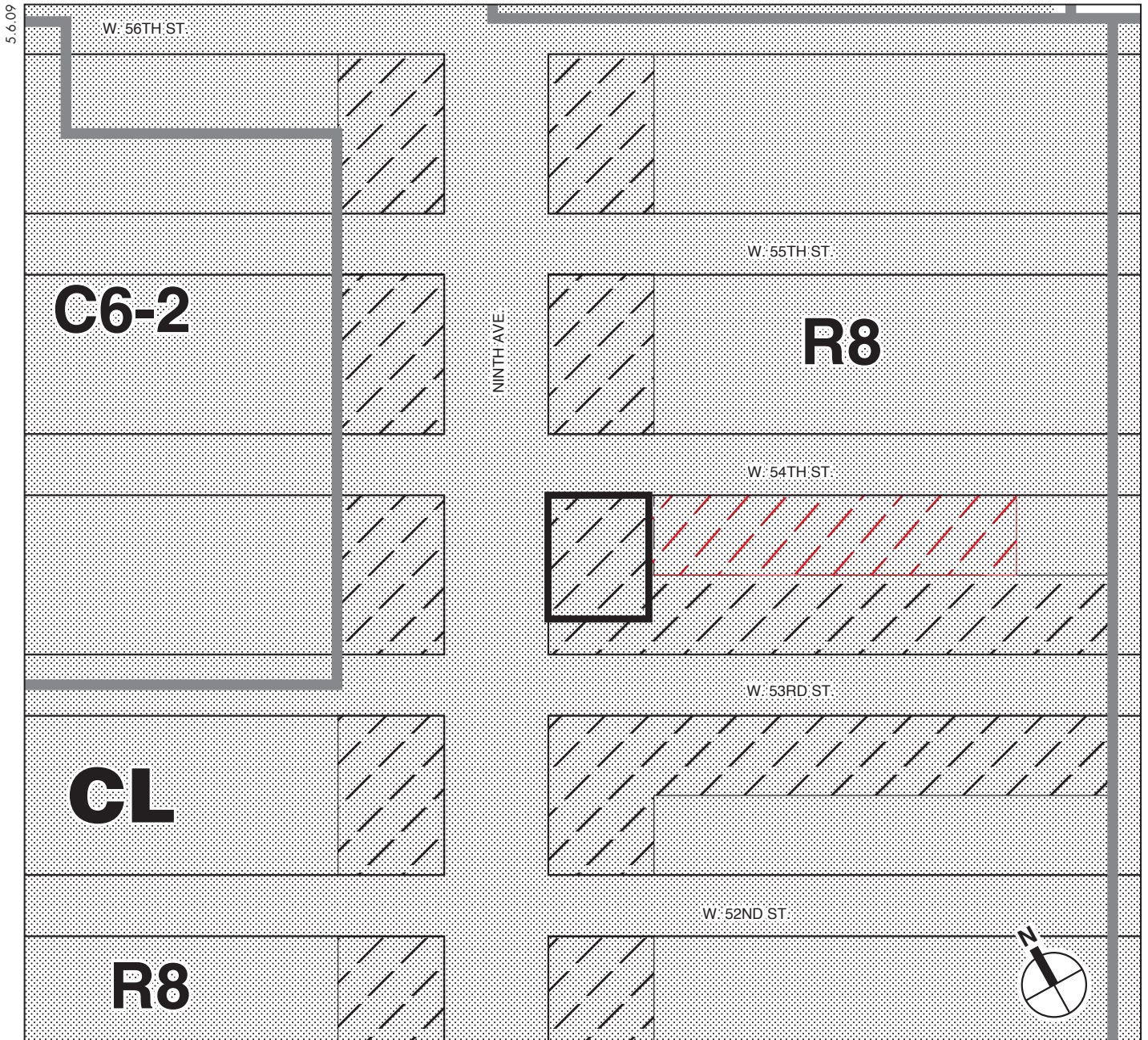
DEVELOPMENT SITE






Program Overview¹

The Proposed Actions would allow for the construction of between 6.2-million to 6.4 million gross-square-foot (gsf) mixed-used development at the Development Site, including residential, commercial (retail and office or hotel space), a PS/IS school, publicly accessible open space, and enclosed accessory parking areas. The Proposed Actions would encourage a variety of housing types on the Development Site, including market rate condo and rental housing and affordable rental housing, with a floor area bonus to facilitate permanent affordable housing.

Residential development at the Development Site would range from approximately 3.8 million sf comprising 4,624 units to 4.8 million sf comprising 5,762 units. Twenty percent of all rental units on the Development Site would be affordable housing units under the terms of the applicable 80/20 program, with the provision of affordable units subject to (1) the allocation of sufficient tax-exempt bond cap or other equivalent low-cost financing to the Developer for each building of rental housing as and when required, and (2) the availability to the Developer of such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of 80/20 housing in the City. The commercial development would include approximately 1.5 to 2.2 million sf of Class A office space or a 1,200-room convention-style hotel. In addition, there would be between 210,000 and 220,500 sf of retail space. The Development Site Project would also provide an approximately 120,000-sf PS/IS school with 420 elementary school seats and 330 intermediate school seats, approximately 5.45 acres of publicly accessible open space, and accessory parking.

¹ This section provides a general overview of the development program. For analysis purposes in the EIS, reasonable worst-case development scenarios have been identified for the Development Site, which are presented below under "Framework for Analysis."



-  Ninth Avenue Site
-  Proposed C1-5 Overlay
-  Zoning District Boundary
-  C1-5 Overlay
-  Clinton Special Purpose District



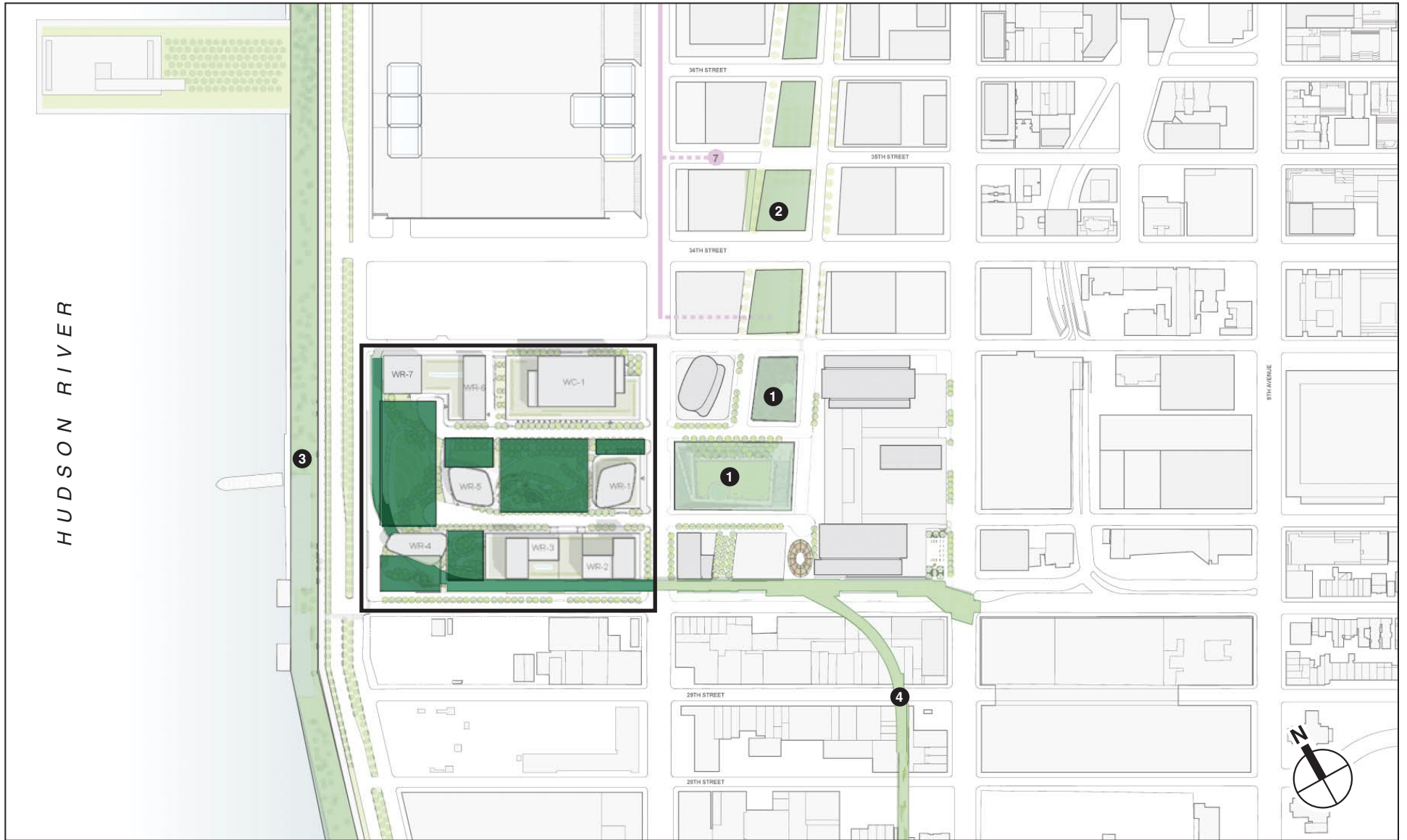
There would be a total of up to 1,600 on-site accessory parking spaces comprising approximately 1,330 accessory residential spaces and 270 accessory commercial spaces. As currently planned, the terra firma portion of the site could accommodate up to approximately 850 parking spaces. The remaining 750 spaces would be constructed on the platform, subject to review and approval by MTA and LIRR.

Site Planning, Bulk and Massing

The planning and design of the Development Site would follow the principles set forth in the RFP, which states that: the development should include a variety of uses and should be integrated into the surrounding neighborhoods; the buildings should be organized around a central open space, and there should be visual connections to the High Line Park and to Hudson River Park; the building heights should vary; the streetscape should be continuous and provide a varied pedestrian experience; and the proposal should include sustainable features. In accordance with these principles and with the proposed new zoning regulations, the following objectives were established to guide the site design:

- Reintroduce the New York City grid—Reintroduce an internal street system generally in line with West 31st and West 32nd Streets, to reduce the “superblock” effect of the Western Rail Yard and help to integrate this site into the rest of the neighborhood.
- Develop a sequence of publicly accessible open spaces—The Development Site sits in a key position in relation to surrounding open spaces, both planned and existing, that will surround it, and the project’s own open space would be a critical link in connecting these spaces into the larger public open space network. (See Figure S-7).
- Place denser development on the eastern portion of the Development Site and less dense development on the western portion of the site.
- Generate street vibrancy—An active streetscape and pedestrian-friendly environment is planned for the internal roadways through the creation of ground-floor retail, street trees, and outdoor seating areas. Ground-floor retail would be required in the buildings along Eleventh Avenue and West 30th Street.

The Developer has prepared an illustrative site plan consistent with the proposed zoning regulations that also complements the design currently planned for the Eastern Rail Yard. Although this plan reflects the Developer’s current approach to site planning, it must be considered illustrative, since it is not fully designed and may change based on market conditions and a more detailed design process. The illustrative site plan includes one commercial building in the northeast corner of the Development Site, three residential buildings, three mixed-use, primarily residential buildings with ground-floor retail and/or a PS/IS school, and one building that would either be residential or mixed use (see Figure S-8). It is anticipated that two residential buildings (WR-6 and WR-7) would be located west of the commercial building (WC-1) along West 33rd Street, and one residential building (WR-4) would be located in the southwest portion of the Development Site. The plan currently proposes the PS/IS school and ground-floor retail in the base of a building, with two residential towers above, in the southeast portion of the Development Site along West 30th Street (WR-2 and WR-3). Just north of this building, another mixed-use residential building would stand along Eleventh Avenue (WR-1) between the two new roadways. The residential building (WR-5) west of WR-1 would also include some ground-floor retail. The High Line is proposed to be integrated into the overall site plan for the Development Site and adaptively reused to provide passive open space with connections to other on site open spaces.



- Development Site*
- Existing open space and open space to be developed in the future without the Proposed Actions*
- Proposed Open Space*

- 1** *Eastern Rail Yard Open Space*
- 2** *Hudson Park*
- 3** *Hudson River Park*
- 4** *High Line Park*

0 200 500 FEET
SCALE



----- Approximate Boundary of Proposed Platform

————— Approximate Boundary of Terra Firma Area

Western Rail Yard

As required in the proposed zoning, building massing and heights would gradually decrease from Eleventh Avenue and West 33rd Street to Twelfth Avenue and West 30th Street. The tallest building on the site would be the commercial building in the northeast corner. Taller residential buildings are proposed generally in the eastern and northern portions of the Development Site, and shorter residential buildings in the southwest quadrant of the Development Site (see Figure S-9). Building heights would generally range from approximately 40 to 70 stories, or 350 to 950 feet. WC-1 would be the tallest, at 850 to 950 feet, WR-6 would be between 650 and 810 feet, and WR-7 would be between 550 and 710 feet.

South of the commercial building on Eleventh Avenue, WR-1 would be approximately 700 to 800 feet high. To its west WR-5 would be shorter at approximately 500 to 700 feet. Along West 30th Street, buildings would also decrease in height from Eleventh Avenue to Twelfth Avenue. The tallest building at the southern portion of the Development Site would be located at Eleventh Avenue, at approximately 650 to 810 feet (WR-2). Directly west of this mixed-use building would be an approximately 550 to 710-foot-tall mixed-use building (WR-3). The shortest building on the site would be at the southwest corner of the site, at a maximum height of 450 feet (WR-4).

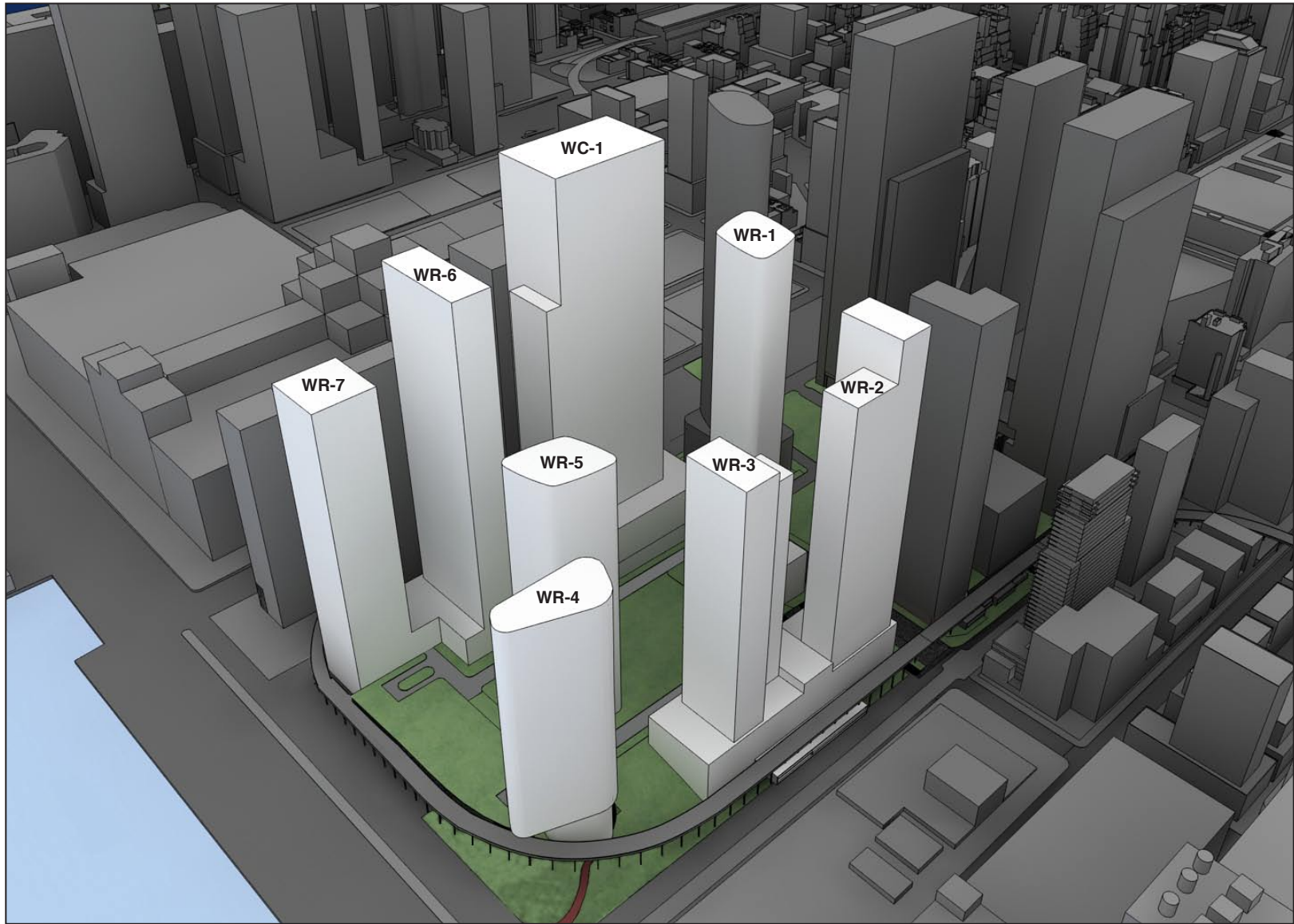
Circulation and Parking

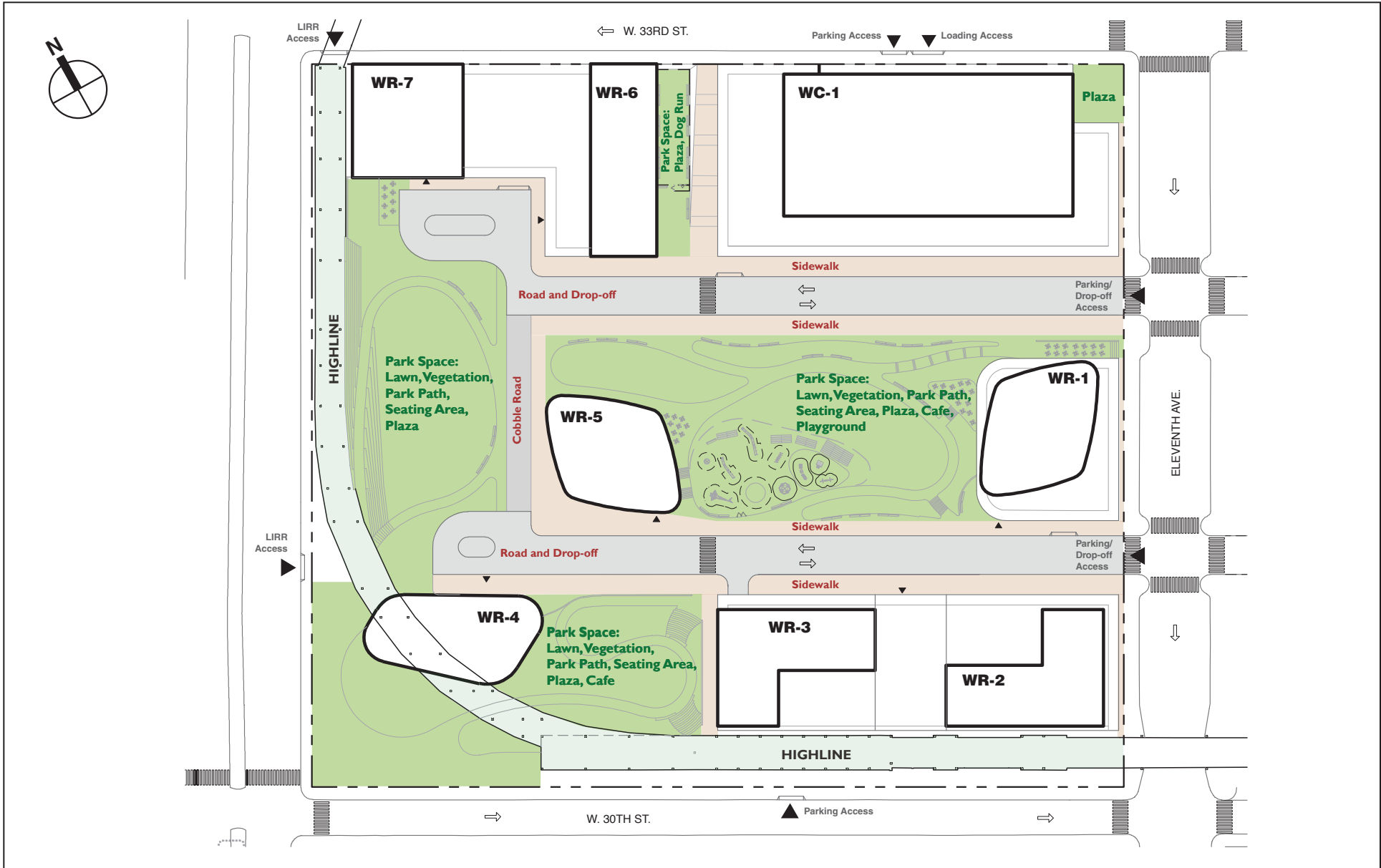
Two parallel vehicular roadways into the site would function as unmapped extensions of West 32nd and West 31st Streets. Both roadways would be accessed from Eleventh Avenue and would continue west with cul-de-sac drop offs to provide vehicular access to the buildings further west. The northern roadway is intended to be a two-way vehicle lane that would provide passenger side drop off and accessibility to the commercial building and residential buildings on the north side of the site. The southern roadway is also intended to be a two-way vehicular roadway and would provide access to the residential buildings in the southern and western portions of the site, as well as to the retail uses at the base of these buildings. Although these roadways would not be mapped as City streets, they would be operated with full public access, sidewalks, and street-level uses.

Access to parking would be along West 30th Street and West 33rd Streets, the northern and southern roadways (see Figure S-10). An entrance on West 33rd Street would also provide access to the loading areas. There would also be two access points to the LIRR facilities, one on West 33rd Street and the other on Twelfth Avenue. In addition, to provide better service access to and from the level of the building platform, West 33rd Street would be rebuilt to an appropriate profile and elevation between Eleventh and Twelfth Avenues. The design and construction of this profile change would be in coordination with the platform design and construction.

Open Space

Approximately 5.45 acres of publicly accessible open space are proposed throughout the site (see Figure S-10). This open space is anticipated to provide lawns, landscaped areas, walking paths, seating areas, plazas, and a dog run. In accordance with Section 93-752 of the proposed zoning text (see Appendix A, "Proposed Zoning Text,") one playground is required in the large lawn in the central portion of the Development Site. As described above, the proposed zoning text amendment would divide the open spaces on the Development Site into zones with core open space elements defined for each. The proposed zoning would mandate specific features and core elements and connection requirements between zones. Amenities in open spaces would need to generally meet the privately owned public plaza standards in the zoning resolution.





- - - - - Development Site Boundary

▶ Proposed Access Point

In the eastern portion of the Development Site, between the northern and southern vehicular roadways, an approximately 1.42-acre central open space is proposed in the illustrative site plan. An “allée,” a pedestrian pathway lined with trees on both sides, is proposed at the northern portion of this open space adjacent to the northern vehicular roadway, to draw residents and visitors into the center of the site. A seating area, plaza, café, and 10,000 square-foot playground are currently contemplated within the central open space. This central open space is intended to be the highest point on the Development Site, which would enable people in this area to see above the High Line to the Hudson River. In the western portion of the Development Site, between the residential buildings to the north and south, an approximately 1.51-acre waterfront lawn is proposed that would support active and passive recreation. Current plans include amphitheater seating along the western portion of this space, which could be used for seating for outdoor events and as steps to access the High Line. A 1.14-acre, tiered open space, which is proposed at the southwest corner of the site, would lead down from the central open space, and continue under the High Line to street level on West 30th Street and Twelfth Avenue. It is proposed that the portion of the space between residential buildings WR-3 and WR-4 would include a seating area, plaza, and café.

There would be two smaller open space areas along West 33rd Street— an approximately 2,600-sf plaza at the northeast corner of the Development Site and an approximately 11,400-sf open space with a pedestrian plaza and a dog run between residential building WR-6 and commercial building WC-1.

As a result of the Proposed Actions, the portion of the High Line on the Development Site would be adaptively reused as 1.05 acres of elevated passive open space. This open space would provide a pedestrian pathway that would run parallel to Twelfth Avenue before curving to the east and running parallel to West 30th Street. This open space would then connect to the portion of the High Line on the Eastern Rail Yard (to be developed in the Future without the Proposed Actions) to the east of the Development Site; from there it would connect to the High Line Park to the south of West 30th Street. As discussed above, access to the High Line is also proposed from the waterfront lawn.

Sustainable Design

The Developer proposes several sustainable, green components for the Development Site to promote water and energy conservation, as follows:

- Stormwater would be captured from building roofs and used for other building uses; buildings without stormwater capture would employ green roof technology where feasible.
- Water-conserving dishwashers and clothes washers would be installed in the residential units; and water-conserving toilets and faucets would be installed in all buildings.
- Covered and secure bike storage would be provided.
- Commitment to seek Leadership in Energy and Environmental Design (LEED) Silver certification for all buildings.
- During construction the Developer would institute diesel emission reduction measures for construction equipment and non-road vehicles and institute practices to minimize the discharge of untreated concrete-contaminated water.

Western Rail Yard

Construction

At the Development Site, approximately two-thirds of the development would be constructed over the railroad tracks and LIRR facilities buildings and would require the construction of a platform. The remainder of the development would be on terra firma. Some of the existing LIRR on-site facilities would be temporarily relocated to facilitate construction. Although there would be temporary or periodic track outages during construction, there would be no disruption of LIRR passenger service.

ADDITIONAL HOUSING SITES

Development Process

Upon completion of the environmental and land use review processes, and MTA's entering into a lease, with option to purchase, for the Development Site with the Developer, HPD would issue an RFP inviting developers to submit development proposals for the Ninth Avenue Site. The RFP would be in accordance with the Mayor's New Housing Marketplace Plan, which commits to the new construction or rehabilitation of 165,000 affordable housing units by 2013. Once proposals are submitted, they would be examined in a competitive review process in the areas of planning, finance, and design. Following this process, a developer would be selected, and special permits and any additional land use reviews, as necessary, for development of the sites would be undertaken.

Development of the Tenth Avenue Site would follow a similar RFP process. The adjacent land fronting on Tenth Avenue is owned by the City and is being used by DEP for the construction of the Water Tunnel No. 3 Project. Therefore, construction of the Tenth Avenue Site would not be allowed until after DEP completed its use of the adjacent site—scheduled for mid-2013 or 2014.

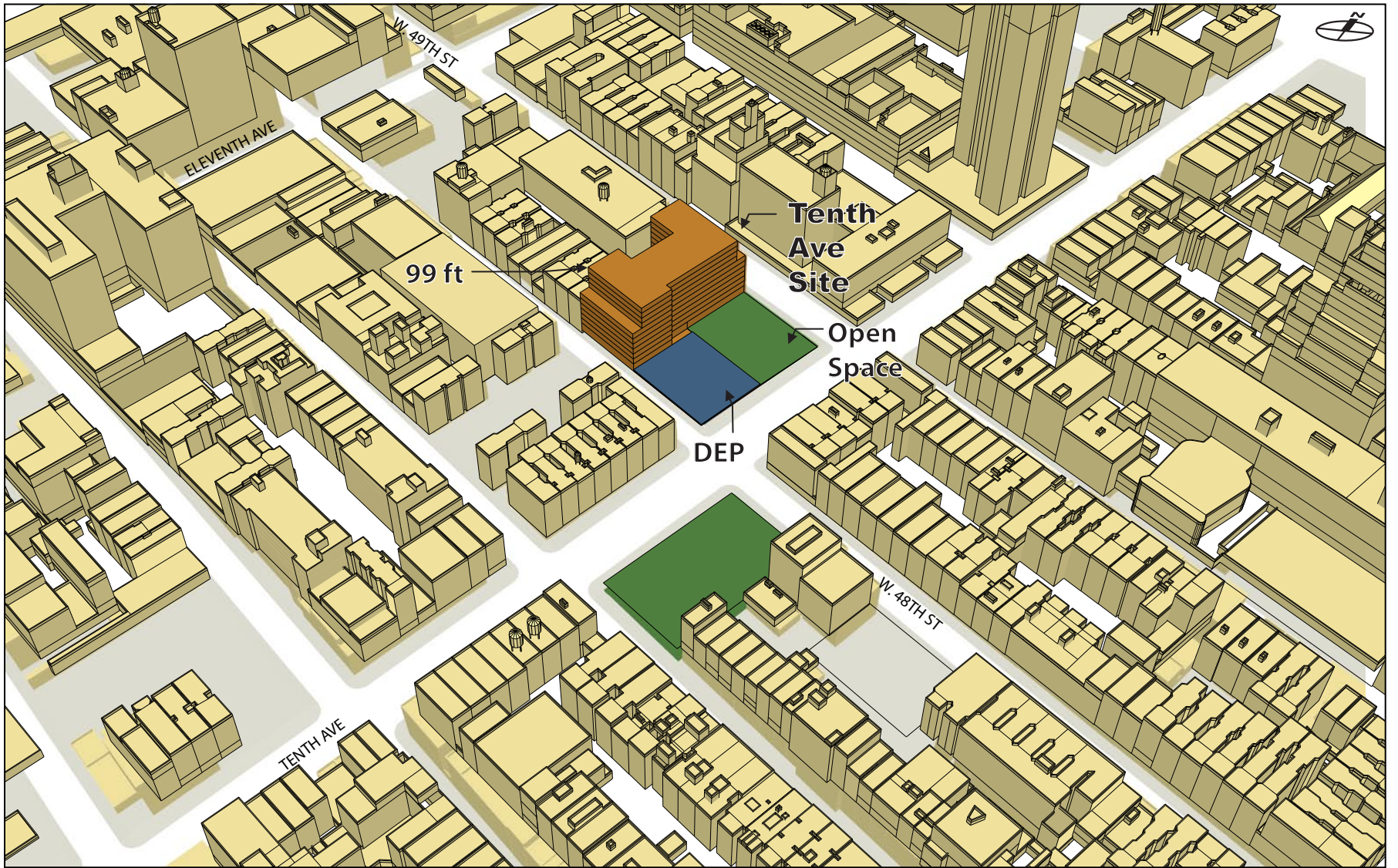
Development Program

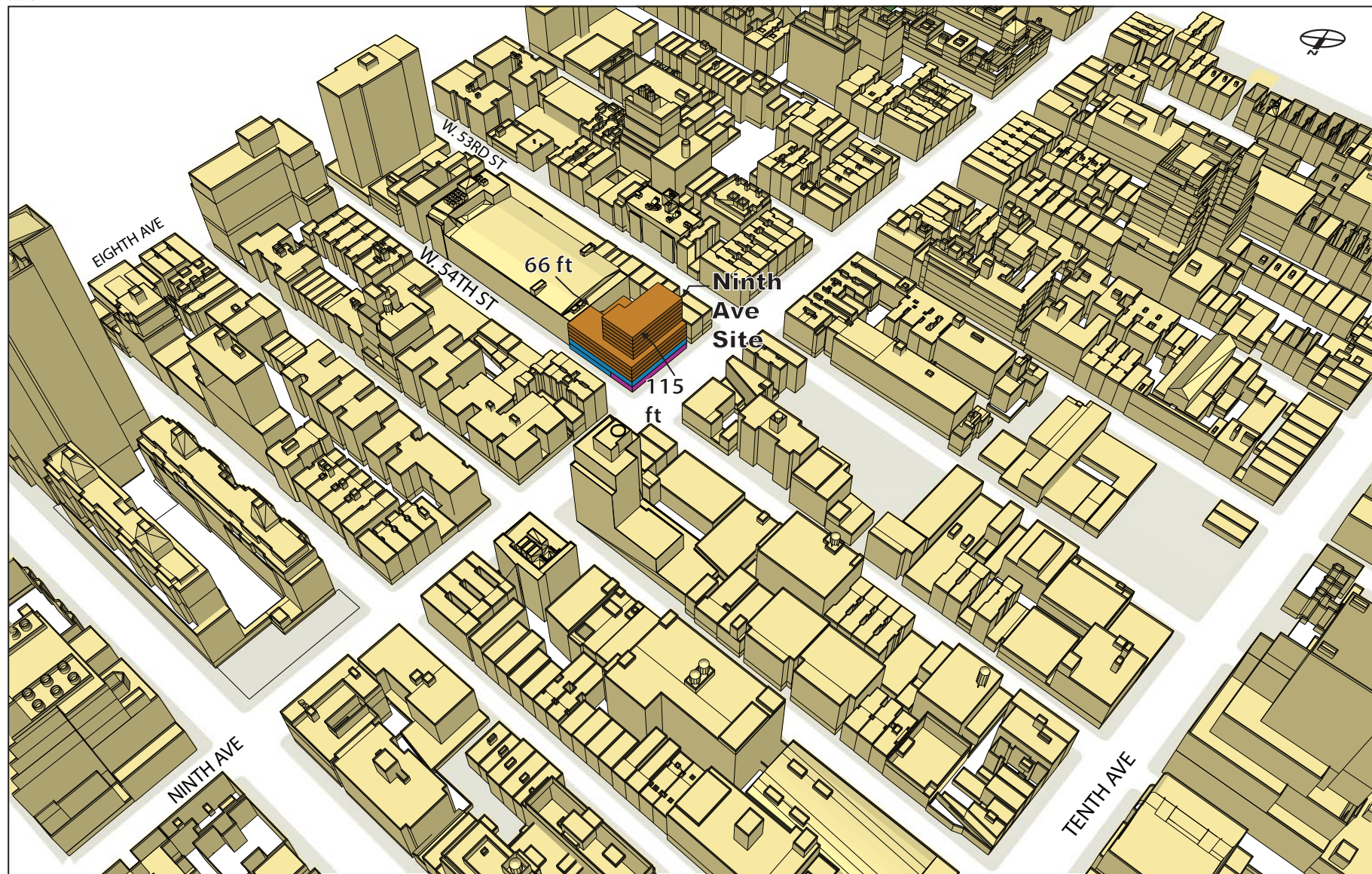
It is anticipated that the building on the Tenth Avenue Site would be approximately 11 stories (or 99 feet in height) and would include approximately 176,300 gsf of residential space (or about 204 permanently affordable units) and 10,800 gsf of retail. Ground-floor retail would front West 49th Street; publicly accessible open space would be developed in the Future without the Proposed Actions directly east of the northern half of the building (see Figure S-11).

Most of the Ninth Avenue Site would be made available for affordable housing development, with a portion reserved for use by NYCT. This site would include approximately 96,300 gsf of residential space (or approximately 108 permanently affordable units), 6,750 gsf of retail space, and 30,000 gsf of office space that would be used for NYCT training facilities. The base of the building would be six stories, with the portion of the building fronting Ninth Avenue rising to 115 feet in height. The midblock portion of the building would be 66 feet high (see Figure S-12). The first floor of the building would include ground-floor retail fronting Ninth Avenue, a residential lobby and office space on the remainder of the site. There would also be NYCT office space on the second floor. The remainder of the building would be residential space. This building would also allow for NYCT below-grade parking for up to 15 emergency vehicles.

Open Space

Development at the Additional Housing Sites would also comply with the recreation space requirements of the New York City Zoning Resolution Quality Housing Program. To comply





with the requirements, the proposed developments would provide a minimum amount of recreation space for the buildings' residents.

Sustainable Design

For the Additional Housing Sites, HPD would require compliance with the New York State Energy Research and Development Authority's (ERDA's) Green Affordable Housing Component and Enterprise Community Partners' Green Communities ("Green Communities"). Green Communities is a subset of ERDA's Multifamily Performance Program, which is designed to improve the energy efficiency, health, safety, and security of new, affordable, multi-family residential buildings. This program serves new construction projects that contain five or more residential units where 25 percent of the households in the building maintain an income level at or below 80 percent of the New York State Median Income. For rental projects, Green Communities requires at least 25 apartments to be occupied by households at or below 60 percent of area median income. Projects participating in the Green Communities are required to attain the Energy Star label for mid- and high-rise buildings, receive incentives for the installation of green building features, and are required to attain LEED Silver certification.

Green Communities criteria promote smart growth, public health, energy conservation, operational savings, and sustainable building practices in affordable housing design, and the criteria contain detailed information addressing aspects of design, development, and operations, including: integrated design; site location and neighborhood fabric; site improvements; water conservation; energy efficiency; materials beneficial to the environment; healthy living environment; and operations and maintenance. The Green Communities Criteria are aligned with the LEED for Homes rating system.

C. CONSTRUCTION SEQUENCING

DEVELOPMENT SITE

Development would begin in 2011 with the construction of the platform. The construction of the platform is anticipated to occur in phases (each phase is associated with storage track outages required to be approved by MTA and LIRR¹), starting in the northernmost portion of the site and proceeding across the yard. Although there would be temporary track outages in the Development Site, there would be no disruption to LIRR passenger service. Generally, construction of the platform and subsequent buildings is anticipated to proceed from north to south. It is anticipated that early work would also involve the construction of the buildings on the terra firma, as shown in Table S-1.

The proposed open space would be developed in phases associated with the completion of the adjacent buildings. By 2017, it is anticipated that the Development Site would contain approximately 1.48 acres of passive open space. Based on the illustrative site plan, it is anticipated that two open space areas would be completed, along with two residential buildings (WR-2 and WR-3) and one commercial building (WC-1) by 2017. A 1.42-acre lawn would be located in the central portion of the site, between buildings WC-1 to the north and WR-2 and WR-3 to the south.

¹ Once the Developer and the MTA have entered into a lease, with an option to purchase, for the Development Site, the LIRR would separately approve construction plans.

Table S-1
Anticipated Building Sequencing: Development Site

Proposed Building⁴	Construction Start	Construction Finish
WR-2 (Residential) ^{1,2}	October 2013	January 2017
WC-1 (Commercial) ²	November 2013	January 2017
WR-3 (Residential) ^{1,2}	April 2014	July 2017
WR-1 (Residential) ²	August 2015	January 2018
WR-6 (Residential)	January 2016	July 2018
WR-7 (Residential)	January 2016	January 2019
WR-4 (Residential)	October 2016	April 2019
WR-5 (Residential) ³	January 2017	September 2019
Notes:		
1. The PS/IS school would be located in the base of WR-2 and WR-3.		
2. Buildings would have retail.		
3. Building WR-5 would only have ground-floor retail in the Maximum Residential Scenario (see Chapter 2, "Framework for Analysis").		
4. See Figure S-8.		

A 2,600-sf plaza would be located at the northeast corner of the site adjacent to building WC-1, at the corner of Eleventh Avenue and West 33rd Street. The remaining open spaces to be completed by 2019 include: a 1.14-acre open space around WR-4; a 1.51-acre lawn area along Twelfth Avenue between WR-4 and WR-7; a 0.26-acre plaza adjacent to WR-6; and 1.05 acres of passive open space on the portion of the High Line on the Development Site.

ADDITIONAL HOUSING SITES

Construction of the Ninth Avenue Site is expected to begin in 2013 and be completed in 2016. Construction at the Tenth Avenue Site is anticipated to begin in 2014 and be completed in 2018.

D. PROJECT APPROVALS AND ACTIONS

DEVELOPMENT SITE

1. Zoning
 - Zoning map amendment of Development Site from existing M2-3 district to proposed C6-4/Special Hudson Yards District;
 - Zoning text amendments to Special Hudson Yards District zoning text to create a new subdistrict. Establish use, bulk, open space, streetwall and other design controls for Development Site and establish certification procedures for phasing for the proposed open space; and
 - Special permits pursuant to Zoning Resolution Section 13-50 for accessory off-street parking.
2. Regulatory approvals/actions as necessary to facilitate the adaptive reuse of the High Line on the Development Site.
3. City map amendment for re-profiling West 33rd Street between Eleventh and Twelfth Avenues.
4. Project approval by MTA, including MTA and/or LIRR approval of platform over and any necessary improvements within the rail yard.

5. Disposition of Development Site by TBTA and MTA, including lease, with option to purchase, easements, and other options.
6. Site selection for the PS/IS school by the SCA.
7. New York City Housing Development Corporation/New York State Housing Finance Agency financing approvals/actions for affordable housing.
8. Possible New York State Department of Environmental Conservation (DEC) State Pollutant Discharge Elimination System (SPDES) and/or other DEC permits.
9. Amendment to the Uniform Tax Exemption Policy (UTEP) by the New York City Industrial Development Agency to expand the boundaries of the UTEP catchment area.

ADDITIONAL HOUSING SITES

10. Disposition by the City of the Additional Housing Sites pursuant to the requirements of the Urban Development Action Area Program (UDAAP), and possible associated affordable housing financing actions, and
 - Tenth Avenue Site:
 - Zoning text map change to place the entire site in the Special Clinton District Other Area;
 - Special permit for building above a railroad right-of-way.¹
 - Ninth Avenue Site:
 - Zoning map change to extend the C1-5 commercial overlay to within approximately 275 feet of Eighth Avenue;
 - Special Permit for existing height modification.¹
 - General Large Scale Special Permit.¹
 - Partial release of MTA's interest in the Ninth Avenue Site to the City of New York.

E. FRAMEWORK FOR ANALYSIS

The process necessary to implement the Proposed Actions and an overview of analytical framework used to guide the technical analysis are presented below.

ENVIRONMENTAL REVIEW PROCESS

This FEIS has been prepared in accordance with SEQRA and CEQR. The review process allows decision-makers to evaluate a proposed project's environmental effects, evaluate reasonable alternatives, and identify measures to mitigate significant adverse impacts. The process also facilitates public involvement by providing the opportunity to comment on the Draft EIS (DEIS). Often, the environmental review process is integrated and coordinated with other government agencies' decision-making processes. For the Proposed Actions, two other public processes are important milestones in implementing the project: ULURP and Waterfront Revitalization. Each is summarized below.

¹ It is anticipated that the special permits will be applied for in accordance with specific site plans following issuance of RFPs for affordable housing development and developer selection for the Additional Housing Sites.

UNIFORM LAND USE REVIEW PROCEDURE

ULURP, mandated by Sections 197-c and 197-d of the City Charter, is a process specifically designed to allow public review at four levels: Community Board, Borough President, CPC, and City Council. The procedure sets time limits for each review, with a maximum period of approximately seven months. The zoning map amendments, special permits, city map amendment, and site selection associated with the Proposed Actions are subject to ULURP. Zoning text amendments are not subject to ULURP, but are subject to review by CPC and the City Council under Sections 200 and 201 of the New York City Charter, and will be reviewed concurrently with ULURP applications. The process begins with certification by CPC that the ULURP application is complete and includes appropriate descriptions of the proposed actions and, in this case, a Notice of Completion for the DEIS.

The application is then referred to the relevant Community Board (for the Proposed Actions, Manhattan Community Board 4 [CB4]). CB4 has up to 60 days to review and discuss the proposal, hold a public hearing, and adopt a recommendation regarding the actions. Once this is complete, the Borough President has up to 30 days to review the ULURP application and issue a recommendation. CPC then has up to 60 days to approve, disapprove, or approve with modifications, and during that time, a ULURP public hearing is held. When a DEIS accompanies the ULURP application, as with this proposal, the CEQR public hearing is held jointly with the ULURP hearing. Comments made at the DEIS public hearing are incorporated into an FEIS; the FEIS must be completed at least 10 days before any action by CPC on the ULURP application. In the event of an approval or an approval with modifications, CPC forwards the application to the City Council, which has 50 days to review it (subject to an extension to 65 days in the event the Council were to propose modifications). Following the Council's vote, the Mayor, at his discretion, may choose to veto the action. The City Council can override that veto.

WATERFRONT REVITALIZATION

The City has adopted the Local Waterfront Revitalization Program (LWRP) pursuant to the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act. CPC serves as the City's Coastal Commission under the LWRP. Actions that are subject to ULURP Sections 200 and 201 of the New York City Charter are also reviewed by CPC in its capacity as the Coastal Commission for consistency with the program's policies. The City Council approved an LWRP in October 1999. The plan replaced 56 City and State policies with 10 policies designed to simplify and clarify the consistency review process. Discretionary actions subject to CEQR and occurring within the program's boundaries are to be reviewed by the lead agency for consistency with the program's policies. Since the Development Site is located within the designated Coastal Zone of New York City, the LWRP consistency assessment is incorporated into this EIS. Written findings must be issued that the Proposed Actions are consistent to the maximum extent practicable with the LWRP before any agency can make a final decision.

FRAMEWORK FOR ENVIRONMENTAL ANALYSIS OF THE PROPOSED ACTIONS

SCOPE OF ENVIRONMENTAL ANALYSIS

As set forth in the Positive Declaration, the co-lead agencies have determined that the Proposed Actions may result in one or more significant adverse environmental impacts and thus require preparation of an EIS. This document applies methodologies and follows the guidelines set forth

in the *CEQR Technical Manual*, where applicable. These are generally considered to be the most appropriate technical analysis methods and guidelines for the environmental impact assessment of projects in the City and are consistent with SEQRA.

For each technical analysis in the EIS, the assessment includes a description of (1) existing conditions, (2) an assessment of conditions in the Future without the Proposed Actions, and (3) an assessment of conditions in the Future with the Proposed Actions. Identification and evaluation of impacts of the Proposed Actions are based on a comparison between conditions in the Future without the Proposed Actions and conditions in the Future with the Proposed Actions. Where significant adverse environmental impacts are identified, potential mitigation measures are proposed and analyzed. An important element of the EIS is the analysis of alternatives that reduce or eliminate the significant adverse effects disclosed in the technical analyses; such alternatives also include a “No Action” alternative, as described at the end of this section.

ANALYSIS YEARS

Operational Analysis

An EIS analyzes the effects of a proposed action on its environmental setting. Since a proposed action, if approved, would take place in the future, the action’s environmental setting is generally not the current environment, but the environment as it would exist at project completion. Therefore future conditions must be projected. This prediction is made for a particular year, generally known as the “analysis year” or “Build year,” which is the year when the proposed action would become substantially operational. The analysis of the Proposed Actions is performed for the expected year of completion of the Proposed Actions, which is 2019. An assessment of the Proposed Actions’ potential environmental impacts has also been undertaken for a 2017 “interim year” of development, after the first three buildings (out of a total of eight) are projected to be constructed and occupied on the Development Site.

Construction Analysis

The construction analyses address conditions during peak construction at the project sites. As appropriate, some of the construction analyses, such as air quality, also address a second scenario that would analyze the effects of project-related construction during the period of the highest cumulative construction activities for the Development Site and for other nearby construction projects. This is based primarily on the largest air quality emissions generation potential at nearby construction areas of the No. 7 subway line station at Eleventh Avenue and West 34th Street, the Eastern Rail Yard development, the Access to the Region’s Core (ARC) project, and individual development sites in the Hudson Yards and West Chelsea areas.

The construction analysis years have been selected to address the worst-case impacts for the discrete technical areas being analyzed. In the case of traffic and parking, it is estimated that the worst-case impacts will occur in 2017. For the air quality analyses, worst-case periods are identified for different pollutants in 2012, 2014, and 2016.

DEFINITION OF STUDY AREAS

For each technical area examined in the EIS, an appropriate study area or multiple study areas are defined for the specific analysis. A study area is the geographic area likely to be affected by the Proposed Actions for a given technical area or the area in which impacts of that type could occur. Appropriate study areas differ depending on the type of impact being analyzed. The

methods and study areas for addressing impacts are discussed in the individual technical analysis chapters.

DEFINING BASELINE CONDITIONS

The projection of future conditions begins with an assessment of existing conditions, because these can be measured and observed. For each technical area assessed in the EIS, the current conditions are first described, based on the most current information and available data regarding the surrounding study areas. Existing conditions are generally studied, where relevant, during the time periods that reasonable worst-case conditions would be expected with the Proposed Actions. For example, the time periods when the greatest number of new vehicular, pedestrian, and transit trips to and from the project sites would occur are measured for the transportation analysis. The project impacts are then assessed for those same peak periods.

The Future without the Proposed Actions condition uses existing conditions as baselines and adds to them changes known or expected to be in place by the time of the 2019 full Build year (or the 2017 interim year). For many technical areas, the Future without the Proposed Actions condition incorporates known development projects that are likely to be built by these analysis years, including developments currently under construction or that can be reasonably expected due to the current level of planning and applications for public approvals. The Future without the Proposed Actions analyses for some technical areas, such as traffic, also use a background growth factor to account for a more general increase expected in the future. Such growth factors may also be used in the absence of known development projects. The Future without the Proposed Actions analyses must also consider other future changes that will affect the environmental setting. These could include technology changes, such as advances in vehicle pollution control and roadway improvements, and changes to City policies, such as zoning regulations.

A substantial number of development projects that have been announced, are in planning or approval processes, or in construction (“No Build projects”) with estimated completion dates on or before 2019 have been identified within approximately ½-mile from all three project sites. These projects are included in the future condition without the Proposed Actions. Although it is unlikely that all of these plans and proposals would be complete by 2019, this EIS conservatively assumes their completion and full build-out and also that all these developments would also be completed by the 2017 analysis year. Since each technical area in the EIS defines an appropriate study area or multiple study areas, the No Build projects have been summarized in two lists—those within approximately ½-mile of the Development Site and those within approximately ½-mile of the Additional Housing Sites. For the Development Site, these include 77 No Build projects representing a total of approximately 36.9 million gross square feet (gsf) of new development including: 18.2 million gsf of new office space, 2.7 million gsf of new retail space, 406,186 gsf of new community facility space, 15,438 new residential units, and 5,517 new hotel rooms. The amount of No Build development surrounding the Development Site reflects the zoning and public policy initiatives to accommodate and attract new development to the Far West Side. For the Additional Housing Sites, these include 41 No Build projects (which are separate from the 77 projects for the Development Site) representing a total of approximately 12.3 million gsf of new development, including 1.7 million gsf of new office space, 753,320 gsf of new retail space, 10,608 new residential units, and 1,626 new hotel rooms.

As described above, the Development Site and surrounding area were analyzed in a Final Generic Environmental Impact Statement (“*Hudson Yards FGEIS*”). Significant adverse environmental

impacts were identified in the *Hudson Yards FGEIS* and associated mitigation measures were proposed to fully or partially mitigate those impacts. Since publication of the *Hudson Yards FGEIS*, there have been substantial changes to conditions and the development program assumed in the *Hudson Yards FGEIS*. Therefore, the mitigation measures identified in the *Hudson Yards FGEIS* were determined to be inappropriate for inclusion in the analyses of future conditions for this FEIS. The analyses of community facilities, traffic and parking, and transit and pedestrians describe in more detail why the associated mitigation from the *Hudson Yards FGEIS* was excluded and how improvements which may be needed as a result of future development in the Hudson Yards area will be addressed.

RELATIONSHIP TO OTHER ACTIONS IN THE FUTURE WITHOUT THE PROPOSED ACTIONS

Several significant public projects and actions have been completed recently or are anticipated to be completed prior to the 2019 analysis year for the Proposed Actions. The analyses of the impacts of the Proposed Actions also consider these projects and actions, which are described below.

Hudson Yards Rezoning

The Hudson Yards rezoning was approved by the City Council in January 2005 for an area generally bounded by West 30th Street to the south, Seventh and Eighth Avenues to the east, West 43rd Street to the north, and Twelfth Avenue to the west. It is intended to allow transformation of the Hudson Yards area from a neighborhood characterized by parking lots, warehouses, auto body shops, and open rail cuts into a vibrant mixed-use district that will complement the Midtown central business district, as well as provide job growth and new housing for the City's growing population. Under the aegis of HYDC, a development program is underway. Development projects anticipated by 2019 are included in the Future without the Proposed Actions condition. The Hudson Yards plan also provides for new parks and public open space throughout the Hudson Yards area, including Hudson Park and Boulevard, a broad open space and boulevard system in the midblocks between Tenth and Eleventh Avenues.

The Eastern Rail Yard was rezoned in 2005 as part of the Hudson Yards rezoning, and the potential impacts of its development were addressed in the *Hudson Yards FGEIS*. The Development Site is being planned and designed to complement the expected development on the Eastern Rail Yard. The Eastern Rail Yard project is expected to include 3.55 million sf of office space, 966,000 sf of retail space, 295 hotel rooms, 1,904 residential units, 200,000 sf of community facility space, 1,000 parking spaces, and approximately 7 acres of publicly accessible open space of which approximately two acres would be enclosed.

No. 7 Subway Extension

In the Future without the Proposed Actions, the No. 7 subway line will be extended to serve the Hudson Yards area. The No. 7 subway line will be extended approximately 1 mile west and south from its current terminal at Times Square, continuing west below West 41st Street, and then turning south below Eleventh Avenue to a new terminal station at 34th Street and Eleventh Avenue—just one block northeast of the Development Site. The subway extension is expected to be completed by late 2013.

Western Rail Yard

West Chelsea Rezoning

The *Special West Chelsea District Rezoning and High Line Open Space FEIS* was approved and the area generally between Tenth and Eleventh Avenues from West 30th Street to West 16th Street was rezoned in 2005. This rezoning created the Special West Chelsea District to provide opportunities for new residential and commercial development, facilitate the reuse of the High Line elevated rail line as a unique linear open space, and enhance the neighborhood's thriving art gallery district. The *Special West Chelsea District Rezoning and High Line Open Space FEIS* identified 25 projected development sites likely to be developed by 2013, which would result in 4,809 dwelling units, 574,128 sf of retail space, 160,000 sf of office space, 76,425 sf of accessory parking for off-site government use, and 227,564 sf of community facility space. In addition to the 25 projected development sites, the FEIS identified 28 potential development sites. This document considers how the Special West Chelsea District projected development relates to activities associated with the Proposed Actions.

DEFINING THE ACTION FOR ENVIRONMENTAL ANALYSIS

The Proposed Actions would allow for the development of new uses and higher densities at the Development Site and Additional Housing Sites. Under the proposed zoning changes and other controls, a range of new development could occur within the Development Site. For analysis purposes, two reasonable worst-case development scenarios have been identified for that site—a Maximum Residential Scenario and a Maximum Commercial Scenario (see Tables S-2 and S-3). The Maximum Residential Scenario would include (in addition to community facilities, open space, and parking) between 5,347 and 5,762 residential units and either (1) 1.5 million gsf of office space; or (2) a 1,200-room convention-style hotel. The Maximum Commercial Scenario would include (in addition to community facilities, open space, and parking) 4,624 residential units and 2.2 million gsf of office space. These two reasonable worst-case development scenarios represent the upper bounds of residential and commercial space for the purposes of the impact analysis. The proportional requirements for affordable housing would be the same in both scenarios. (The actual development would likely fall between these two scenarios.) The EIS examines the scenario with the greater potential environmental impact for each impact area. The two different scenarios associated with the Development Site assume the same development for the Additional Housing Sites.

The Proposed Actions would also include development of permanently affordable housing at the Additional Housing Sites. By 2016, the Proposed Actions would allow the development of approximately 108 permanently affordable housing units, 30,000 gsf of office space to be used by NYCT, and 6,750 gsf of retail space at the Ninth Avenue Site (see Table S-4). At the Tenth Avenue Site, the Proposed Actions would result in the development of 204 permanently affordable housing units and 10,800 gsf of retail space by 2018. The 312 total residential units to be developed at the Additional Housing Sites would be permanently affordable for low- to moderate-income households. Table S-5 summarizes the reasonable worst-case development scenarios assumed for the Proposed Actions, including the Development Site and the Additional Housing Sites, for 2017 and 2019.

GENERIC ANALYSIS FOR RELOCATION OF DSNY FACILITIES

The Proposed Actions would result in the interim relocation of the DSNY Garage M-6, which includes certain facilities currently located on a portion of the terra firma on the Development Site. At present, sites have not been identified for the interim relocation of the DSNY uses. Chapter 15, "Solid Waste and Sanitation Services" contains a generic analysis of the potential environmental impacts that could result from relocating the DSNY facilities from the Development Site.

Table S-2

Reasonable Worst-Case Development Scenarios for the Development Site: 2017

Development Program	Maximum Residential Scenario (GSF)		Maximum Commercial Scenario (GSF)
	Office Option ¹	Hotel Option ¹	
Residential	1,460,813	1,460,813	1,422,225
Residential Units			
Rental Units	1,948 units	1,948 units	1,896 units
Condominium Units	0 units	0 units	0 units
Total Units	1,948 units	1,948 units	1,896 units
Affordable Units (rental)	390 units ²	390 units ²	379 units ²
Market Rate Units (rental and condo)	1,558 units	1,558 units	1,517 units
Commercial			
Office	1,495,000	0	2,185,000
Hotel	0	1,008,000 1,200 rooms	0
Retail	162,750	152,250	162,750
Community Facility			
Public School	120,000	120,000	120,000
TOTAL	3,238,563	2,741,063	3,889,975
Notes:			
1. Two options are being considered for the commercial building in the Maximum Residential Scenario. One would be for a 1,495,000-gsf office building. The other would be for a 1,200-room convention-style hotel.			
2. Twenty percent of all rental units on the Development Site would be affordable housing units under the terms of the applicable 80/20 program.			

Table S-3

Reasonable Worst-Case Development Scenarios for the Development Site: 2019

Development Program	Maximum Residential Scenario (GSF)		Maximum Commercial Scenario (GSF)
	Office Option ¹	Hotel Option ¹	
Residential	4,469,063	4,836,563	3,837,225
Residential Units			
Rental Units	1,948 units	1,948 units	1,896 units
Condominium Units	3,399 units	3,814 units	2,728 units
Total Units	5,347 units	5,762 units	4,624 units
Affordable Units (rental)	390 units ²	390 units ²	379 units ²
Market Rate Units (rental and condo)	4,957 units	5,372 units	4,245 units
Commercial			
Office	1,495,000	0	2,185,000
Hotel	0	1,008,000 1,200 rooms	0
Retail	220,500	210,000	220,500
Community Facility			
Public School	120,000	120,000	120,000
TOTAL	6,304,563	6,174,563	6,362,725
Notes:			
1. Two options are being considered for the commercial building in the Maximum Residential Scenario. One would be for a 1,495,000-gsf office building. The other would be for a 1,200-room convention-style hotel.			
2. Twenty percent of all rental units on the Development Site would be affordable housing units under the terms of the applicable 80/20 program.			

Table S-4

Development Scenario: Additional Housing Sites

Development Program	Ninth Avenue Site (GSF)	Tenth Avenue Site (GSF)	TOTAL (GSF)
Residential	96,300	176,300	272,600
Affordable Units	108 units	204 units	312 units
Commercial			
Office	30,000 ¹	0	30,000
Retail	6,750	10,800	17,550
TOTAL	133,050²	187,100	320,150

Notes:

- Office space to be used by NYCT.
- The development would allow for NYCT below-grade parking for emergency vehicles (approx. 15 vehicles)

Table S-5

Reasonable Worst-Case Development Scenarios for the Proposed Actions

Development Program	Maximum Residential Scenario (GSF)		Maximum Commercial Scenario (GSF)
	Office Option	Hotel Option	
2017			
Residential Units			
Affordable Units	498 units ¹	498 units ¹	487 units ²
Market Rate Units	1,558 units	1,558 units	1,896 units
Total Units	2,056 units	2,056 units	2,004 units
Office	1,495,000	0	2,185,000
NYCT Office	30,000	30,000	30,000
Hotel	0	1,008,000 1,200 rooms	0
Retail	169,500	159,000	169,500
Public School	120,000	120,000	120,000
TOTAL 2017	3,371,613	2,874,113	4,023,025
2019			
Residential Units			
Affordable Units	702 units ³	702 units ³	691 units ²
Market Rate Units	4,957 units	5,372 units	4,245 units
Total Units	5,659 units	6,074 units	4,936 units
Office	1,495,000	0	2,185,000
NYCT Office	30,000	30,000	30,000
Hotel	0	1,008,000 1,200 rooms	0
Retail	238,050	227,550	238,050
Public School	120,000	120,000	120,000
TOTAL 2019	6,624,713	6,494,713	6,682,875

Notes:

- Includes 108 units at the Ninth Avenue Site and 390 units at the Development Site.
- Includes 108 units at the Ninth Avenue Site and 379 units at the Development Site
- Includes 108 units at the Ninth Avenue Site, 204 units at the Tenth Avenue Site and 390 units at the Development Site.
- Includes 108 units at the Ninth Avenue Site, 204 units at the Tenth Avenue Site and 379 units at the Development Site.

MITIGATION

Potential mitigation measures for significant adverse impacts identified in this FEIS are described in Chapter 24, “Mitigation,” and are summarized below. CEQR and SEQRA require that any significant adverse impacts identified in the EIS be minimized or avoided to the fullest extent practicable, given costs and other factors. In the DEIS, options for mitigation were presented for public review and discussion, without the co-lead agencies having selected those for implementation. Where no practicable mitigation is available, the EIS must disclose that fact and indicate the potential for unmitigated significant adverse impacts.

Where significant adverse impacts from the Proposed Actions have been identified in this FEIS, specific mitigation measures to minimize or eliminate the significant adverse impacts have been defined and evaluated. Where necessary, measures to further mitigate significant adverse impacts were refined and evaluated between the DEIS and FEIS. This FEIS includes a description of all practicable mitigation measures to be implemented with the Proposed Actions.

ALTERNATIVES

Chapter 25, “Alternatives,” assesses several alternatives to the Proposed Actions. CEQR and SEQRA require that a description and evaluation of the range of reasonable alternatives to an action be included in the EIS at a level of detail sufficient to allow a comparative assessment of the significant environmental impacts of these alternatives. If the environmental assessment and consideration of alternatives identify a feasible alternative that eliminates or minimizes adverse impacts while substantially meeting the project goals and objectives, the lead agency considers whether to adopt that alternative. CEQR and SEQRA require consideration of a “No Action Alternative,” which compares environmental conditions that are likely to occur in the future without the Proposed Actions to conditions that would occur in the future with the Proposed Actions. This EIS also considers a Reduced Density Alternative, and an alternative that frames a level of development small enough to eliminate all such significant, unmitigated adverse impacts (“No Unmitigated Significant Adverse Impact Alternative”). In addition, the chapter analyzes an option to include an on-site Tri-Generation energy facility on the Development Site.

F. LAND USE, ZONING, AND PUBLIC POLICY

The Proposed Actions would not result in a significant adverse impact on land use, zoning, or public policy. While the Proposed Actions would lead to substantial changes in land use and density on the Development Site, these changes would be compatible with the mixture of uses and densities that are expected to be developed in the immediately surrounding area in the Future without the Proposed Actions. The Proposed Actions would not displace the predominant existing land use on the Development Site—a platform would be constructed over the rail yard and the existing LIRR train yard and associated uses would remain. Therefore, the Proposed Actions would preserve the existing transportation use, but redevelop the Development Site to include land uses that would support and complement future development trends within the surrounding study area. Portions of the study area are already starting to transition towards high-density mixed-use development with commercial, retail, residential, and open space uses and this will continue in the Future without the Proposed Actions. Overall, the Proposed Actions would introduce new open space, a new public school, and new commercial office, residential, and retail space that would match future land use trends.

Western Rail Yard

The Development Site would be rezoned from an existing M2-3 district to a C6-4 zoning district and incorporated as a new subdistrict (Subdistrict F) of the Special Hudson Yards District. The existing M2-3 zoning does not permit residential use on the Development Site and limits the density of permitted uses. Rezoning to a C6-4 district would allow for a mixture of commercial, residential, community facility, and open space uses. These uses would be permitted to a maximum FAR of 10.0 with a floor area bonus available for the provision of permanently affordable housing and a floor area allowance for the 750-seat PS/IS school. The proposed zoning would be compatible with the Special Hudson Yards District immediately east of the Development Site.

The new subdistrict would contain specific zoning controls that would regulate building envelopes, publicly accessible open space areas, streetwall controls, retail continuity and transparency. The retail continuity and transparency requirements would create active uses along the street level within the Development Site and along the surrounding streets—areas that currently lack such uses. Building envelope controls and tower requirements would ensure that the densest development be located in the northeastern portion of the Development Site—consistent with the high density zoning of the adjacent Large-Scale Plan subarea of the Special Hudson Yards District. Buildings would gradually decrease in height descending from Eleventh Avenue and West 33rd Street to Twelfth Avenue and West 30th Street, with lower building heights and bulk on the portion of the Development Site located close to the Chelsea subarea of the land use study area. The proposed zoning would create a number of publicly accessible open space areas on the Development Site, each having core open space elements that would need to generally meet the design standards of the privately owned public plazas or similar standards of the Zoning Resolution.

The Proposed Actions would also result in development at the two Additional Housing Sites. The Ninth Avenue Site, currently a gravel parking lot, would be redeveloped with permanently affordable housing, ground-floor retail space, and office space and parking for NYCT. The Tenth Avenue Site, currently open air space above a below-grade Amtrak rail cut, would be redeveloped with permanently affordable housing and ground-floor retail space. This analysis concludes that each development would replace underutilized sites with new land uses that would match the prevailing land uses within each of the Additional Housing Site study areas, that would be developed to appropriate heights, and that would be consistent with surrounding zoning.

Finally, the Proposed Actions would be consistent with relevant public policies, including PlaNYC. Many of the recommendations, goals, and initiatives of PlaNYC are at the core of the Proposed Actions, including pursuing transit oriented development, providing new housing to meet the needs of current and future residents while making housing more affordable and sustainable, utilizing land already owned by the public, improving and capitalizing on transit access, and providing for improved open spaces.

G. SOCIOECONOMIC CONDITIONS

The Proposed Actions would not result in any significant adverse socioeconomic impacts in either 2017 or 2019. The *CEQR Technical Manual* guidelines require analysis of the following five areas of concern to determine if significant adverse impacts with respect to socioeconomic conditions could occur: direct residential displacement, indirect residential displacement; direct business and institutional displacement; indirect business and institutional displacement; and adverse effects on specific industries. A summary of the analysis of the five areas of concern is below.

DIRECT RESIDENTIAL DISPLACEMENT

The Proposed Actions would not result in any direct residential displacement. None of the project sites contain a residential population.

INDIRECT RESIDENTIAL DISPLACEMENT

The Proposed Actions would not result in a significant adverse impact due to indirect residential displacement. The analysis considers the impact of the new uses introduced by the Proposed Actions, with particular focus on the up to 6,074 new housing units and the associated residential populations that could be added to the project sites' study areas. Twenty percent of all rental units on the Development Site would be affordable housing units under the terms of the applicable 80/20 program, with the provision of affordable units subject to (1) the allocation of sufficient tax-exempt bond cap or other equivalent low-cost financing to the Developer for each building of rental housing as and when required, and (2) the availability to the Developer of such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of 80/20 housing in the City. Under the conservative Maximum Residential Scenario-Hotel Option, up to 5,762 residential units would be introduced to the Development Site study area (approximately 5,372 market-rate units and 390 affordable units¹). The Proposed Actions also would introduce up to 108 affordable housing units to the Ninth Avenue Site study area, and up to 204 affordable housing units to the Tenth Avenue Site study area.

The number of new residents introduced to the Development Site study area by the Proposed Actions would be substantial, representing about 49 percent of the study area's existing population², and 25 percent of the study area's population in the Future with the Proposed Actions. However, the demographic characteristics of the resulting residential population would not differ significantly from that of the study area population in the Future without the Proposed Actions. The market-rate housing introduced by the Proposed Actions would be offered at rents comparable to rents for other newly-constructed market-rate apartments in the surrounding area, and would be comparable to the rents for market-rate residential units expected in the study area in the Future without the Proposed Actions. In the Future with or without the Proposed Actions by 2017 and 2019, housing prices, rents, and median incomes are expected to rise in the study area such that the Proposed Actions would not significantly alter or substantially accelerate the study area's long-term trend toward increasing residential development, affluence, and residential desirability. The Proposed Actions would not introduce any type of land use that would diminish the residential desirability of the area, offset positive trends in the study area, impede efforts to attract investment to the area, or create a climate for disinvestment. For these reasons, a significant adverse impact from indirect residential displacement would not be expected to result from the Proposed Actions.

The Proposed Actions would not result in any indirect residential displacement within the Ninth Avenue Site and Tenth Avenue Site study areas. Given that all of the residential units introduced

¹ Twenty percent of all rental units on the Development Site would be affordable housing units under the terms of the applicable 80/20 program.

² The Development Site study area's 2008 population estimate (20,369 residents) is based on the 2000 Census study area population estimate, with an annual background growth rate of 0.5 percent applied between 2001 and 2008. The actual number of existing residents is likely to be significantly higher, given that an estimated 5,510 housing units have been constructed in the study area since 2000.

would be leased to low- to moderate-income households, the new populations would not have the effect of increasing pressure on area housing costs and would help to maintain the existing socioeconomic characteristics of the residential population. In addition, the non-residential uses introduced to those sites would not be of a critical mass that would alter the overall socioeconomic character of the residential neighborhoods.

DIRECT BUSINESS AND INSTITUTIONAL DISPLACEMENT

The Proposed Actions would not result in a significant adverse impact due to direct business and institutional displacement. The development plan for the Development Site would require the temporary relocation of some of the LIRR facilities currently located on the Development Site, but there would not be an interruption in LIRR passenger rail service during that time.

The Proposed Actions would permanently displace from the Development Site a Greyhound Bus parking lot and DSNY facilities. DSNY is a government agency and, therefore, is not the subject of direct displacement analysis under CEQR, since it is expected that government agencies will continue in operation with or without the Proposed Actions. It is assumed that the City would retain the employees who would be displaced, as well as the services provided to the City by those employees. DSNY facilities on the Development Site help to serve several customer bases, none of which are within this study area.

As a result of the Proposed Actions, Greyhound would likely be required to find a new location for this bus parking lot, which accommodates approximately 52 Greyhound buses. The location needs of the bus parking lot could be satisfied at other locations in the City or in surrounding areas with access to the Port Authority Bus Terminal. The Port Authority of New York and New Jersey (PANYNJ) is committed to maintaining Greyhound's services in the Port Authority Bus Terminal, and would work with Greyhound to identify an appropriate relocation site. Therefore, the displacement of the parking lot would not jeopardize the operations of Greyhound, and Greyhound would be expected to continue operations serving the City in the Future with or without the Proposed Actions. Additionally, the location of the bus parking lot does not provide substantial economic value to the study area because it serves a region-wide customer base and the services it provides to local residents are not contingent on its proximity to these residents. Finally, although the study area is characterized in part by transportation uses, the bus parking lot itself is not a defining element of the neighborhood. Therefore, the direct displacement of the Greyhound Bus parking lot would not result in a significant adverse impact.

The Proposed Actions would result in the direct displacement of a NYCT surface parking lot from the Ninth Avenue Site. NYCT is a government agency and, therefore, the NYCT parking lot is not subject to direct displacement analysis under CEQR, since it is expected that government agencies will continue in operation with or without the Proposed Actions. Therefore, the Proposed Actions would not result in a significant adverse impact due to direct business displacement at the Ninth Avenue Site.

The Tenth Avenue Site includes the air space above a below-grade Amtrak rail cut. The development plan for the Tenth Avenue Site would require construction of a platform over the existing Amtrak line. The Amtrak line would continue to operate below the Tenth Avenue Site after construction, and no interruption in Amtrak service would occur. Therefore, the Proposed Actions would not result in a significant adverse impact due to direct business displacement at the Tenth Avenue Site.

INDIRECT BUSINESS AND INSTITUTIONAL DISPLACEMENT

The Proposed Actions would not result in a significant adverse impact due to indirect business and institutional displacement. All of the uses under the Proposed Actions are currently present and well-established in the study areas, and additional similar uses are projected to be in place by the 2017 and 2019 analysis years. The Proposed Actions would not introduce any new types of economic activities to the study areas, nor would they be expected to alter or accelerate an ongoing trend to alter existing economic patterns.

None of the uses directly displaced by the Proposed Actions directly support businesses in the Development Site study area or bring people to the area who form a customer base for local businesses. The Proposed Actions would add up to 2.2 million gsf of commercial office space to the Development Site study area, which would bring more people to the area that form a customer base for local businesses. The net effect of the Proposed Actions would be a substantial increase in the number of residents and daytime workers and visitors, thereby providing significant numbers of new customers for the existing and proposed business uses.

ADVERSE EFFECTS ON SPECIFIC INDUSTRIES

The Proposed Actions would not result in a significant adverse impact on any industry or any category of business within or outside the study areas. The Proposed Actions would not introduce any regulations or policies that would restrict any business or process from continuing to function within or outside the project sites' study areas. Nor would the Proposed Actions result in a significant adverse impact from the direct displacement of uses currently located on the project sites. Therefore, the Proposed Actions would not have any direct effects on business conditions in any industry or category of business within the study areas or New York City more broadly.

Similarly, the Proposed Actions would not indirectly displace a substantial amount of employment or impair the economic viability in any one industry sector or category of business. The study areas include a mix of commercial office, retail, residential, industrial, and transportation uses. According to data from the U.S. Census Bureau, there is not a substantial concentration of any one category of business or industry within the study areas. Therefore, any potential indirect business displacement resulting from the Proposed Actions would not impair the economic viability of any industry or category of business.

H. COMMUNITY FACILITIES AND SERVICES

The *CEQR Technical Manual* defines community facilities as public or publicly funded facilities including schools, hospitals, libraries, child care centers, and fire and police protection services. A summary of the analysis for each community facility is below.

PUBLIC SCHOOLS

The analysis of potential school impacts considers elementary and intermediate schools within Community School District 2 (CSD 2), where the project sites are located, as well as within ½-mile of the Development Site and the Additional Housing Sites. The analysis of high schools considers the potential impacts on the entire Borough of Manhattan.

Under the anticipated building sequencing described above the PS/IS school would be constructed on the Development Site by July 2017. However, for the purposes of a conservative

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analysis, a second scenario considers the potential effects if the school were not completed by 2017 (“Scenario Without the PS/IS School in 2017”). In 2017, the Proposed Actions would not exceed the threshold for conducting a high school analysis, and therefore, high schools were analyzed for the 2019 analysis year only.

2019

The construction of the PS/IS school (420 elementary seats and 330 intermediate seats) as part of the Proposed Actions would partially offset the demand for school seats introduced by the Proposed Actions (729 elementary and 243 intermediate seats) in 2019. Elementary schools in the study area would continue to operate well over capacity in the Future with the Proposed Actions. Furthermore, the 729 elementary students generated by the Proposed Actions would exceed the 420 elementary seats to be provided by the Proposed Actions’ PS/IS school on the Development Site. However, elementary school utilization rates in the study area would decrease as a result of the Proposed Actions (196 to 192 percent) and would increase by approximately one percentage point (from 115 to 116) in the CSD. According to the *CEQR Technical Manual*, an increase in the utilization rate of 5 percentage points may indicate a significant adverse impact; under this standard, although elementary schools in the CSD would operate with a substantial deficiency of seats that would be exacerbated by the Proposed Actions, the Proposed Actions would not result in a significant adverse elementary school impact for either the study area or CSD 2 in 2019.

The development of the new PS/IS school on the Development Site would substantially decrease the deficiency of intermediate seats in the study area (from 112 to 106 percent utilization rate), because the intermediate seats to be provided at the PS/IS school on the Development Site would exceed the project-generated intermediate students. Although the intermediate schools within the study area would continue to operate well over capacity, for the CSD as a whole, intermediate school utilization rates would decrease and these schools would continue to operate with a surplus of seats. As a result, the Proposed Actions would not have a significant adverse impact on intermediate schools within the study area or within CSD 2 in 2019.

With the Proposed Actions, high schools utilization rates at the borough level would not change. Sufficient space would exist in Manhattan high schools for the 364 project-generated high school students. Therefore, the Proposed Actions would not have a significant adverse impact on high schools in 2019.

2017

Proposed Actions—Scenario with the PS/IS School in 2017

The Proposed Actions would include the construction of an approximately 120,000 square-foot PS/IS school on the Development Site. According to the SCA, a school of this size would include of a total of 750 seats, with 420 for elementary students and 330 for intermediate students. The Proposed Actions would also generate approximately 247 elementary students and 82 intermediate students by 2017. Based on the anticipated construction sequencing schedule for the Development Site, the proposed PS/IS school is expected to be completed by the 2017 analysis year.

In 2017, construction of the PS/IS school on the Development Site would provide sufficient seats for elementary and intermediate students generated by the Proposed Actions, and the proposed PS/IS school would help alleviate the prevailing deficit of elementary seats within both

the study area and the CSD, decreasing elementary school utilization rates in both the study area (from 196 to 169 percent) and the CSD (from 115 to 114 percent). Utilization rates at intermediate schools would also decrease in the study area (from 112 to 99 percent) and within the CSD (91 compared to 88 percent).

Therefore, with the PS/IS school on the Development Site, the Proposed Actions would not result in a significant adverse impact on elementary or intermediate schools in the 2017 analysis year.

Proposed Actions—Scenario Without the PS/IS School in 2017

Identification of Impacts

If the proposed PS/IS school were not completed by 2017, the Proposed Actions could result in a significant adverse impact on elementary and intermediate schools in the study area in 2017, but this impact would not remain once the school is completed. Elementary school utilization rates would increase by 5 or more percentage points in the study area, from 196 to 211 percent, which is considered a significant adverse elementary school impact, although the increase would not be significant for CSD 2 as a whole.

Intermediate schools within the study area would also experience an increase in the utilization rate (from 112 to 117 percent) and a shortfall of seats (approximately 300 seats). While the utilization rate would increase, it would not exceed the CEQR threshold indicating the potential for a significant adverse impact. Intermediate schools within the CSD would continue to operate with excess capacity.

Mitigation

Mitigation for this impact would be to build and complete the school by 2017. The Restrictive Declaration will include provisions for the Developer to work with SCA upon completion of a threshold number of residential units in order to pursue action on the new school in the early phase of build-out of the project. In the event that the school is not completed by 2017, the Proposed Actions would result in a temporary unmitigated significant adverse impact to elementary schools in the study area.

LIBRARIES

The analysis considers the Proposed Actions' impact on the Muhlenberg, Columbus, and Riverside Libraries, the three branch libraries of the New York Public Library (NYPL) system within a ¾-mile radius of the Development Site and Additional Housing Sites. According to the *CEQR Technical Manual*, if a proposed project increases the study area population by 5 percent or more over the Future without the Proposed Actions condition, this increase would impair the delivery of library services in the study area, and a significant impact could occur.

2019

By full build out of the Proposed Actions in 2019, the Columbus and Riverside Branches catchment area populations would each increase by less than one percent. The combined catchment area would increase by 3 percent. In all cases, the increase in population would be less than 5 percent, and, therefore, would not cause a noticeable change in the delivery of library services to the Columbus Library, Riverside Library, or the combined catchment area.

The Muhlenberg Library would receive the majority of the population growth since it serves the Development Site. As compared to the population in the Future without the Proposed Actions in

2019, the Muhlenberg catchment area populations would increase by 7 percent. While the catchment area population would increase by more than 5 percent, the increase would not impair the delivery of library services within this catchment area, since residents of the Muhlenberg catchment area and the Proposed Actions would have access to the five central libraries located within the study area. Furthermore, residents would also have access to libraries near their place of work. Therefore, there would not be a significant adverse impact on library services in the study area in 2019 as a result of the Proposed Actions.

2017

In 2017, new population would be introduced to the area as a result of the Proposed Actions. The Muhlenberg Library catchment area would experience a 2 percent increase in population. The Columbus and Riverside Branch populations would each increase by less than one percent. The combined catchment area population would increase by one percent. Therefore, no significant adverse library impacts are expected by 2017.

CHILD CARE CENTERS

IDENTIFICATION OF IMPACTS

The analysis considers the Proposed Actions' impact on publicly funded child care and Head Start facilities within a one-mile radius of the Development Site and Additional Housing Sites. The Proposed Actions would introduce 105 and 147 children under the age of 6 who would be eligible for publicly funded child care in 2017 and 2019, respectively. Publicly funded child care and Head Start facilities in the area will already be operating above capacity in the Future without the Proposed Actions in both analysis years. The new children from the Proposed Actions would exacerbate the predicted shortage in child care and Head Start slots. These new children represent 24 percent by 2017 and 33 percent by 2019 of the existing collective capacity of publicly funded child care and Head Start centers in the study area. Given that this exceeds the CEQR threshold of a 5 percent increase of the collective capacity, if no new public child care and Head Start facilities or private providers accepting vouchers are created to increase the study area's capacity, significant adverse impacts could occur in 2017 and 2019 as a result of the Proposed Actions.

MITIGATION

This potential increase in demand could be offset by a number of factors. Some of the increased child care demand would likely be offset by parents who choose to take their children to child care centers outside of the study area (e.g., closer to work). Some of the Family Day Care Networks serve children residing in the study area and could potentially absorb some of the demand. This new demand may also be considered in future Request for Proposal planning for contracted services. New capacity could potentially be developed as part of the New York City Administration for Children's Services' (ACS) public-private partnership initiatives. As partial mitigation for this impact, ACS will monitor the demand and need for additional capacity and implement change to the extent practicable. The Restrictive Declaration will require the Developer to offer ACS 10,000 square feet of space for use as a day care facility, at a rate affordable to ACS providers (currently \$10 per sf), in the event that ACS determines that development of the site would result in a need for additional day care capacity. In the event ACS declines the offer of space, ACS may request implementation of alternative measures to make program or physical improvements that would support additional day care capacity. The Developer would consider such alternative measures, when identified.

HEALTH CARE FACILITIES (OUTPATIENT)

The analysis considers the Proposed Actions' impacts on St. Luke's Roosevelt Hospital and St. Vincent's Hospital. The Proposed Actions could increase the demand for health care facilities by less than one percent, which is below the CEQR threshold of 5 percent that could cause a significant adverse impact. Therefore, a significant adverse impact on area hospitals is not anticipated as a result of the Proposed Actions.

POLICE PROTECTION SERVICES

The Proposed Actions would not result in direct effects on the physical operations of, or access to and from, a New York City Police Department (NYPD) precinct house. By 2019, the new worker, residential, and visitor population generated by the Proposed Actions could increase the demand for police protection. In coordination with the NYPD, the development associated with the Proposed Actions has been reviewed for potential impacts on police coverage. According to a letter from the NYPD Office of Management Analysis and Planning, NYPD would continue to evaluate its staffing needs and assign personnel based on a variety of factors, including demographics, calls for service, and crime conditions. Accordingly, there would be no significant adverse impact on police services.

FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

The Proposed Actions would not result in any direct effects to New York City Fire Department (FDNY) or Emergency Medical Services (EMS) facilities. By 2017, the new worker, residential, and visitor population generated in the Future without the Proposed Actions could increase the demand for fire protection and for emergency medical services. According to the FDNY, based on anticipated No Build development in the Development Site Study Area, the mitigation of a new firehouse as first proposed in the *Hudson Yards FGEIS* would need to be in place in 2017 (some eight years earlier than envisioned in the *Hudson Yards FGEIS*). However, FDNY would continue to evaluate its needs and determine the specific timing for this mitigation based on the actual completion of development in the Hudson Yards area. The FDNY has indicated that if the firehouse is in place by 2017, it would accommodate the demands from the Proposed Actions, as well as surrounding No Build development. Therefore, the Proposed Actions would not result in a significant adverse impact to fire services.

I. OPEN SPACE

The Proposed Actions would result in direct significant adverse impacts on open spaces due to shadows. The build out of the Proposed Actions would also result in significant adverse indirect active and total open space impacts in the Development Site Study Area, as discussed below.

The Proposed Actions would create approximately 5.45 acres of open space on the Development Site. This new open space would provide a considerable open space amenity for residents and workers in an area that currently lacks open space or parks. It is anticipated to contain a variety of elements, including lawns, landscaped areas, walking paths, seating areas, plazas, and one playground and would serve an important role as a link in the open space network that will be developed throughout the Hudson Yards area. In the Future without the Proposed Actions, a network of open spaces will be developed extending southward from West 36th Street through the first phase of Hudson Park and Boulevard into the Eastern Rail Yard and continuing along the High Line to the south. Approximately 1.48 acres of the proposed open space would be completed in the interim Build year (2017) with the remainder completed by 2019.

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No publicly accessible open space is proposed at the two Additional Housing Sites. However, development at the Additional Housing Sites would comply with the recreation space requirements of the New York City Zoning Resolution Quality Housing Program. To comply with the requirements, the proposed developments would provide a minimum amount of recreation space for the building's residents to utilize. While this space would be for use by the building's residents only and is not considered publicly accessible for the purposes of the quantitative analysis in the Open Space chapter, the additional space would provide an on-site resource for the proposed residents.

DIRECT EFFECTS

IDENTIFICATION OF IMPACTS

The Proposed Actions would not displace or eliminate any existing open space resources. However, shadows from the proposed buildings on the Development Site are expected to result in a significant adverse impact on the planned Eastern Rail Yard open space during the spring, summer, and fall, when large incremental shadows would remove the remaining sunlight on the open space. The Proposed Actions would also result in significant shadow impacts at the Tenth Avenue Site. As a result of the Proposed Actions, much of the open space that will be constructed immediately to the east of the Tenth Avenue Site would be in shadow from early afternoon to the end of the day during each analysis day.

MITIGATION

As partial mitigation for both the Eastern Rail Yard and the Tenth Avenue Site, the design and layout for these future open spaces would take into consideration the shadows from the Proposed Actions. Such measures could be the placement of features requiring sunlight to be located in areas of the open space where shadows are cast for a short duration, and the use of shade tolerant vegetation for landscaping. Additionally for the Tenth Avenue Site, measures could include the programming of active recreation features.

INDIRECT EFFECTS

DEVELOPMENT SITE

Identification of Impacts

While the Proposed Actions would provide a substantial amount of additional new open space in a part of the City largely devoid of parks and open space, the Proposed Actions would nevertheless result in a significant decrease in the active and total open space ratios (the amount of active or total open space per 1,000 persons) in the study area due to the introduction of workers and residents in the larger "residential" study area surrounding the Development Site. Thus, literal compliance with the *CEQR Technical Manual* methodology would result in a significant adverse environmental impact to open space. While the Proposed Actions would result in decreases to the passive open space ratios in the smaller "non-residential" and larger residential study areas, these decreases are not considered significant adverse impacts.

To ensure that open space ratio increments remain at the level of the Future without the Proposed Actions, thereby avoiding significant adverse open space impacts, in addition to the open space that would be provided the project would need to add another 2.39 acres of open

space (0.48 acres of active and 1.91 acres of passive open space) in 2017 and 5.75 acres of open space (2.40 acres of active and 3.35 acres of passive open space) in 2019. The total open space on the Development Site would need to increase to 3.87 acres in 2017 and 11.2 acres in 2019. In 2017, this would represent most of the open space to be provided on the Development Site at full build out. This is not feasible when considering construction activities and staging. In 2019, the necessary amount of open space (11.2 acres) would almost equal the size of the 13-acre Development Site. Nonetheless, in both the 2017 and 2019 analysis years, the ratio declines (as shown in Table S-6) coupled with the active open space deficiencies in the area, indicate that the Proposed Actions would result in significant adverse indirect total open space impacts in 2017 and significant adverse indirect total and active open space impacts in 2019.

Table S-6
Development Site Study Areas
Summary Open Space Ratios, 2017 and 2019

Ratio	City Guideline Ratio*	Existing Ratio	Future Without the Proposed Actions	Future with the Proposed Actions	Percent Change**
			Ratio	Ratio	
2017 Non-Residential Study Area					
Passive/Workers	0.15	0.16	0.30	0.27	-10.00
Passive/Total Population	0.22	0.15	0.24	0.21	-12.50
2017 Residential Study Area					
Total/Residents	2.5	1.01	1.15	1.09	-5.22
Active/Residents	2.0	0.61	0.44	<u>0.42</u>	-4.55
Passive/Residents	0.5	0.40	0.71	<u>0.66</u>	-7.04
Passive/Total Population	0.23	0.09	0.15	0.15	0.00
2019 Non-Residential Study Area					
Passive/Workers	0.15	0.16	0.30	<u>0.32</u>	<u>6.67</u>
Passive/Total Population	0.24	0.15	0.24	<u>0.24</u>	<u>0.00</u>
2019 Residential Study Area					
Total/Residents	2.5	1.01	1.15	<u>1.03</u>	-10.43
Active/Residents	2.0	0.61	0.44	0.39	-11.36
Passive/Residents	0.5	0.40	0.71	<u>0.64</u>	-9.86
Passive/Total Population	0.24	0.09	0.15	0.16	6.67
Notes: * Ratios in acres per 1,000 people.					
** BOLD signifies that the ratio percent change indicates the potential for the Proposed Actions to result in a significant adverse impact.					

The exception is that open space ratios in the smaller “non-residential” study area would continue to be at or above City goals for workers and total population in 2017 and for both workers and total population in 2019.

Mitigation

Potential mitigation measures for the Proposed Actions could include, among others: creating additional active open space programming on the Development Site; funding for improvements, renovation, or maintenance at existing local parks; adding amenities to existing parks to increase park usage year-round or at night; and opening schoolyards to the public outside of school hours.

Western Rail Yard

These options were explored and evaluated in consultation with DPR between the DEIS and FEIS. The Restrictive Declaration will include provisions to establish an Open Space Fund, with contributions made by the Developer at appropriate intervals as development occurs on the site. The proceeds of the Open Space Fund would be utilized by DPR, in consultation with Community Board 4 and the local City Council Member, to fund programs or improvements which would improve or increase capacity for active recreation within Community Board 4 and constitute partial mitigation for the significant adverse impact.

ADDITIONAL HOUSING SITES

The locations of the Additional Housing Sites are a sufficient distance away from the Development Site such that there would not be cumulative demand for open space resources. In the Future with the Proposed Actions, the study area would continue to experience an open space deficiency. While this is the case, the Proposed Actions would not result in a significant adverse impact for this study area in either analysis year because the open space ratios would change minimally.

J. SHADOWS

IDENTIFICATION OF IMPACTS

The Shadows chapter assesses whether the proposed buildings would result in new shadows that would adversely affect any nearby shadow-sensitive resources, including publicly accessible open spaces, historic resources with sunlight-dependent architectural features, or important natural features. The incremental shadows created by the full build out of the Proposed Actions on the Development Site in 2019 would cause a significant adverse shadow impact on the Eastern Rail Yard open space. In addition, shadows from the Tenth Avenue Site would be cast on the future open space adjacent to its east for several hours in all seasons. The design for this open space is still in development. However, the analysis conservatively assumes the entire open space would be heavily programmed with passive open space features, such as benches and other sitting areas. As such, the Proposed Actions would result in a significant adverse impact.

The proposed buildings at the Development Site would cast new shadows westward in the mornings throughout the year. Several hours of new shadows would fall on portions of the Hudson River, Hudson River Park, and the Route 9A Bikeway. Despite the long durations of new shadows, only small sections of these large resources would be affected overall. The new shadows would not create a significant adverse impact on the biota of the Hudson River, or on the Route 9A Bikeway, because it is an active linear recreation resource extending for miles north and south of the Development Site. Similarly, there would be no significant adverse impact on Hudson River Park from the incremental shadows, extending as it does for miles north and south of the site. All three of these resources would experience many hours of sun from around noon until sunset, providing both users and vegetation with substantial direct sunlight for much of the day all year.

The analysis also concluded that the planned Hudson Park and Boulevard would experience two to three hours of new shadows through the spring, summer, and fall. The incremental shadows would occur late in the afternoon and would generally be quite small in extent throughout the affected period. Further, Hudson Park and Boulevard would experience ample sunlight through the morning and afternoon. As the design of this park is still in development, the City will take into consideration the location and duration of shadows to enhance the use and landscaping of

the space. Given all these factors, the Proposed Actions would not result in a significant adverse impact on this space.

The analysis determined that incremental shadows would fall across portions of the Eastern Rail Yard open space for over four hours through the late spring and summer, and for two and a half hours on March 21 and September 21. The large areas of new shadow would remove most of the remaining sunlight for much of the affected period, and would therefore result in a significant adverse impact on this open space resource. Mitigation measures to reduce or fully mitigate the Proposed Actions' shadow impact on the Eastern Rail Yard open space are discussed in Chapter 24, "Mitigation," and above in "Open Space."

The Proposed Actions at the Development Site would create several new publicly accessible open spaces, including a large central open space, an open space overlooking the waterfront on the west side of the site, and an open space in the southwest section of the site. In general, the new central spaces would be mostly shady in the mornings but at least partially sunny in the afternoons. The open space overlooking the waterfront and in the southwest portion of the site in particular would be mostly or totally in direct sun throughout the afternoons in the spring, summer and fall, and for much of the afternoon in winter. The High Line, the former freight rail viaduct that runs along the southern and western boundaries of the Development Site, would be adaptively reused as passive open space as part of the Proposed Actions. Like the other proposed open spaces on the Development Site, these sections of the High Line would generally be shady in the mornings and sunny during the afternoons.

The analysis found that the Additional Housing Site on Ninth Avenue would not cast a shadow long enough to reach any open spaces or historic resources with sun-sensitive features on any analysis day. Therefore, the development that would result at the Ninth Avenue Additional Housing Site from the Proposed Actions would not result in a significant adverse shadow impact.

MITIGATION

Mitigation measures to reduce or fully mitigate the Development Site's shadow impact on the Eastern Rail Yard open space are discussed above, in "Open Space."

K. HISTORIC RESOURCES

The Development Site and the two Additional Housing Sites were determined not sensitive for archaeological sensitivity by the New York City Landmarks Preservation Commission (LPC) and the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP). Therefore, the Proposed Actions would not have a significant adverse impact on archaeological resources.

The Proposed Actions would directly affect the High Line, a known architectural resource with a section located on the Development Site. With the Proposed Actions, this section of the High Line is proposed to be integrated into the overall site plan for the Development Site as a passive open space resource and pedestrian pathway that would also connect with the portion of the High Line on the Eastern Rail Yard and the 1.5 mile High Line Park to the south. In order to fully integrate the High Line with the planned open space network on the Development Site, features, such as railings, of the High Line's Twelfth Avenue section would be removed. OPRHP has agreed that construction near the High Line is historically appropriate, but has expressed concerns about the relationship of the High Line to certain improvements included in

the Proposed Actions. Therefore, in compliance with Section 14.09 of the New York State Historic Preservation Act of 1980, the co-lead agencies and the Developer are continuing to consult with OPRHP with regard to whether the proposed development's design could affect the High Line. A Letter of Resolution (LOR) will be executed among the co-lead agencies, OPRHP, and the Developer that would require the Developer to submit the relevant portions of the preliminary and pre-final design plans for the proposed development that affect the High Line to OPRHP for review and comment.

As currently contemplated, the proposed site plan for the Development Site would result in four, out of a total of eight, buildings located immediately adjacent to the High Line. In order to preserve the integrity of this architectural resource, a five-foot-wide set back would be located between the High Line and all proposed building development fronting on the High Line. To protect the High Line from any potential construction-related adverse physical impacts, such as ground-borne construction-period vibrations, falling debris, and damage from heavy machinery, a Construction Environmental Protection Plan (CEPP) would be developed in coordination with OPRHP and LPC, as provided in the LOR and required in the Restrictive Declaration.

There are no architectural resources located within 90 feet of the Tenth Avenue Site or the Ninth Avenue Site. Therefore, the development of the two Additional Housing Sites would have no direct physical effect on any architectural resources in their study areas.

It is not expected that the Proposed Actions would have adverse visual or contextual impacts on any architectural resources. The context of the portion of the High Line located on the Development Site would be altered under the Proposed Actions due to the added bulk and height of the proposed development. However, the proposed development would be in keeping with the bulk, height, and modern design of the various No Build projects that are planned for completion by 2019 in the Future without the Proposed Actions. Specifically, the development of the Eastern Rail Yard site, located directly east of the Development Site, would also abut the High Line and similarly alter the context of this architectural resource. In addition, the High Line runs adjacent to and sometimes through large buildings constructed both recently and contemporary to the High Line; therefore, the construction of new buildings adjacent to or cantilevering over the historic structure would not change the High Line's existing context. In comparison to the Future without the Proposed Actions, the Future with the Proposed Actions would not create a significant adverse impact on this architectural resource. Further, the development of the two Additional Housing Sites would not result in any adverse visual or contextual impacts on any architectural resources due to the relatively low-scale of the proposed developments and their distance from any architectural resources.

L. URBAN DESIGN AND VISUAL RESOURCES

The Urban Design and Visual Resources chapter considers the potential for the Proposed Actions to adversely affect the urban design characteristics and visual resources of the project sites and their surrounding study areas. Although, the Proposed Actions would create pedestrian wind conditions on and adjacent to the Development Site that exceed the safety criterion, these conditions would be similar to conditions at comparable locations in Manhattan near the Hudson River. In consideration of that and other relevant factors relating to urban design, these exceedances would not be considered a significant adverse impact.

DEVELOPMENT SITE

URBAN DESIGN

The Proposed Actions would positively affect the urban design of the Development Site. They would result in the construction of up to eight mixed-use towers and a varied 5.45-acre open space network on the Development Site. The Proposed Actions would enliven the Development Site, its street frontages, and the surrounding area with active ground-floor retail and school uses, anticipated widened sidewalks, and a street-tree program for the interior of the site and the sidewalks that border the perimeter of the site. The Proposed Actions would provide access to the currently inaccessible site through the creation of two roadways roughly aligned with the formerly mapped West 31st and West 32nd Streets. A large open space network with a variety of elements would provide landscaped areas, including vantage points from which one could enjoy unobstructed views of the Hudson River.

The Proposed Actions would alter the existing topography of the Development Site by constructing the proposed buildings on a platform over the LIRR rail yard below, so the topography of the Development Site would vary to promote unobstructed views west and southwest of the Hudson River and Hudson River Park through the site from the publicly accessible open spaces located within the center of the site. In addition, the Proposed Actions would result in the regrading of West 33rd Street adjacent to the Development Site, which would change the street profile between Eleventh and Twelfth Avenues to provide better service access to and from the platform level. The design and construction of this profile change will be completed in coordination with the platform design and construction.

The Proposed Actions would alter the street pattern and block form of the Development Site. Changes in the street pattern would result from the creation of two private roadways that would partially break up the superblock of the Development Site. These two roadways would terminate in cul-de-sacs near the western portion of the site and would be generally aligned with the two private but publicly accessible vehicular roadways on the east side of Eleventh Avenue that are part of plans for the independent development of the Eastern Rail Yard (to be developed in the Future without the Proposed Actions).

The Proposed Actions would result in the development of up to eight tall buildings on the Development Site, which would be similar to proposed developments planned for completion in the surrounding area in the Future without the Proposed Actions. The building uses, bulk, height, density, and setback of the Proposed Actions would be compatible with the planned development of the Eastern Rail Yard and the high-rise residential and mixed-use buildings planned and under construction throughout the study area between West 26th and West 38th Streets and Tenth and Eleventh Avenues. The eight buildings proposed to be constructed on the Development Site would range in height from approximately 350 to 950 feet, and the six buildings planned for development on the Eastern Rail Yard will range in height from approximately 150 to 900 feet. Additionally, the planned office tower on the Extell Development site on the east side of Eleventh Avenue between West 33rd and West 34th Streets will range in height from approximately 650 to 700 feet, and the planned office and residential tower on the Moinian Group development site one block to the north between West 34th and West 35th Streets will range in height from 900 to 1,000 feet. The buildings proposed on the Development Site would have similar massing to those planned on the Eastern Rail Yard and many of the other No Build projects planned on Eleventh Avenue in the study area, including the Extell Development, Moinian Group, and Avalon Bay Properties developments. The buildings on the

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Eastern Rail Yard and those planned adjacent to the future Hudson Park and Boulevard would be set back from adjacent streets and front onto public plazas and open spaces. The proposed buildings on the Development Site would be similar to the height, setback, and bulk of the other planned developments along the Eleventh Avenue corridor and side streets expected to be completed in the Future without the Proposed Actions.

The Proposed Actions would greatly improve the streetscape of the Development Site and study area with the creation of active ground floor uses and unique open spaces. Tree-lined sidewalks and ground floor uses would greatly enhance the streetscape from the currently inactive and blank concrete walls and chain link fencing that surround the Development Site. The adaptive reuse of the portion of the High Line located on the Development Site as a publicly accessible open space and connection to the rest of High Line Park would contribute to a new and unique open space, which would be easily accessed from the Development Site. The site's diverse and large open space network would include both passive and active uses with seating and a playground.

An assessment was undertaken to determine whether the Development Site would experience pedestrian level wind speeds that would be potentially hazardous. This assessment found that such conditions would occur with strong winds from the west and northwest. Measures that could reduce such conditions have been incorporated into the proposed zoning although full avoidance would not be feasible under the proposed zoning and site plan. These conditions would be similar to conditions at other comparable locations in Manhattan near the Hudson River. In consideration of that and other relevant factors relating to urban design, these exceedances would not be considered a significant adverse impact.

VISUAL RESOURCES

The Proposed Actions would not directly block views of any visual resources from streets or publicly accessible open spaces. They would, however, result in some altered views in the study area, but as described more fully below, these altered views would not result in significant adverse impacts. Views of the Jacob K. Javits Convention Center ("Convention Center") along the Eleventh Avenue view corridor and views of the Starrett-Lehigh Building along the Eleventh and Twelfth Avenue view corridors would be altered, as these two buildings are currently visible to the north and south over the Development Site. However, the Convention Center would still be visible along the Eleventh Avenue view corridor north of the Development Site, and the Starrett-Lehigh Building would still be visible along the Eleventh and Twelfth Avenue view corridors south of the Development Site. North-south views of the Daily News Building (formerly the Westyard Distribution Center), a 15-story modern office building with a sloping façade, along Tenth Avenue in the study area would not be affected by development on the proposed Development Site. Views east to the Daily News Building will already be partially or entirely obstructed due to the development of the Eastern Rail Yard in the Future without the Proposed Actions. Views east to the Empire State Building will already be partially or entirely obstructed due to the development of the Brookfield Properties site on the west side of Ninth Avenue between West 31st and West 33rd Streets in the Future without the Proposed Actions.

The High Line, a visual resource located on the Development Site, would not be adversely affected by the Proposed Actions. The context of the visual resource would be altered due to the construction of tall buildings on the Development Site; however, this would not result in a significant adverse impact since the resource will be surrounded by tall buildings with the construction of other projects in the study area in the Future without the Proposed Actions.

Further, as a result of the Proposed Actions, the High Line would be adaptively reused as a publicly accessible open space and would provide unencumbered views west of the Hudson River and north, south, and east to the City skyline.

The Proposed Actions would result in the creation of new east-west views across the site through the construction of two roadways through the site; currently, the concrete wall surrounding the site obstructs views through the site from Eleventh Avenue west to the Hudson River. These new roadways would open views through the site. Further, they would roughly align with the two planned east-west roadways on the Eastern Rail Yard, which would result in extended views west from the publically accessible paved plazas and open spaces in the Eastern Rail Yard through the Development Site and to the Hudson River.

ADDITIONAL HOUSING SITES

URBAN DESIGN

The Proposed Actions would not alter the block form, street pattern and hierarchy of the two Additional Housing Sites. Both developments would occupy existing blocks and lots and would be in keeping with the existing building arrangement in each study area. By changing the topography on the Tenth Avenue Site (i.e., placing a building above the Amtrak cut), the Proposed Actions would reinforce the block form and street grid on West 48th and West 49th Street.

The Proposed Actions would improve the streetscape of the two Additional Housing Sites. Both developments would connect to the existing streetwalls of adjacent buildings. The Proposed Actions would allow for ground floor retail uses on the Tenth Avenue Site, which would greatly enhance the existing streetscape of the project site that includes a concrete wall and chain-link fencing. The Proposed Actions would allow for ground floor retail uses on the Ninth Avenue Site, which would improve the project site from the currently fenced-in surface parking lot that occupies the lot.

The Proposed Actions would result in development that would be similar with respect to existing building use, bulk, height, setbacks, and density of adjacent buildings for each of the Additional Housing Sites. The Proposed Actions would result in the construction of an 11-story residential building with ground floor retail on the Tenth Avenue Site, similar in height and massing to existing development in the study area. The Proposed Actions would result in the construction of a 12-story residential and office building with ground floor retail on the Ninth Avenue Site, similar to the use, bulk, height, and massing of existing development in the study area.

VISUAL RESOURCES

The proposed buildings at the two Additional Housing Sites would not result in a significant adverse impact to visual resources. The proposed building at the Tenth Avenue Site would not directly obstruct any visual resources or block any view corridors. Views east over the project site of the varied skyline of Midtown Manhattan would be partially obstructed; however, the skyline would still be visible from cross streets in the study area, like West 48th and West 49th Streets adjacent to the project site. The proposed building at the Ninth Avenue Site would not directly obstruct any visual resources or block any view corridors. Background skyline views of the Time Warner Center and Hearst Building to the north and Worldwide Plaza to the south, visible over the Ninth Avenue Site would be partially obstructed with the development of the Ninth Avenue Site. However, these visual resources would still be prominently visible to the

north and south along the Ninth Avenue view corridor adjacent to the project site and along east-west cross streets in the study area.

M. NEIGHBORHOOD CHARACTER

The Proposed Actions would have a beneficial effect on neighborhood character on the project sites and in the surrounding study areas. Development of Western Rail Yard would fulfill a long-standing public policy to promote productive use of the site with a lively mix of uses, open spaces, and streets that would complement and support the development in the Hudson Yards area and West Chelsea. Construction of permanently affordable housing on the Tenth Avenue and Ninth Avenue Sites would support the Clinton neighborhood by emphasizing its residential character and the mixed-income character of its residents.

DEVELOPMENT SITE

The Proposed Actions would change the character of the Development Site, and this change would be, on balance, decidedly beneficial. The site, which presents a blank wall to the surrounding neighborhood on two sides and transportation/maintenance uses where it can be seen, would be transformed with a mix of residential and commercial uses and open spaces, clearly visible and accessible to the public. Two publicly accessible roadways, on axis with West 31st and West 32nd Streets, would break up the perception of a formidable superblock, allowing vehicles and people to move into and through the site with ease. The 5.45 acres of publicly accessible open space would draw people into and through the site as well, helping to make connections to other existing and planned parks and open spaces. The High Line would be preserved and adaptively reused as passive open space at the site and would help extend the experience of the High Line Park, now in development, west to Twelfth Avenue and north to West 33rd Street. The streetscape surrounding the site would be greatly improved, with street trees and views into and through the development. Moreover, with this change on the Development Site, the Proposed Actions also would advance long-standing policy goals of both the City and MTA to encourage development above the Western Rail Yard.

Specifically, the analyses of land use, urban design and visual resources, historic resources, socioeconomic conditions, and traffic and pedestrian conditions, found no significant impacts that would adversely affect neighborhood character on the site. Noise levels at the site would be high, but noise attenuation in building design would ameliorate this condition. The levels within the new open spaces would also be high, but comparable to the levels in many other New York City parks and open spaces in Manhattan, such as Hudson River Park, Riverside Park, Central Park, and Bryant Park. Similarly, although the Development Site would experience high pedestrian-level winds on days when the prevailing winds are high and from the northwest and west, these conditions would be to conditions at comparable locations in Manhattan near the Hudson River and would not be considered a significant adverse impact on neighborhood character.

In summary, the Proposed Actions would not result in a significant adverse neighborhood character impact on the Development Site and would significantly improve neighborhood character on the Development Site.

DEVELOPMENT SITE STUDY AREA

The decided change in neighborhood character on the Development Site would also have, on balance, a positive effect on neighborhood character in the Development Site Study Area. Instead of facing a large seemingly empty space on the western side of the neighborhood, surrounding development would benefit from the new, compatible land uses on the Development Site, by its urban form that would extend the grid into the site, by the level of density and building forms that would be similar to those on the Eastern Rail Yard site and several other developments anticipated in the future without the Proposed Actions, and by the site's open spaces, which would provide an important link in a network of open spaces now emerging in the Study Area. In short, the Proposed Actions would complement the emerging developments in the Special Hudson Yards District and the Special West Chelsea District, as well as areas of Midtown, Clinton, and Chelsea more broadly.

Specifically, the land use analysis found that the development resulting from the Proposed Actions would be compatible and consistent with development trends in the Development Site study area. The urban design and visual resources analysis found that the building heights and forms, mix of uses, and plan of the Development Site would be compatible with building heights, forms and mix of uses of the new development anticipated in the future without the Proposed Actions. Although the tall buildings would rise on the Development Site, they would not block any views to visual or architectural resources in the study area. The context for historic resources in the study area would change under the Proposed Actions, but this context would already be altered by development in the future without the Proposed Actions. The socioeconomic analysis found that while the Proposed Actions would introduce a substantial amount of housing to the study area, this housing would not be more costly than the new housing currently in construction and anticipated in the future without the Proposed Actions.

The analysis of traffic and pedestrians identified a number of locations of significant adverse impacts in the study area. However, in the future without the Proposed Actions most of the study area is expected to be characterized by congested traffic and pedestrian conditions, particularly during peak periods of activity, so that even though these conditions would worsen, the general character of traffic and pedestrian conditions in the area would not change. Noise levels in the study area also would increase—from increased traffic, proposed playgrounds, and building mechanical equipment—but the magnitude of the increases would be generally imperceptible to most listeners and below the CEQR threshold for a significant adverse noise impact.

In summary, the change in character on the Development Site would be consistent with the character of the surrounding areas as they would be developed by 2019, and the Proposed Actions would help create a new 24-hour neighborhood that complements the emerging developments in the Hudson Yards and the West Chelsea neighborhoods. The Proposed Actions would not have a significant adverse impact on neighborhood character in the Development Site's study area.

TENTH AVENUE SITE

The proposed building on the Tenth Avenue Site would complement the mixture of densities and uses in the surrounding area, and would not have a significant adverse impact on neighborhood character. Moreover, by building over the rail cut and adding residential use, the proposed building would greatly improve the character of the Tenth Avenue Site.

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The change in character on the Tenth Avenue Site would have a positive effect on neighborhood character in the Tenth Avenue Site Study Area. By providing a compatible residential use and removing the rail cut, thus reinforcing the grid on West 48th and West 49th Streets, the new development would support neighborhood character. Although the building would be taller than nearby structures, at 99 feet it would not be out of scale with the northern area of Clinton. Finally, by providing permanently affordable housing on the site, the Proposed Actions would greatly support the character of the Clinton neighborhood as one whose residents are characterized by a true mix of incomes.

NINTH AVENUE SITE

The proposed building on the Ninth Avenue Site would complement the mixture of densities and uses in the surrounding area, and would not have a significant adverse impact on neighborhood character. By replacing a gravel parking lot with a new residential mixed-use building, the Proposed Actions would improve the character of the Ninth Avenue Site.

The Proposed Actions would not have a significant adverse impact on neighborhood character in the Ninth Avenue Site study area. Similar to the Tenth Avenue Site, by providing compatible residential use, the new development would support neighborhood character. Although the building would be taller than nearby structures, at 115 feet it would not be out of scale with the surrounding area of Clinton. Finally, by providing permanently affordable housing on the site, the Proposed Actions would greatly support the character of the Clinton neighborhood as one whose residents are characterized by a true mix of incomes.

N. NATURAL RESOURCES

The *CEQR Technical Manual* defines natural resources as “plant and animal species and any area capable of providing habitat for plant and animal species or capable of functioning to support ecological systems and maintain the City’s environmental balance.” The Proposed Actions would not have a significant adverse impact on these resources, as discussed below.

GROUNDWATER

Construction and operation of the Development Site Project would not result in a significant adverse impact to groundwater. Groundwater is not used as a source of drinking water in Manhattan.

WETLANDS

The Proposed Actions would not result in in-water construction activities within the Hudson River. Implementation of the stormwater pollution prevention plan (SWPPP) prepared in accordance with the DEC SPDES General Permit for Stormwater Discharges from Construction Activity Permit No. GP-0-08-001 during construction and operation of the Development Site Project would avoid a significant adverse impact to designated DEC littoral zone tidal wetlands in the Hudson River from the discharge of stormwater generated within the Development Site. Post-construction stormwater management measures for the Development Site Project would decrease the rate and quantity and improve the quality of stormwater discharged from the Development Site and conveyed to the Hudson River. As a result, the Proposed Actions would not result in any significant adverse environmental impacts to designated DEC littoral zone tidal wetlands in the Hudson River.

FLOODPLAINS

The majority of the Development Site is located within the 100-year floodplain, which is affected by coastal flooding. Unlike fluvial flooding, which is affected by activities within the floodplain of a river, coastal flooding is influenced by tidal and meteorological forces and is not affected by activities within the floodplain. Therefore, the Development Site Project would not adversely affect flooding of areas adjacent to the Development Site. Furthermore, approximately two-thirds of the Development Site Project would be located on the platform over the LIRR facilities and would be elevated above the existing 100-year floodplain as well as the projected 100-year elevation due to sea level rise. Any development that would occur within the terra firma portion of the Development Site would have the elevation of the lowest floor set forth in the Restrictive Declaration for the Development Site. The placement of the elevation of the lowest floor for the base of structures WR-2, WR-3, and WR-4 (all would be located on terra firma) at least one foot above the current base flood elevation (BFE) for the 100-year flood would result in an elevation of the lowest floor that would be above the New York City Panel on Climate Change (NPCC) projected increased 100-year flood elevation in the 2020s. Therefore, the design for these structures would minimize the potential for public and private losses due to flood damage under current and projected flood conditions.

TERRESTRIAL RESOURCES

The Proposed Actions would not result in a significant adverse impact to terrestrial resources. Construction of the Development Site Project would result in loss of limited habitat present within the project sites, and wildlife displacement. However, vegetation and wildlife at the project sites is primarily composed of common species tolerant of urban ecosystems, including native species (i.e., Eastern gray squirrel), non-native species (i.e., European starling). The loss of existing vegetation and wildlife would not result in a significant adverse impact on terrestrial resources of the New York City metropolitan region.

The construction of the Development Site Project would create more than five acres of open space (including approximately one acre of the High Line open space). These proposed open spaces would be planted with a variety of native and ornamental trees, shrubs, grasses, and herbaceous perennials. This habitat enhancement would likely improve the resource value of the Development Site beyond its current value, and would provide potential habitat for urban wildlife, including migratory songbirds, small mammals and butterflies. The potential losses of birds due to daytime and nighttime collisions with buildings during the fall and spring migratory periods would not be expected to result in a significant adverse impact to migratory bird populations.

WATER QUALITY AND AQUATIC BIOTA

The Proposed Actions would not result in a significant adverse impact on water quality or aquatic biota of the Hudson River. No in-water construction activities would occur as a result of the Proposed Actions. During construction of the Development Site Project, implementation of the SWPPP prepared in accordance with the DEC SPDES General Permit for Stormwater Discharges from Construction Activity Permit No. GP-0-08-001 would avoid any significant adverse impacts on water quality or aquatic resources of the Hudson River from the discharge of stormwater from the Development Site.

Although additional discharge of sanitary sewage would occur as a result of the Proposed Actions, the incremental increase (1.24 million gallons per day [mgd]) is small and would not be

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expected to cause the North River Water Pollution Control Plant to be above its permitted daily flow limit of 170 mgd or adversely affect compliance of the North River Water Pollution Control Plant effluent with its SPDES permit limits.

Under existing conditions, stormwater generated within the northern two-thirds of the Development Site is discharged to the LIRR stormwater drainage system within the Western Rail Yard. Stormwater generated within the southern third of the Development Site along the West 30th Street frontage is conveyed to the combined sewer system within West 30th Street. Stormwater from the Additional Housing Sites is discharged to the combined sewer system. The Proposed Actions would result in the removal of stormwater generated within the southern third of the Development Site from the combined sewer system, discharging it instead to the existing LIRR stormwater drainage system. As detailed in Chapter 14, "Infrastructure," stormwater generated within the northern half of the Development Site would be discharged to the separate storm sewer that will be installed within West 33rd Street in the Future without the Proposed Actions as part of the City's Amended Drainage Plan for the Hudson Yard area. With the implementation of stormwater management best management practices (BMPs) proposed for the Development Site Project, the Proposed Actions would result in a decrease in the quantity and rate at which stormwater runoff would be discharged from the Development Site, and an improvement in the quality of stormwater discharged to the Hudson River.

As discussed in the Chapter 14, "Infrastructure," the Proposed Actions would result in an increase in the volume of sanitary sewage generated and discharged into the combined sewer system. The North River Water Pollution Control Plant has ample dry weather capacity to handle this additional sewage. New sanitary flows from the Development Site may exacerbate the combined sewer overflows (CSOs) at affected outfalls by displacing other wastewater volumes from other sources, but would not result in a significant adverse impact on water quality or on the aquatic resources of the Hudson River.

SIGNIFICANT COASTAL FISH AND WILDLIFE HABITAT

The Proposed Actions would not result in in-water construction activities. The discharge of stormwater originating from the Development Site and the discharge of sanitary sewage resulting from the Proposed Actions to the combined sewer system would not result in a significant adverse impact to water quality. Therefore, the Proposed Actions would not result in a significant adverse impact to Significant Coastal Fish and Wildlife Habitat.

ENDANGERED, THREATENED, AND SPECIAL CONCERN SPECIES

No in-water work would be conducted as part of the Proposed Actions, and the construction and operation of the Development Site Project would not result in a significant adverse impact to water quality. Moreover, rare, special concern, threatened, endangered and candidate species with the potential to occur within the vicinity of the Development Site and Additional Housing Sites are limited to aquatic species that are likely transient. For these reasons, the Proposed Actions would not result in any significant adverse impacts to State-listed or federally-listed species.

O. HAZARDOUS MATERIALS

The Hazardous Materials chapter assesses the potential impacts from hazardous materials and contaminants encountered in the soil, groundwater, or existing structures during construction of

the project sites and the likelihood of such contaminants to persist after development. It also assesses and summarizes specific measures to be employed to minimize the potential for exposure to such materials. Based on the findings and conclusions of the environmental assessments completed for the three project sites, the Proposed Actions are not anticipated to result in a significant adverse impact with respect to hazardous materials. With the implementation of the following remediation and protective measures, the risk of exposure to contaminated soil and groundwater would be minimal:

- Preparation of a site-specific Construction Health and Safety Plan (CHASP) describing precautionary measures and safety procedures to be followed to minimize pathways of exposure to contaminants prior to any excavation or construction activity. The CHASP would include a Materials Handling Plan identifying specific protocols and procedures to be employed to manage the contaminated soil and groundwater at the Development Site and at both the Ninth Avenue and Tenth Avenue Additional Housing Sites in accordance with applicable regulations. For the Development Site, the requirement for a CHASP will be included in the Restrictive Declaration. For the Additional Housing Sites, the requirement for a CHASP will be included in a MOU between DCP, HPD, and DEP;
- Installation of appropriate vapor mitigation systems to protect buildings in “terra firma” of the Development Site and the Ninth Avenue Site. If required, the design of new buildings at both sites would consider soil vapor mitigation measures to prevent any volatile contaminants that may remain present in the soil and groundwater from migrating into the buildings. The Restrictive Declaration for the Development Site and the MOU for the Ninth Avenue Site will include these vapor mitigation requirements. Those documents will specify that, based upon further testing and review of any additional analytical data, the Developer (for the Development Site) and HPD (for the Ninth Avenue Additional Housing Site) will have the opportunity to demonstrate to DEP’s satisfaction which of these measures are required.
- Installation of appropriate permanent ventilation systems for areas under the platform at the Development Site in accordance with LIRR’s engineering design criteria for yard ventilation.

P. WATERFRONT REVITALIZATION PROGRAM

The New York City Waterfront Revitalization Program (WRP) is the City’s principal coastal zone management tool. The WRP encourages coordination among all levels of government to promote sound waterfront planning and requires consideration of the program’s goals in making land use decisions. All discretionary land use actions within the mapped coastal zone must be found consistent with the policies and intent of the WRP (i.e., they must not hinder the achievement of any of the policies and, where practicable, advance one or more policy). The entire Development Site is located within New York City’s coastal zone boundary. Both of the Additional Housing Sites are outside the City’s coastal zone boundary. Therefore, the Waterfront Revitalization Program analysis only examines the Proposed Actions’ compliance with Federal, State, and local coastal zone policies as they relate to the Development Site.

The Proposed Actions would be consistent with the WRP, and would advance the goal of encouraging commercial and residential redevelopment in appropriate portions of the coastal zone (WRP Policy 1.1) where public facilities and infrastructure are or will be adequate (WRP Policy 1.3), and the goal of providing public access to and along the City’s coastal waters (WRP Policy 8.0). The Proposed Actions would result in the addition of more than five acres of

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publicly accessible open space within the City's coastal area. The new publicly accessible open space would provide passive recreational opportunities and attractive pedestrian connections between the Development Site, the High Line, the open space planned for the Eastern Rail Yard and surrounding neighborhoods—areas long separated visually and physically by the largely below-grade rail yard. The proposed open space would also serve an important role as a link in the open space network that will be developed throughout the Hudson Yards area.

While the Proposed Actions would provide a substantial amount of open space in a part of the City coastal zone largely devoid of parks and open space, the Proposed Actions would nevertheless result in a significant decrease in the active and total open space ratios due to the introduction of workers and residents in the larger “residential” study area surrounding the Development Site. This decrease in active and total open space ratios would result in a significant adverse impact, and requires consideration of measures to mitigate these impacts to the greatest extent practicable. As described in Chapter 24, “Mitigation,” and summarized above in “Open Space,” as partial mitigation for the indirect open space impact, the Restrictive Declaration will include provisions to establish an Open Space Fund, with contributions made by the Developer at appropriate intervals as development occurs on the site. The proceeds of the Open Space Fund would be utilized by DPR, in consultation with Community Board 4 and the local City Council Member, to fund programs or improvements which would improve or increase capacity for active recreation within Community Board 4 and constitute partial mitigation for the significant adverse impact. With this mitigation, the Proposed Actions are consistent with WRP Policy 13.

The Proposed Actions would not impair any existing views of the waterfront and would open views of the waterfront from the Development Site that are currently not accessible to the public. The creation of two east-west vehicular roadways, and a north-south pedestrian corridor located midblock on West 33rd Street, would improve vehicular and pedestrian access to the Development Site, and create new east-west and north-south view corridors. A large and diverse approximately 5-acre open space network would provide unique landscaped areas from which one could enjoy views of the Hudson River and access the waterfront via an at-grade crossing at West 30th Street and Twelfth Avenue, furthering the goal of providing public access along the City's coastal waters (WRP Policy 8.0).

The Proposed Actions would not occur within a Special Natural Area District (SNAD), Significant Natural Waterfront Area (SNWA) or Recognized Ecological Complex, nor would they result in a significant adverse impact on terrestrial plants or animals, wetlands, water quality, or aquatic biota (see Chapter 11, “Natural Resources”). As discussed in Chapter 11, “Natural Resources,” the Development Site does not contain tidal or freshwater wetlands. No in-water work would be conducted as part of the Proposed Actions.

Implementation of stormwater best management practices (BMPs) and sustainable, green components for the Development Site would reduce the quantity and rate at which stormwater runoff would be discharged from the Development Site to the separate storm sewer that would be developed in the Future without the Proposed Actions as part of the Amended Drainage Plan.¹ Implementation of these measures, as well as other stormwater management measures

¹ DEP has prepared an Amended Drainage Plan for the Hudson Yards area (generally bounded by: Route 9A to the west; West 46th to the north; West 27th Street to the south; and between Seventh and Tenth Avenues to the east) to accommodate additional sanitary sewage that would result from the rezoning of this area, and modify the storm sewer system. The Amended Drainage Plan, and future changes to the

specified in the stormwater pollution prevention plan (SWPPP) developed for the Proposed Actions, would avoid a significant adverse impact to tidal wetlands, and the water quality and aquatic biota of the Hudson River due to discharge of stormwater from the Development Site. Additionally, the discharge of sanitary sewage resulting from the Proposed Actions would not cause the North River Water Pollution Control Plant to exceed its permitted daily flow limit, or adversely affect its compliance with its SPDES permit limits. Implementation of water conservation measures to reduce sanitary sewage would minimize the potential for the Proposed Actions to result in a significant adverse impact to the water quality and aquatic biota of the Hudson River due to increased CSOs.

The construction and operation of the Proposed Project would not result in a significant adverse impact to groundwater resources. The majority of the Development Site is located within the 100-year floodplain. Approximately two-thirds of the proposed development at the Development Site would be located on the platform over the LIRR facilities. The Proposed Project elements that would be developed on the platform would not affect the 100-year flood elevation on or adjacent to the Development Site. Any development that would occur within the terra firma portion of the Development Site would have the elevation of the lowest floor set forth in the Restrictive Declaration for the Development Site. The placement of the elevation of the lowest floor for the base of structures WR-2, WR-3, and WR-4 (all would be located on terra firma) at least one foot above the current base flood elevation BFE for the 100-year flood would result in an elevation of the lowest floor that would be above the New York City Panel on Climate Change (NPCC) projected increased 100-year flood elevation in the 2020s. Therefore, the design for these structures would minimize the potential for public and private losses due to flood damage under current and projected flood conditions.

Q. INFRASTRUCTURE

The Infrastructure chapter evaluates the potential effects of the Proposed Actions on New York City's water supply, sanitary sewage treatment, and stormwater management infrastructure. It describes the existing water supply and wastewater infrastructure in the vicinity of the project sites and identifies changes to water supply, stormwater, and wastewater conditions that would occur in the Future with and without the Proposed Actions.

The Proposed Actions would result in increased demands on New York City's water supply and sanitary sewage treatment systems by as much as 1.25 million gallons per day. The municipal systems have adequate overall capacity to meet the projected demands, though local improvements in City water mains and sewer infrastructure will be necessary to relieve local constraints in water supply, sewer infrastructure, and stormwater management networks in order to accommodate the Proposed Actions. The City has committed to make these improvements, in the required timeframe, to support the proposed development that would result from the Proposed Actions. Therefore, the Proposed Actions would not have any significant impacts on the City water supply, sanitary sewage, and stormwater management systems.

In addition, these sewer and water demands would be reduced because the proposed developments would include sustainable design strategies to reduce potable water usage and sewage demands. For the Development Site, the Developer has committed to incorporating

combined and separate storm systems associated with the Amended Drainage Plan would occur in the Future without the Proposed Actions.

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water conservation measures (i.e., low-flow fixtures), rainwater collection systems and green roofs into the Development Site that would reduce demands on New York City's water supply and stormwater management systems. The Developer has also committed to seek LEED Silver certification from the Green Building Certification Institute (GBCI), which prescribes at least a 20 percent reduction in water usage compared to the baseline condition. In addition, a portion of the increased sanitary sewage flow would be offset by diverting stormwater runoff from the combined sewer system to separate storm sewers and implementing water conservation measures as part of the Proposed Actions.

The DEP water supply system has adequate capacity to supply the necessary water to meet the demands associated with each of the project sites; however, some new local distribution mains in the immediate vicinity of the Development Site would be required in order to meet project-generated demands and maintain service supply pressures for customers and fire protection. The *Hudson Yards FGEIS* identified necessary modifications to water supply infrastructure to ensure that users throughout the Hudson Yards area have an adequate water supply at stable pressure for all conditions and to accommodate the redevelopment of the adjacent Hudson Yards area, including the Development Site.

The Proposed Actions would result in an increase in the volume of sanitary sewage generated and discharged into the DEP combined sewer system. The North River Water Pollution Control Plant has ample dry weather capacity to handle this additional sewage. New sanitary flows into the combined sewer system from the Development Site may exacerbate the CSOs at affected outfalls by displacing other wastewater volumes from other sources. Additional modeling was performed subsequent to the DEIS to analyze in greater detail the projected effects of the Proposed Actions on CSOs. This modeling indicates that during a representative year, the Proposed Actions would result in a minor increase in CSO volume and would not increase the number of CSO events associated with the North River collection system as a whole, though one additional CSO event annually could occur at three outfalls. Nevertheless, because of the available assimilative capacity of the Hudson River, those increases were determined not to have a significant adverse impact on water quality. Under existing conditions, some stormwater runoff drains into the combined sewer system and can contribute to CSO events. Under the Proposed Actions, stormwater runoff would drain directly to the Hudson River and, therefore, would not contribute to CSO events. The Proposed Actions would also implement mechanisms at the Development Site to decrease sanitary flows, relative to the base flow analysis, to the combined sewer system and slow down and treat stormwater runoff to the Hudson River.

The Proposed Actions would reduce the quantity and improve the quality of stormwater runoff discharged from the Development Site with several measures. Landscaped areas would allow for some subsurface infiltration of rainfall, and green roofs and rainwater harvesting systems would provide additional runoff capture, and reduce the rate of discharges that would occur. The incorporation of best management practices (BMPs) into the stormwater management plan for the Development Site would result in reduced levels of suspended solids and other contaminants carried by surface runoff, thereby improving the quality of existing stormwater runoff from the Development Site that discharges directly into the Hudson River.

DEP has developed an Amended Drainage Plan for the Hudson Yards area that identifies improvements to the existing storm and combined sewer system infrastructure that are necessary to accommodate the full build out of the Hudson Yards area. The Amended Drainage Plan provides for the construction of new storm sewers along the West 33rd Street and Twelfth Avenue frontages of the Development Site that would divert existing stormwater runoff from the

combined sewer system. The Amended Drainage Plan also identifies replacement of the existing combined sewer in West 33rd Street with a separate storm sewer and sanitary sewer. These sewers would be adequately sized to handle the flows that would be discharged from the Development Site as well as the adjacent Hudson Yards area, based on the development density allowed by the proposed zoning under the Proposed Actions.

The two Additional Housing Sites would generate minor additional sanitary sewage flows and site stormwater runoff would drain into the existing combined sewer system. Design and construction for the two Additional Housing Sites would incorporate BMPs and sustainable measures to control the rates of stormwater discharges from each site. Existing combined sewer infrastructure in the vicinity of the Additional Housing Sites is adequate to accommodate the relatively minor increases in flows that would be generated by the developments in these sites.

PlaNYC, the City's long-term sustainability plan, and the Sustainable Stormwater Management Plan (2008) developed by the Mayor's Office as a key initiative of PlaNYC, identify a number of strategies for meeting water quality goals that focus on promoting cost-effective source controls for stormwater management. While the majority of the initiatives are targeted towards City agencies for implementation, the Proposed Actions would include the following measures consistent with PlaNYC and the Sustainable Stormwater Management Plan: (1) divert runoff from the combined sewer system into high level storm sewers (HLSS); (2) incorporate various source control features into proposed buildings and site open space design to promote stormwater collection and management to reduce the quantity of offsite discharges and improve the quality of runoff that is discharged into the Hudson River; and (3) incorporate measures to promote the efficient use and conservation of domestic water to reduce sewage generation rates.

R. SOLID WASTE AND SANITATION SERVICES

While the Proposed Actions would generate additional solid waste and require the relocation of existing DSNY facilities, a significant adverse impact on solid waste and sanitation services would not occur as a result of the Proposed Actions.

DSNY is responsible for the collection and disposal of municipal solid waste, including the collection of recyclables, generated by residences, some nonprofit institutions, tax exempt properties, and City agencies. Private carters provide these services to commercial and other users. DSNY is also responsible for street cleaning, snow and ice removal from City streets, and enforcement of the City's Recycling Law and other Sanitation Code provisions. The Proposed Actions would increase volumes of generated solid waste and recyclables that would have to be managed, but would not pose a significant strain to overall capacity of the City's municipal and private solid waste system or hamper the provision of adequate sanitation services.

Municipal waste collection services within the surrounding area are provided by DSNY in accordance with a new 20-year Comprehensive Solid Waste Management Plan (SWMP) dated September 2006. The Proposed Actions are consistent with, and do not require amendments to, the City's SWMP.

The Proposed Actions would require the relocation of existing DSNY facilities from the Development Site to existing feasible alternative sites, which may be subject to necessary approvals. DSNY would identify suitable interim relocation sites. A generic analysis was conducted to determine the potential environmental impacts that could result from the relocation of the DSNY facilities from the Development Site. The analysis concluded that, depending on

the interim site, relocation of the DSNY facilities could result in significant adverse impacts in the following areas: land use, zoning, and public policy; architectural historic resources; and noise. The assessment is conservative, and many, if not all, of the potential impacts may not occur. In the absence of site-specific details at this time, it is possible that the relocation of the DSNY facilities would result in one or more of the significant adverse impacts noted above. In that event, a range of measures would be available to eliminate or avoid those possible impacts.

S. ENERGY

Overall, the Proposed Actions would not have a significant adverse impact on energy supply and distribution systems. The Proposed Actions would result in increased energy demands of approximately 32 megawatts (MW) for electricity and 0.12 million cubic feet per hour (CFH) for natural gas. Because these increases overall are small relative to the capacity of these systems and the current and future projected levels of service needs within New York City, these demand increases would not have a significant adverse impact on either electricity or natural gas services; however, some improvements to the local utility infrastructure would be required to connect the Development Site to the local utility distribution networks for electricity and natural gas.

Con Edison is responsible for providing electric and gas services throughout Manhattan, including constructing and maintaining the local utility infrastructure necessary to service customer requirements. Con Edison plans for the expansion of local utility infrastructure as necessary to accommodate projected growth citywide and the local demand increases for development projects such as the Proposed Actions.

The New York Independent System Operator (NYISO), as the responsible body for overseeing the safe and reliable operation of the electric transmission system across the State of New York, performs an annual review of the electricity needs for the State, and monitors the system supply and distribution capabilities for adequacy to meet projected demand growth. NYISO in its *2009 Reliability Needs Assessment* for the period from 2009 through 2018 anticipates that the resources needed to meet the forecast electricity needs of New York will be adequate in 2018.

The Developer has committed to achieve higher energy efficiency for the proposed buildings on the Development Site, resulting in 14 percent less energy use than would be achieved by complying with the current building code. The Developer has also committed to seek LEED Silver certification for all proposed buildings. For the Additional Housing Sites, HPD would require energy reduction measures in compliance with the New York State Energy Research and Development Authority's Green Affordable Housing Component and Enterprise Community Partners' Green Communities program. Therefore, the Proposed Actions would be consistent with and advance the energy reduction goals of PlaNYC.

T. TRAFFIC AND PARKING

IDENTIFICATION OF IMPACTS

The Proposed Actions include substantial commercial and residential development on the Development Site, resulting in an increase in the number of vehicle trips into and out of the Development Site study area. Although anticipated development of the Additional Housing Sites would generate a minimal volume of additional vehicle trips, the number of vehicle trips that would be cumulatively generated by the Development Site and Additional Housing Sites forms the basis of the traffic impact evaluation within the traffic study area, which extends from West

23rd Street to West 54th Street and from Twelfth Avenue east to Broadway. Within this study area, 112 intersections were selected for detailed traffic impact analysis, consisting of 109 signalized and three unsignalized intersections. These intersections were analyzed for weekday AM weekday midday, weekday PM, and Saturday midday peak hour conditions. Due to the remoteness of the Additional Housing Sites from the Development Site and the minimal off-site parking demand that they would generate, the parking study area was focused within one-half mile of the Development Site.

Existing conditions traffic analysis indicated that although most intersections in the traffic study area operate at overall acceptable levels during the four analysis peak hours, individual approach movements at numerous intersections operate at mid-Level of Service (LOS) D or worse. Specifically, 61 approach movements at 38 intersections operate at mid-LOS D, LOS E or LOS F in the AM peak hour; 37 approach movements at 32 intersections operate at mid-LOS D, LOS E or LOS F in the midday peak hour; 89 approach movements at 56 intersections operate at mid-LOS D, LOS E or LOS F in the PM peak hour; and 34 approach movements at 25 intersections operate at mid-LOS D, LOS E or LOS F in the Saturday midday peak hour. Little on-street parking is available weekdays in the parking study area, with most parking supply restricted to commercial vehicles and the few unrestricted spaces are fully utilized. Off-street parking surveys indicated a midday weekday off-street utilization rate of 79 percent with approximately 1,100 spaces available and a weekday overnight utilization rate of 37 percent with approximately 2,350 spaces available.

Significant levels of development were assumed within and in the area surrounding the traffic study area for analysis of the Future without the Proposed Actions condition. Vehicle trips generated by this development would result in a substantial deterioration in traffic operations from existing 2008 conditions to the 2019 full Build analysis year, with similar conditions projected for the 2017 interim analysis year. For example, in the weekday PM peak hour, the most congested condition in the study area, the number of intersection approach movements that would operate at mid-LOS D or worse would deteriorate from the 89 approach movements at 56 intersections indicated above for existing conditions to 144 approach movements at 83 intersections that would operate at mid-LOS D, LOS E or LOS F in the traffic study area under the 2019 Future without the Proposed Actions condition. Off-street parking demand would also increase significantly in the parking study area in the Future without the Proposed Actions condition. Off-street parking demand is projected to increase to 134 percent of supply during the weekday midday in 2019, but it is estimated that over 1,100 overnight spaces would be available. Interim year 2017 conditions would be similar.

For the Future with the Proposed Actions condition, the worst-case development scenario at the Development Site was analyzed for each traffic and parking analysis time period. Although traffic volumes generated by the Proposed Actions would cause further deterioration in traffic operations, the number of intersection approach movements that would operate at mid-LOS D or worse would not substantially increase. For example, in the weekday 2019 PM peak hour, the number of intersection approach movements that would operate at LOS E or LOS F is projected to increase from 133 intersection approach movements to 142 intersection approach movements. The 2017 Future with the Proposed Actions condition would be essentially the same with 140 intersection approach movements projected to operate in LOS E or F, as compared to 131 approach movements projected to operate at these levels in the 2017 Future without the Proposed Actions condition.

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Under the 2019 Future with the Proposed Actions condition, significant adverse traffic impacts were identified for 82 intersection approaches at 64 intersections during the weekday AM peak hour, 77 approach movements at 60 intersections during the weekday midday peak hour, 99 approach movements at 75 intersections during the weekday PM peak hour, and 52 approach movements at 48 intersections during the Saturday midday peak hour. Under the 2017 Future with the Proposed Actions condition, significant adverse impacts were identified at 70 approach movements at 59 intersections during the weekday AM peak hour, 64 approach movements at 50 intersections during the weekday midday peak hour, 87 approach movements at 71 intersections during the weekday PM peak hour, and 43 approach movements 42 intersections during the Saturday midday peak hour. In nearly all cases, the intersection approach movements on which significant adverse traffic impacts would occur in 2017 would also have significant adverse traffic impacts in 2019.

Subsequent to the completion of the DEIS, the New York City Department of Transportation (NYCDOT) implemented the Green Light for Midtown pilot project, which includes the complete closure of Broadway to through traffic at Times Square and Herald Square, as well as other geometric changes on Broadway between Columbus Circle and West 26th Street. This project is still in the pilot stage, and a determination whether these changes will be made permanent will occur at a later date. However, the Green Light for Midtown project, if implemented, could have the potential to change traffic circulation patterns at some of the study area intersections analyzed in the FEIS for the Western Rail Yard.

Given the potential for the Green Light for Midtown pilot project to be made permanent, a sensitivity analysis was conducted for the 2019 Future with and without the Proposed Actions. The goal of this analysis was to identify the potential in the 2019 analysis year for the Proposed Actions to result in additional significant adverse traffic impacts, as well as additional unmitigated significant adverse traffic impacts, under a 2019 Future without the Proposed Actions condition that includes traffic volume changes associated with implementation of the Green Light for Midtown project. The detailed analysis is provided in Appendix E8.

Overall, with implementation of the Green Light for Midtown project incorporated into the 2019 Future without the Proposed Actions condition, there is the potential that incremental traffic from the Proposed Actions could result in additional significant adverse traffic impacts when compared to the 2019 Future with the Proposed Actions condition analyzed in the FEIS due to the projected increase in No Build traffic volumes on the Sixth Avenue, Seventh Avenue, Ninth Avenue, and Eleventh Avenue corridors. There could be a total of four, five, four, and six additional intersections with significant adverse traffic impacts in the weekday AM, midday, PM, and Saturday midday peak hours, respectively, as compared to the 2019 Future with the Proposed Actions condition analyzed in the FEIS. Most of these impacts would likely be mitigated through the implementation of traffic engineering improvements such as modification of traffic signal timing and phasing; elimination of on-street parking near intersections (“daylighting”); traffic enforcement; channelization and lane designation changes; turn movement restrictions; and installation of traffic signals at appropriate unsignalized intersections.

With implementation of the Green Light for Midtown project incorporated into the 2019 Future without the Proposed Actions condition, there is also the potential that incremental traffic from the Proposed Actions could increase the number of locations with unmitigated significant adverse traffic impacts by one intersection during the weekday midday peak hour, two intersections during the weekday PM peak hour, and two intersections during the Saturday

midday peak hour, as compared to the 2019 Future with the Proposed Actions condition analyzed in the FEIS. These significant adverse traffic impacts could not be mitigated using the same types of traffic capacity improvements presented in the FEIS. The number of locations with unmitigated significant traffic impacts during the weekday AM peak hour should remain unchanged. Of these locations with unmitigated significant adverse traffic impacts, one intersection (during the weekday midday peak hour) was previously identified in the DEIS as an impacted intersection that could be mitigated through the implementation of traffic engineering improvements. These projections are based on a preliminary assessment using a series of ATR counts undertaken for a two-week period in September 2009. It is possible that future traffic counts would indicate that the level of potential traffic diversions would result in changes in the projections with respect to the potential impacts of the Proposed Actions. If the Green Light for Midtown project is made permanent, any additional data would be considered in the Hudson Yards traffic monitoring program so that appropriate measures could be implemented, as necessary.

The Proposed Actions would further exacerbate the weekday midday off-street parking shortfall in the parking study area, but not substantially. It is assumed that 1,600 accessory parking spaces would be provided at the Development Site, but the parking analysis found that this supply would not accommodate all the parking demand generated by the Proposed Actions during the weekday midday time period. However, it is expected that the available off-street parking supply would be able to accommodate the expected increase in overnight demand for all scenarios of the Proposed Actions in both 2017 and 2019. The reasonable worst-case development scenario would increase weekday midday off-site parking demand by approximately 320 spaces above 2019 demand levels in the Future without the Proposed Actions with the off-street utilization rate increasing from 134 percent to 139 percent of parking supply. Interim year 2017 weekday midday conditions would be slightly worse due to the assumption that only 850 of the 1,600 accessory spaces would be available in 2017 with a worst case off-site weekday demand of approximately 460 parking spaces. However, according to the *CEQR Technical Manual*, for proposed actions within the Manhattan Business District (defined as the area south of 61st Street), the inability of a proposed action or the surrounding area to accommodate projected future parking demands would be considered a parking shortfall, but is not deemed to be a significant adverse impact. The unsatisfied demand for parking spaces during the midday peak utilization period would result in vehicles parking outside of the parking study area and motorists walking greater distances to their destinations. As parking shortfalls do not constitute significant adverse impacts for CEQR purposes, mitigation is not required.

MITIGATION

Most of the impacts could be mitigated through the implementation of traffic engineering improvements, including:

- Modification of traffic signal phasing and/or timing;
- Elimination of on-street parking within 150 feet of intersections to add a limited travel lane, known as “daylighting”;
- Enforcement of existing parking restrictions to ensure that traffic lanes are available to moving traffic;
- Channelization and lane designation changes to make more efficient use of available street widths; and

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- Installation of traffic signals at unsignalized intersections if warranted.

As part of the Hudson Yards traffic monitoring program, the City will continue, as appropriate, to identify potential improvement measures including those noted above in order to address potential changes associated with other No Build projects that may occur over time.

Of the more than 370 intersection movements evaluated for the 2019 Future with the Proposed Actions condition, 12 intersection movements would have unmitigated significant adverse impacts during the weekday AM peak hour, 3 intersection movements would have unmitigated significant adverse impacts during the weekday midday peak hour, 15 intersection movements would have unmitigated significant adverse impacts during the weekday PM peak hour and 5 intersection movements would have unmitigated significant adverse impacts during the Saturday midday peak hour.

U. TRANSIT AND PEDESTRIANS

Analyses of transit elements included operations of subway lines (line-haul) and subway stations (turnstiles, High Entrance/Exit Turnstiles [HEETs], service gates, stairways, and escalators), bus services, and ferry services, as well as pedestrian elements (sidewalks, crosswalks, corners, and bicycle routes). The Proposed Actions would not cause a significant adverse impact to subway line haul, ferry operations or bicycle routes. However, the Proposed Actions would cause significant adverse impacts to one subway station stairway, certain bus lines, and certain pedestrian elements. Most of these could be mitigated through implementation of the measures described below. In the absence of such measures, these impacts would remain unmitigated.

TRANSIT

SUBWAY LINE

A line haul assessment was performed for the Flushing Line (No. 7) in the peak direction (Manhattan bound) in the AM peak hour. The Proposed Actions would not result in a significant adverse impact on the Flushing Line during the AM peak hour.

SUBWAY STATIONS

Identification of Impacts

For both 2017 and 2019, 113 subway station elements were analyzed for the weekday AM and PM peak periods, including 13 turnstiles, 6 HEETs, 13 service gates, 25 escalators, and 56 stairways. The Proposed Actions would not result in any significant adverse impacts at these station elements, except at one location where a significant adverse impact could occur—one subway stairway—the M23/24 at Control Area N67 at the 34th Street-Penn Eighth Avenue Station—if that stairway is not, as anticipated, relocated and widened as part of the Moynihan Project.

Mitigation

If the Moynihan Project does not relocate and widen that stairway, the Proposed Actions would result in a significant adverse impact during the weekday PM peak hour in 2019 that could be mitigated by widening the stairway by a minimum of approximately seven inches. If the stairway is not widened, this impact would remain unmitigated.

BUS ROUTES

2019

Identification of Impacts

Seven bus routes (M10, M11, M16, M20, M23, M34, and M42) currently provide service within a ½-mile radius of the redevelopment area. The Proposed Actions would add fewer than 200 new riders each to three of these routes (M16, M23, and M42) and, in accordance with CEQR methodology, these routes would not be required to be analyzed.¹ The remaining four routes (M10, M11, M20, and M34) were analyzed for existing service conditions and potential significant adverse impacts from increased utilization in the 2019 Future with the Proposed Actions. Based on the existing service plans, all four routes analyzed would not provide sufficient capacity in the future during both the weekday AM and PM peak hours.

Mitigation

Additional regular or articulated bus service for these routes would be necessary to meet the projected demand for the 2019 Future with the Proposed Actions condition. For the weekday AM peak hour, the potential significant adverse bus impacts could be mitigated by adding two additional regular or articulated buses to the M10/M20, three additional regular buses or two articulated buses to the M11, and 13 additional regular buses or ten articulated buses to the M34/M16. For the weekday PM peak hour, the potential significant adverse bus impacts could be mitigated by adding two additional regular or articulated buses to the M10/M20, four additional regular buses or three articulated buses to the M11, and 15 additional regular buses or 11 articulated buses to the M34/M16. If these measures are implemented, no unmitigated significant adverse impacts would occur to bus service as a result of the Proposed Actions.

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 and as development is implemented throughout the study area, a comprehensive service plan would be generated to respond to specific, known needs with capital and/or operational improvements where fiscally feasible and operationally practicable. MTA-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.

2017

Identification of Impacts

The same four bus routes were analyzed in the 2017 Future with the Proposed Actions condition. Based on the existing service plans, all four routes analyzed would not provide sufficient capacity in the future during both the AM and PM peak hours with the Proposed Actions in 2017.

Mitigation

Additional regular or articulated bus service for these routes would be necessary to meet the projected demand for the 2017 Future with the Proposed Actions condition. For the weekday AM peak hour, the potential significant adverse bus impacts could be mitigated by adding one additional regular or articulated bus to the M10/M20, three additional regular buses or two

¹ The M16 nevertheless appears in the analysis because the M16 and M34 NYCT ridership data are collected together and cannot be disaggregated.

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articulated buses to the M11, and 13 additional regular buses or nine articulated buses to the M34/M16. For the weekday PM peak hour, the potential significant adverse bus impacts could be mitigated by adding one additional regular or articulated bus to the M10/M20, four additional regular buses or three articulated buses to the M11, and 14 additional regular buses or ten articulated buses to the M34/M16. If these measures are implemented, no unmitigated significant adverse impacts would occur to bus service as a result of the 2017 Future with the Proposed Actions condition.

PEDESTRIANS

2019

Under the 2019 Future with the Proposed Actions, 373 pedestrian elements were analyzed for the weekday AM, midday and PM peak periods, including 188 sidewalks, 95 crosswalks, and 90 corners. For the Saturday midday peak period, 289 pedestrian elements were analyzed, including 146 sidewalks, 73 crosswalks, and 70 corners. Below is a summary of significant adverse pedestrian impacts generated in the Future with the Proposed Actions. Significant adverse impacts due to traffic mitigation measures, such as changes in traffic signal timing, are also discussed.

Identification of Impacts

Sidewalks

Of the 188 sidewalks that were analyzed in the weekday peak periods, two sidewalks would have significant adverse impacts in the AM peak period. During the midday peak period, one sidewalk would have a significant adverse impact. During the PM peak period, five sidewalks would have significant adverse impacts. In addition, of the 146 sidewalks that were analyzed in the Saturday midday peak period, one sidewalk would have a significant adverse impact (see Table S-7).

Table S-7
2019 Future with the Proposed Actions:
Summary of Pedestrian Element Locations with Significant Adverse Impacts

Time Period	# of Elements Analyzed	Mitigated Significant Adverse Impacts	Unmitigated Significant Adverse Impacts		Total Significant Adverse Impacts		
			From Proposed Project	From Traffic Mitigation	From Proposed Project	From Traffic Mitigation	Total
Sidewalks							
AM	188	1	1	0	2	0	2
Midday	188	0	1	0	1	0	1
PM	188	1	4	0	5	0	5
Saturday	146	0	1	0	1	0	1
Crosswalks							
AM	95	7	2	3	9	3	12
Midday	95	4	3	5	7	5	12
PM	95	7	3	0	10	0	10
Saturday	73	7	1	0	8	0	8
Corners							
AM	90	10	3	0	13	0	13
Midday	90	2	5	2	7	2	9
PM	90	9	3	0	12	0	12
Saturday	70	7	0	0	7	0	7

During the AM peak period, of the two significant adverse sidewalk impacts, one impact would be mitigated and one impact would be unmitigated. During the weekday PM peak period, of the five significant adverse impacts, one would be mitigated and four would be unmitigated significant adverse sidewalk impacts. During both the weekday midday peak period and Saturday midday peak period, there would be one unmitigated significant adverse impact. All of the unmitigated significant adverse impacts would include sidewalks along West 33rd Street between Eighth and Tenth Avenues.

Crosswalks

During the weekday AM peak period, nine crosswalks would have significant adverse impacts from the Proposed Actions. In addition, three crosswalks would have significant adverse impacts due to the implementation of traffic mitigation. During the weekday midday peak period, seven crosswalks would have significant adverse impacts from the Proposed Actions. In addition, due to traffic mitigation, five crosswalks would have significant adverse impacts during the weekday midday peak period. Due to the Proposed Actions, significant adverse impacts would occur at 10 crosswalks during the weekday PM peak period and at 8 crosswalks during the Saturday midday peak period.

As discussed above, during the weekday AM peak period, there would be 9 significant adverse crosswalk impacts due to the Proposed Actions. Of these impacts, there would be seven mitigated significant adverse impacts and two unmitigated significant adverse impacts. In addition, three crosswalks would have unmitigated significant adverse impacts due to traffic mitigation during this time period. During the weekday midday peak period, of the seven significant adverse crosswalk impacts from the Proposed Actions, there would be four mitigated significant adverse impacts and three unmitigated significant adverse impacts. An additional five crosswalks would have unmitigated significant adverse impacts due to traffic mitigation. During the PM peak period, of the 10 significant adverse crosswalk impacts from the Proposed Actions, seven impacts would be mitigated and 3 impacts would be unmitigated. During the Saturday midday peak period, there would be one unmitigated significant adverse crosswalk impact from the Proposed Actions. Seven significant adverse impacts during the Saturday midday peak period would be mitigated. Most of the unmitigated significant adverse impacts would include crosswalks along West 31st, West 33rd, and West 34th Streets between Eighth and Tenth Avenues.

Corners

In total, 90 corners were analyzed during the weekday peak periods in the Future with the Proposed Actions. As a result of the Proposed Actions, there would be significant adverse impacts at 13 corners during the AM peak period and at 12 corners during the PM peak period. During the weekday midday peak period, there would be seven significant adverse impacts due to the Proposed Actions and two significant adverse impacts due to the implementation of traffic mitigation measures. In addition, of the 70 corners that were analyzed during the Saturday midday peak period, 7 corners would have significant adverse corner impacts.

During the weekday AM peak period, of the 13 significant adverse corner impacts, there would be 3 unmitigated significant adverse impacts and 10 mitigated significant adverse impacts. During the weekday midday peak period, of the seven significant adverse impacts that would be generated from the Proposed Actions, there would be 2 mitigated significant adverse impacts and five unmitigated significant adverse impacts. There would be an additional two unmitigated significant adverse corner impacts during the weekday midday peak period due to the implementation of traffic mitigation. Of the 12 significant adverse corner impacts during the PM

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peak period, 9 impacts would be mitigated and 3 impacts would be unmitigated. During the Saturday midday peak period, all seven significant adverse impacts would be mitigated. Most of the unmitigated significant adverse impacts would include corners along West 33rd Street between Eighth and Eleventh Avenues.

Mitigation

Standard mitigation for projected significant adverse impacts to pedestrian conditions includes relocation or removal of obstacles on sidewalks, construction of wider sidewalks and corners and repainting crosswalks for additional width. Certain pedestrian adverse significant impacts cannot be mitigated without resulting in significant adverse impacts on traffic conditions beyond those identified in the traffic analysis. As part of the Hudson Yards traffic monitoring program, the City will continue, as appropriate, to identify potential improvement measures including those noted above in order to address potential changes associated with other No Build projects that may occur over time.

Upon incorporation of the mitigation measures, unmitigated adverse impacts would remain at one sidewalk location during the weekday AM peak period, one sidewalk location during the midday period, four sidewalk locations at three intersections during the weekday PM peak period, and one sidewalk location during the Saturday midday peak period. Upon incorporation of the mitigation measures, unmitigated adverse impacts would remain at two crosswalk locations at two intersections during the weekday AM peak period, three crosswalk locations at two intersections during the midday peak period, three crosswalk locations at three intersections during the weekday PM peak period, and one crosswalk locations at one intersection during the Saturday midday peak period.

In addition, unmitigated significant adverse impacts would occur at three crosswalk locations at two intersections during the weekday AM peak period and five crosswalk locations in three intersections during the midday peak period due to changes in signal timing as part of traffic mitigation measures. Upon incorporation of the mitigation measures, unmitigated adverse impacts would remain at three corner locations at two intersections during the weekday AM peak period, five corner locations at four intersections during the midday peak period, three corner locations two intersections during the weekday PM peak period, and no corner locations during the Saturday midday peak period. In addition, unmitigated significant adverse impacts would occur at two corners locations at two intersections during the midday peak period due to changes in signal timing as part of traffic mitigation measures.

2017

Identification of Impacts

A total of 373 pedestrian elements (188 sidewalks, 95 crosswalks, and 90 corners) were analyzed for the weekday AM, midday and PM peak periods and 289 pedestrian elements (146 sidewalks, 70 corners, and 73 crosswalks) were analyzed for the Saturday midday peak period.

Sidewalks

In total, 188 sidewalks were analyzed in the weekday peak periods in the 2017 Future with the Proposed Actions condition. Of these sidewalks, there were two significant adverse impacts during the AM weekday peak period and 4 significant adverse impacts during the weekday PM peak period. In addition, 146 sidewalks were analyzed during the Saturday midday peak period. None of these sidewalks had significant adverse sidewalk impacts.

During the AM peak period, there would be one unmitigated significant adverse impact, which is the same as 2019 Future with the Proposed Actions condition. During the PM peak period, there would be 3 unmitigated significant adverse impacts, which would be one less than the 2019 Future with the Proposed Actions condition. There would be no unmitigated significant adverse impacts during the weekday and Saturday midday peak periods. This is one less unmitigated significant adverse impact compared with the 2019 Future with the Proposed Action condition.

Crosswalks

During the weekday peak periods, 95 crosswalks were analyzed in the 2017 Future with the Proposed Actions condition. During the weekday AM peak period, there were significant adverse impacts at 7 crosswalks due to the Proposed Actions and at 2 crosswalks due to traffic mitigation. During the weekday midday peak period, there were significant adverse impacts at 3 crosswalks due to the Proposed Actions and 6 crosswalks due to traffic mitigation. As a result of the Proposed Actions, there were significant adverse crosswalk impacts at 8 crosswalks during the PM peak period and at one crosswalk during the Saturday midday peak period.

Upon incorporation of mitigation measures, unmitigated adverse impacts would remain at 3 crosswalks during the AM peak period, which is one more impact than in the 2019 Future with the Proposed Actions condition. In the weekday midday peak period, there would be 4 unmitigated significant adverse impacts, which would be two fewer impacts than the 2019 Future with the Proposed Actions condition. During the weekday PM peak period, there would be 2 unmitigated significant adverse impacts, which would be one less impact compared to the 2019 Future with the Proposed Actions condition. During the Saturday midday peak period in both the 2017 and 2019 Future with the Proposed Actions conditions, there would be one unmitigated significant adverse crosswalk impact.

Corners

During the weekday peak periods, 90 corners were analyzed in the 2017 Future with the Proposed Actions condition. During the weekday AM peak period, there were significant adverse impacts at 13 corners due to the Proposed Actions. During the weekday midday peak period, there were significant adverse impacts at 6 corners due to the Proposed Actions. As a result of the Proposed Actions, there were significant adverse corner impacts at 11 corners during the PM peak period and at 1 corner during the Saturday midday peak period.

Upon incorporation of mitigation measures, unmitigated adverse impacts would remain at 1 corner during the AM peak period, the same as in the 2019 Future with the Proposed Actions condition. In the weekday midday peak period, there would be 3 unmitigated significant adverse impacts, which would be four fewer unmitigated significant adverse impacts compared to the 2019 Future with the Proposed Actions condition. During the weekday PM peak period, there would be two unmitigated significant adverse impacts, which would be one less impact compared to the 2019 Future with the Proposed Actions condition. There would be no unmitigated significant adverse corner impacts during the Saturday midday peak periods in both the 2017 and 2019 Future with the Proposed Actions conditions.

Mitigation

Standard mitigation for projected significant adverse impacts to pedestrian conditions includes relocation or removal of obstacles on sidewalks, construction of wider sidewalks and corners and repainting crosswalks for additional width. Certain pedestrian adverse significant impacts cannot be mitigated without resulting in a significant adverse impact on traffic conditions beyond those identified in the traffic analysis.

Based on the application of mitigation measures, the analysis indicates that the 2017 Future with the Proposed Actions condition would have 4 unmitigated significant adverse sidewalk impacts compared to 7 unmitigated significant adverse impacts in the 2019 Future with the Proposed Actions condition. In addition, there would be 10 unmitigated significant adverse crosswalk impacts in the 2017 Future with the Proposed Actions condition compared to the 12 unmitigated significant adverse crosswalk impacts in the 2019 Future with the Proposed Actions condition. In the 2017 Future with the Proposed Actions condition, there would be 6 unmitigated significant adverse corner impacts. In comparison, there would be 11 unmitigated significant adverse corner impacts in the 2019 Future with the Proposed Actions condition.

V. AIR QUALITY AND GREENHOUSE GAS EMISSIONS

AIR QUALITY

Air quality is a general term used to describe pollutant levels in the atmosphere that are affected by numerous sources and activities that introduce air contaminants into the atmosphere. The following two broad classifications are often used to describe these sources: “mobile source” emissions from motor vehicles, and “stationary source” emissions from fixed-location facilities. The air quality chapter documents the assessment of the following emission sources: increased traffic or changes in traffic patterns on congested intersections of the local street network; proposed parking facilities; emissions from the heating, ventilation, and air conditioning (HVAC) systems of the proposed buildings; and toxic air emissions generated by existing industrial sources that would affect the proposed buildings. The chapter also estimates the effects of the Proposed Actions on greenhouse gas emissions (GHG).

MOBILE SOURCE ANALYSIS

Emissions from increased traffic or changed traffic patterns as a result of the Proposed Actions would not cause or exacerbate a violation of the National Ambient Air Quality Standards (NAAQS) or cause an exceedance of DEC/ DEP significant threshold values (STVs) for PM_{2.5} or of the DEP *de minimis* criteria for CO, and thus will not have a significant adverse impact on the environment.

The parking facilities included as part of the Proposed Actions would not cause a violation of the NAAQS or an exceedance of the STVs, and thus would not have a significant adverse impact on the environment.

STATIONARY SOURCE ANALYSIS

HVAC Analysis

Based on evaluation of emissions from the HVAC systems of the proposed buildings and assuming specified numbers, heights and locations of exhaust stacks, and air intake duct restrictions (which would be included in the Restrictive Declaration for the Development Site Project), the Proposed Actions would not cause a violation of the NAAQS or an exceedance of the STVs—either from the impacts of the HVAC emissions of the buildings to be constructed as part of the Proposed Actions on other Proposed Actions buildings (building-on-building impacts) or on existing and future No Build developments. In addition, the HVAC emissions of existing and future No Build developments, as well as “major” existing emission sources, will

not significantly impact the Proposed Actions' buildings. Therefore, the proposed HVAC system would not result in a significant adverse air quality impact.

Air Toxics Analysis

The analysis of the potential impacts of the air toxic emissions from existing nearby industrial facilities indicates that the proposed sensitive land uses associated with the Proposed Actions would not experience a significant adverse air quality impact.

GREENHOUSE GAS EMISSIONS

Overall, the site selection, the dense and mixed-use design, the commitment to seek LEED Silver certification for all buildings and achieve a significant reduction in energy use, and other measures incorporated in the Proposed Actions, would result in lower GHG emissions than would otherwise be achieved by similar residential and commercial uses, and thus would advance New York City's GHG reduction goals stated in PlaNYC.

The annual GHG emissions from the uses at the Development Site are predicted to be approximately 102,026 metric tons of carbon dioxide equivalent (MT CO₂e), while the GHG emissions from the uses at the Additional Housing Sites are predicted to be approximately 4,364 MT CO₂e. The total GHG emissions associated with the Proposed Actions would be approximately 106,390 metric tons of CO₂e per year. This would not necessarily represent a net increment in GHG emissions, since similar GHG emissions would occur elsewhere if residents and associated uses were to be constructed elsewhere, and could be higher if constructed as lower density residential, further from employment and commercial uses, with less immediate access to transit service.

W. NOISE

The Proposed Actions would not result in significant adverse exterior noise impacts from increased traffic, proposed playgrounds, or building mechanical equipment. However, without noise attenuation, interior noise levels in the proposed buildings would be above CEQR significant impact criteria and New York City Noise Code limits. As part of the Proposed Actions, however, the proposed buildings would include noise attenuation measures as part of the building design and would meet interior noise standards. Therefore, no significant adverse noise impacts or violations of New York City Noise Code limits would occur as a result of the Proposed Actions.

For the Development Site, projected noise levels in the Future with the Proposed Actions would be the greatest along Twelfth and Eleventh Avenues, with lower levels along West 33rd and West 30th Streets. Window wall building attenuation of 40 decibels would be required along building façades on the Development Site facing Eleventh and Twelfth Avenues, with lower attenuation requirements on West 30th and West 33rd Streets and on the interior façades. These measures would be included in the Restrictive Declaration for the Development Site. For the Additional Housing Sites, various façades would require between 25- and 35-decibel window wall building attenuation; which would be included in a MOU between DCP, HPD, and DEP.

In addition, noise levels within the new open space areas on the Development Site that would be created by the Proposed Actions would be above the *CEQR Technical Manual* noise exposure guideline of 55 dBA L₁₀₍₁₎ for outdoor areas requiring serenity and quiet. Although noise levels in the new open space areas would be above the CEQR guideline, they would be comparable to

noise levels in other open space areas and parks located in Midtown Manhattan, including Hudson River Park, Riverside Park, Central Park, and Bryant Park, and would not result in a significant adverse noise impact.

X. CONSTRUCTION

The potential environmental effects resulting from construction of the Proposed Actions have been analyzed based on a detailed assessment of likely construction activities throughout the construction period. Key findings regarding air quality, noise, vibration and historic resources, and natural resources are summarized below. The construction impact analyses determined that the Proposed Actions would not have a significant adverse impact on land use, neighborhood character, socioeconomic conditions, community facilities, open space, infrastructure, and hazardous materials.

AIR QUALITY

Potential air emissions from construction activity, both on-site from construction machinery and activity, and mobile sources from material delivery and disposal, were estimated, and the maximum project increments (on-site plus off-site) and total concentrations (maximum project increments plus background values) for each pollutant of concern were calculated. Following the DEP interim guidance, the maximum PM_{2.5} project increments were compared to the CEQR Significant Threshold Values (STV) for PM_{2.5}. It was determined that air emissions for CO, NO₂ and PM₁₀ due to construction activity associated with the Proposed Actions would not cause the pollution concentrations to exceed the National Ambient Air Quality Standards (NAAQS) and would not have significant air quality impacts. It was also determined that PM_{2.5} impacts from the on-site construction activities and off-site mobile sources associated with construction would be below the CEQR STVs.

The emission contribution from other projects in the area of the Development Site was considered for a cumulative impact analysis. Cumulative increments, when added to background levels for nitrogen dioxide (NO₂) and PM₁₀, indicated that total concentrations for the Proposed Actions would not exceed the NAAQS at any of the analysis sites considered.

Emissions from construction at the Additional Housing Sites would be of short duration and would not produce significant adverse air quality impacts.

NOISE, VIBRATION, AND HISTORIC RESOURCES

DEVELOPMENT SITE

Given the scope and duration of construction activities for the Development Site, a quantified construction noise and vibration analysis was performed. The purpose of this analysis was to determine if any significant adverse noise or vibration impacts would occur during construction.

Construction-related noise impacts can result from noise generated on the Development Site by construction equipment operation, and from construction vehicles and delivery vehicles traveling to and from the site. Results of an evaluation of potential worst-case construction noise conditions for the 102-month construction period indicate that no significant adverse noise impacts would occur at any analysis location. This is because predicted noise levels would be below acceptable CEQR impact criteria. Construction operations and noise levels are also

expected to comply with the New York City Construction Noise Regulations with respect to equipment noise emission levels.

A construction vibration assessment was performed for the existing elevated High Line historic rail structure. It was determined that the use of certain high-vibration-producing equipment within one foot of the High Line should be limited in order to minimize the potential of damage to the structure. As discussed in Chapter 8, "Historic Resources," and summarized above, a LOR will be executed among the co-lead agencies, OPRHP, and the Developer. The CEPP would meet the guidelines set forth in TPPN #10/88, concerning procedures for the avoidance of damage to adjacent historic structures from nearby construction, the *Protection Programs for Landmarked Buildings* guidance document of the LPC, and the National Park Service's *Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction*. The CEPP would specify measures and construction procedures, such as vibration limits and monitoring that would be implemented during construction of the Proposed Actions. With these measures, there would not be a significant adverse impact to the High Line due to construction of the Proposed Actions.

ADDITIONAL HOUSING SITES

Construction noise associated with the Additional Housing Sites is expected to be temporary, typical of other similar construction projects in the city. While there may be short periods of high noise levels, no significant adverse impacts would be expected based on the limited duration and intensity of construction-related activities.

Historical and archaeological resources in the vicinity of the Proposed Actions include three tenement buildings located across West 54th Street from the Ninth Avenue Site at 357 West 54th Street and 824-826 Ninth Avenue. Vibration levels may be perceptible in the vicinity of the Additional Housing Sites for limited periods of time, but because of their minor intensity and limited duration, these levels would not be considered a significant adverse impact. With the use of proper construction techniques and standard protective measures, including conditions set forth in the CEPP, no significant adverse vibration impacts would and, specifically, no significant adverse impacts would occur at these historic resources.

TRAFFIC AND PARKING

IDENTIFICATION OF IMPACTS

Construction of the Development Site from 2011 to 2019 would result in local traffic disruptions and generate construction worker and truck traffic, and some significant adverse construction-related traffic impacts are anticipated as construction activities peak in late 2016.

Within the study area, 25 critical intersections were selected for detailed traffic impact analysis. These intersections were analyzed for weekday AM, weekday midday, and weekday PM conditions. Under 2016 conditions with construction, significant adverse impacts would occur at 10 locations in the weekday AM; 8 intersections in the weekday midday, and 11 intersections in the weekday PM. In terms of intersection movements, 71 movements were assessed during the weekday AM; and 70 were evaluated under midday and evening conditions. As a result of construction activities under 2016 conditions with construction, 15, 11, and 17 intersection movements would be significantly impacted during the AM, midday, and PM peak hours, respectively.

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Analysis indicated that as a result of construction of the Proposed Actions, the weekday midday off-street parking shortfall in the parking study area would increase from 1,982 to 2,332 spaces and the overall parking utilization would increase from 134 to 140 percent.

MITIGATION

Of the more than 70 intersection movements evaluated for the 2016 peak construction year 2016, six intersection movements would have unmitigated significant adverse impacts during the weekday AM peak hour, six intersection movements would have unmitigated significant adverse impacts during the weekday midday peak hours, and seven intersection movements would have unmitigated significant adverse impacts during the weekday PM peak hour.

TRANSIT AND PEDESTRIANS

Construction workers would commute to work either by walking, driving alone or carpooling, or using public transportation. Because typical construction hours throughout New York City begin at 7:00 AM it is expected that an eight-hour shift would begin at 7:00 AM and end at 3:30 PM. For construction of those portions of the Proposed Actions that would employ two shifts, the first shift would begin at 7:00 AM and end at 3:30 PM and the second would begin at 2:30 PM and end at 11:00 PM. In either case—one eight-hour shift or two eight-hour shifts per day—construction workers' commutes would not coincide with the AM, midday, or PM peak hour for public transportation or the AM, midday, or PM peak hour for vehicular traffic. There would not be significant adverse impacts to pedestrian circulation due to construction of the Proposed Actions.

NATURAL RESOURCES

The western edge of the Development Site is located approximately 250 feet from the Hudson River. Therefore, uncontrolled construction activities could allow sediment to migrate from the construction site to the river. Provisions of the CEPP would specify measures to be implemented in order to prevent sediments from exiting the Development Site as well as each Additional Housing Site.

Dewatering activities would likely be necessary at the Development Site and the Additional Housing Sites. A dewatering plan would be developed as part of the Construction Environmental Protection Plan to address procedures for handling groundwater encountered during construction of the Proposed Actions. A description of the methods used to collect, store, and dispose of water collected during dewatering activities would be provided. Additionally, the dewatering plan would identify the necessary permits required from either DEP or DEC to discharge the water into the city's sewers or surface waters, respectively. (Permit requirements are discussed below.)

The Development Site and Additional Housing Sites are situated in dense urban environs and maintain no significant biotic habitat. No state- or federal-listed Threatened or Endangered Species, nor habitat for these species, are known to inhabit the Development Site, the Additional Housing Sites or the areas surrounding these sites, and no wetlands are located on or surrounding these sites. Overall, there would not be a significant adverse impact on Natural Resources as a result of construction activities associated with the Proposed Actions.

Y. PUBLIC HEALTH

This analysis finds that the Proposed Actions would not result in any significant adverse public health impacts.

Z. ENVIRONMENTAL JUSTICE

An environmental justice analysis has been prepared under the standards set forth in *CP-29 Environmental Justice and Permitting* (the Policy), issued by DEC on March 19, 2003, to identify and address any potential adverse impacts on minority or low-income populations that could result from the Proposed Actions.

The Proposed Actions would not result in disproportionate significant adverse impacts on environmental justice populations. However, certain portions of the study area have been determined to be a potential environmental justice area, because of the presence of low-income and minority populations higher than the thresholds provided in DEC's Policy. The Proposed Actions would mitigate significant adverse impacts to the extent practicable. The Proposed Actions would be expected to have significant adverse impacts that cannot be fully mitigated in the following areas: child care, open space, shadows, traffic, transit, pedestrians, and construction-related traffic. Many impacts may not fall within a potential environmental justice area. In addition, these impacts would affect environmental justice populations as well as non-environmental justice populations.

In addition to the significant adverse environmental impacts discussed above, the Proposed Actions would also result in substantial benefits for residents and workers in the environmental justice study area. Among other benefits, these would include the addition of open space and a substantial number of units of affordable housing.

Overall, based on the analyses in this chapter, the Proposed Actions would not result in disproportionate significant adverse impacts on environmental justice populations.

AA. ALTERNATIVES

In accordance with SEQRA and CEQR, the Alternatives chapter presents and analyzes alternatives to the Proposed Actions. Alternatives selected for consideration in an EIS are generally those which are feasible and have the potential to reduce, eliminate, or avoid adverse impacts of a proposed action while meeting some or all of the goals and objectives of the action. In addition to a comparative impact analysis, the alternatives in this chapter are assessed to determine to what extent they would meet the goals and objectives of the Proposed Actions.

The chapter considers the following four alternatives to the Proposed Actions:

- A No Action Alternative, which assumes that the Proposed Actions are not approved and the project sites remain in their current uses;
- A No Unmitigated Significant Adverse Impact Alternative, which considers development that would not result in any identified significant, unmitigated adverse impacts; and
- A Reduced Density Alternative, which considers a smaller project on the Development Site that avoids some or all of the significant adverse impacts identified in the EIS analyses;
- A Tri-Generation Energy Supply Alternative to improve energy efficiency and reliability while reducing greenhouse gas emissions from the Development Site Project.

Neither the No Action Alternative nor the No Unmitigated Significant Adverse Impact Alternative would meet the goals and objectives of the Proposed Actions. Moreover, the latter alternative is not feasible in view of the substantial initial costs required to construct a platform over the operating LIRR rail yard on the Development Site. The Reduced Density Alternative, even if feasible, would result in significant adverse environmental impacts only slightly less than those of the Proposed Actions while (1) failing to realize principal project goals of maximizing revenue for MTA's capital plan and (2) reducing the number of affordable housing units constructed on the Development Site. The Tri-Generation Energy Supply Alternative, while requiring somewhat greater initial investment, would meet the goals and objectives of the Proposed Actions and offer the opportunity to achieve modest increases in energy efficiency and reduced GHG emissions.

For each alternative, the principal conclusions of the analysis are as follows:

NO ACTION ALTERNATIVE

Consideration of the No Action Alternative is mandated by both SEQRA and CEQR, and is intended to provide the co-lead and involved agencies with an assessment of the consequences of not selecting the Proposed Actions. The No Action Alternative assumes that the Proposed Actions—including disposition of the Development Site by MTA and TBTA, disposition by the City of the Additional Housing Sites, zoning map and text amendments, and site selection for the public school—would not be implemented. Under the No Action Alternative, no material changes would occur on the Development Site or at the Additional Housing Sites. Instead, it is assumed that the Development Site and the Additional Housing Sites would remain in their current states.

With no new buildings on the project sites and no new residents or workers, none of the significant adverse impacts anticipated for the Proposed Actions would occur in the No Action Alternative. At the same time, however, the No Action Alternative would not meet the goals and objectives of the Proposed Actions. Specifically, the No Action Alternative would not provide additional revenues for MTA's transportation improvements, nor would it encourage the development of new residential, commercial, public school, and open space uses within a largely underutilized area of Far West Midtown, nor would it enhance the vitality of the Hudson Yards area, build the City's tax base, or create a new 24-hour neighborhood that complements the adjacent areas of Midtown and Chelsea and the emerging development in West Chelsea and the Hudson Yards area. The No Action Alternative would not provide new publicly accessible open space, nor would it provide a substantial number of new permanently affordable housing units.

NO UNMITIGATED SIGNIFICANT ADVERSE IMPACT ALTERNATIVE

To eliminate all unmitigated significant adverse impacts, the Proposed Actions would have to be reduced in size or modified to a point where they would not be feasible and could not realize the principal goals of the Proposed Actions. This analysis finds that:

- To eliminate the Proposed Actions' significant adverse impact on child care capacity by reducing the number of children at the project sites who would be eligible for publicly funded child care, the Proposed Actions would have to be reduced to only 104 apartments (up to an approximately 85 percent reduction) affordable to low- to moderate-income households at the project sites. This potential alternative would not meet the Proposed Actions' goal of maximizing affordable housing opportunities.

- To eliminate the Proposed Actions' significant adverse impacts on total and active open space ratios, the project would have to be reduced to a maximum of 2,552 residential units (a 56 percent reduction), or would have to include an additional 6.2 acres of open space—for a total of 11.65 acres on the 13-acre Development Site or in the surrounding area. The inability to locate such acreage on-site or to find suitable locations nearby makes this potential alternative infeasible.
- To eliminate the Proposed Actions' significant adverse shadow impact on the planned Eastern Rail Yard open space, the three residential buildings along the midblock of Eleventh Avenue and at the southeast corner of the Development Site (WR-1, WR-2, and WR-3) would have to be reduced in height by 58 to 75 percent, which would require a substantial reduction in bulk over the entire site. Such reduction in bulk would negatively affect the overall project viability and such a redistribution of bulk from this corner to other buildings on the site, which would not be consistent with the design intent for the Development Site. To eliminate the significant adverse shadow impact on the planned open space adjacent to the Tenth Avenue Site, the new building on the site could not exceed 40 feet in height, providing little or no realistic development opportunity and not meeting the goal of maximizing new permanently affordable housing at that site.
- Because of existing and congestion at a number of intersections and the anticipated congestion in the Future without the Proposed Actions, even a minimal increase in traffic would result in unmitigated impacts at some locations and, therefore, any substantial development on the Development Site would result in unmitigated significant adverse traffic impacts.

REDUCED DENSITY ALTERNATIVE

The Reduced Density Alternative assumes the same mix of uses as the Proposed Actions, but with a lesser amount of total development (an 8.0 FAR, rather than 10.0 FAR under the Proposed Actions). On the Development Site, the Reduced Density Alternative would include the same overall site plan layout, including location of buildings, open space, and internal roadways, as those currently contemplated for the Proposed Actions. Like the Proposed Actions, the Reduced Density Alternative would provide residential, commercial (retail and office or hotel space), a public school, publicly accessible open space, and enclosed accessory parking on the Development Site. The Additional Housing Sites would have the same development program as with the Proposed Actions. Overall, the Reduced Density Alternative would provide approximately 20 percent less total development on the Development Site than with the Proposed Actions, with approximately 5.0 million to 5.1 million gsf of development compared to between 6.2 million and 6.4 million gsf of development for the Proposed Actions. Building heights would generally range from approximately 350 to 750 feet compared to building heights ranging from 350 to 950 feet under the Proposed Actions.

The Reduced Density Alternative would result in significant adverse environmental impacts similar to those of the Proposed Actions while failing to realize a principal project goal—to maximize revenue for MTA's capital plan—and reducing the number of affordable housing units constructed on the Development Site. The Reduced Density Alternative would still require the extraordinary cost of constructing a platform over the operating LIRR rail yard in order to erect any commercial and residential buildings and open space over the rail yard. The cost of the platform and other required infrastructure would have to be amortized by a smaller number of residential units and reduced commercial space, thereby reducing the monetary value of the

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Development Site Project and making it unlikely to realize all of the goals and objectives of the Proposed Actions as set forth in Chapter 1, “Project Description.” Specifically, it is highly unlikely that the Reduced Density Alternative would be able to contribute as substantially as the Proposed Actions to the MTA’s capital budget for critical transportation improvements. The Reduced Density Alternative would also fail to provide the same number of residential units—particularly affordable units—as the Proposed Actions; nor would it provide the same level of economic development to the City. Given the fixed infrastructure costs at the Development Site, the viability of constructing a reduced density development with the features of the Proposed Actions is questionable.

In areas where the Proposed Actions are anticipated to result in significant adverse impacts, the Reduced Density Alternative would not eliminate those impacts. Like the Proposed Actions, the Reduced Density Alternative would result in significant adverse impacts related to publicly funded child care space, total and active open space utilization, and shadow impacts on the planned Eastern Rail Yard open space and the open space planned adjacent to the Tenth Avenue Site. The Reduced Density Alternative would, like the Proposed Actions, also result in significant adverse traffic, transit, and pedestrian impacts. The total number of intersections with significant adverse traffic impacts under the Reduced Density Alternative would be essentially the same as the Proposed Actions, although more intersection movements would be unmitigated with the Proposed Actions. The Reduced Density Alternative would reduce the number of unmitigated significant adverse pedestrian impacts in comparison with the Proposed Actions, but significant adverse impacts would remain that could not be mitigated. Like the Proposed Actions, the Reduced Density Alternative would result in incidents of high winds at the pedestrian level for certain locations and prevailing winds.

TRI-GENERATION ENERGY SUPPLY ALTERNATIVE

Under the Tri-Generation Energy Supply Alternative, on-site facilities to generate electricity, heat, and cooling would be constructed as part of the Development Site Project. All other aspects of the Proposed Actions would remain the same for this Alternative. The Tri-Generation Energy Supply Alternative is under consideration by the Developer as part of an overall effort to create a sustainable community, conserve energy and minimize GHG emissions. Tri-generation systems provide three key building requirements—electricity, heat, and cooling. With tri-generation, the thermal byproduct of electricity generation is captured and used to supply heat, hot water, and air conditioning needs on-site. The overall feasibility of the Tri-Generation Energy Supply Alternative was evaluated to further the goals of improved energy efficiency, energy reliability, and reducing the GHG emissions from the Development Site Project. With the same overall development program, the Tri-Generation Alternative would achieve the goals and objectives established for the project and offer the opportunity to achieve greater energy efficiency and reduced GHG emissions, although the energy efficiency benefits would not equal EPA benchmarks. The cost effectiveness and total financial feasibility of the alternative would also require further analysis by the Developer prior to implementation.

The differences between the Proposed Actions and the Tri-Generation Alternative include:

- Consideration of the Tri-Generation Alternative of on-site energy capacity is specifically responsive to public policies in PlaNYC.
- While the Tri-Generation Energy Supply Alternative would meet the same annual energy demand for the Development Site Project as the Proposed Actions, the alternative’s on-site production of energy would be more efficient than the combined regional electricity

Exhibit B
Western Rail Yard

**Restrictive Declaration for the Western Rail Yard
to be recorded in accordance with Section 93-06
of the NYC Zoning Resolution**

**RESTRICTIVE DECLARATION FOR THE
WESTERN RAILYARD
TO BE RECORDED IN ACCORDANCE WITH
SECTION 93-06 OF THE NYC ZONING RESOLUTION**

THIS DECLARATION, made as of the ___ day of ___, 200__ by RG WRY LLC, having an office located c/o The Related Companies, L.P., 60 Columbus Circle, New York, N.Y. 10023 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS:

- A. Declarant is, as of the date hereof, the lessee of certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Western Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of ___, 20__ , made by Metropolitan Transportation Authority of the State of New York ("MTA"), as declarant, and recorded at Reel ___, Page ___ (the "Declaration of Easements"), and designated for real property tax purposes as Lot(s) ___ and ___ of Tax Block ___, and as more particularly described on Exhibit A to this Declaration (the "Subject Property"); and
- B. The MTA is, as of the date hereof, the fee owner of the Subject Property; and
- C. Declarant has made applications to the City Planning Commission of the City of New York (the "CPC"): (a) under Application Number C 090433 ZMM to amend the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") to establish a C6-4 zoning district for the Subject Property; (b) under Application Number N 090434 ZRM to amend the Zoning Resolution to establish regulations for a new Subdistrict F within the Special Hudson Yards District applicable to the Subject Property; and (c) under Application Numbers C 090435 ZSM and C 090436 ZSM for special permits pursuant to ZR 93-052 as amended and 13-561 for attended accessory parking garages to be located on the Subject Property (collectively, the "Applications") in order to facilitate a mixed-use development thereon (the "Western Rail Yard Project"); and
- D. The CPC adopted resolutions approving the Applications, with modifications, on October 19, 2009, under Calendar Numbers 14, 15, 16 and 17 (the "CPC Actions"); and
- E. The New York City Council adopted resolutions approving the CPC Actions, [with further modifications], on December ___, 2009, under Calendar Numbers _____ (the "Approvals"); and

- F. CPC and MTA acted as co-lead agencies and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and
- G. CPC and MTA prepared a Final Environmental Impact Statement for the Western Rail Yard Project (the “FEIS”) and issued a Notice of Completion of FEIS on October 19, 2009; and
- H. The analyses and conclusions set forth in the FEIS were based upon the incorporation into the Western Rail Yard Project of certain project components related to the environment (the “Project Components Related to the Environment” or “PCREs”), including measures relating to construction on the Subject Property and the design and operation of buildings, open space and other features of development thereon; and
- I. The FEIS identified certain significant adverse impacts and proposed mitigation measures with respect thereto (the “Mitigation Measures”); and
- J. CPC issued findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS on October 19, 2009 on the basis that the PCREs and the Mitigation Measures would be incorporated as conditions to the decision by means of a declaration of restrictions, and a form of declaration of restrictions containing provisions with respect to the PCREs and the Mitigation Measures was referenced in and made an exhibit to such findings; and
- K. MTA issued findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS on ____, 20__ ; and
- L. Section 93-06 of the Zoning Resolution provides that no building permit shall be issued for any development or enlargement within Subdistrict F of the Special Hudson Yards District unless a declaration of restrictions in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS (as such declaration may be revised prior to filing and recordation in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation) shall have been filed and duly recorded in the Borough Office of the City Register of the City of New York and indexed against all property in Subdistrict F of the Special Hudson Yards District proposed for development or enlargement pursuant to Article IX Chapter 3 of the Zoning Resolution; and
- M. The New York City Department of City Planning (the “DCP”) has determined that this Declaration is in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS[, and that all revisions have been made in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation]; and
- N. _____ Title Insurance Company has certified in a certification attached to this Declaration as Exhibit B that, as of ____, 20__, Declarant, MTA and [_____] are the

sole “Parties-in-Interest” (as defined in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution), in the Subject Property; and

- O. The MTA has agreed to permit this Declaration to be recorded by Declarant against the Subject Property in the form of the consent attached as Exhibit C-1 to this Declaration, with the intention of binding the interest of Declarant and/or a Successor Declarant as lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or as the subsequent owner in fee of all or any portion of the Subject Property, and upon the provisions of Sections 6.04 and 6.08 with respect to MTA’s interest in the Subject Property; and
- P. [All mortgagees and other parties not executing] have waived their right to execute this Declaration and have subordinated their interest in the Subject Property to this Declaration and all of the documents appended as Exhibits to this Declaration or to be entered into and recorded as prescribed by this Declaration, by execution and delivery of a document in the form of the Waiver attached to this Declaration as Exhibit C-2; and
- Q. Declarant, to insure that development of the Subject Property is consistent with the analysis in the FEIS, and that the development of the Subject Property incorporates the PCREs and the Mitigation Measures to be undertaken by Declarant at various times, and that the development of the Subject Property incorporates certain other features relevant to the Approvals, 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
- R. Declarant represents and warrants that, except with respect to mortgages or other instruments specified herein, the holders of which have given their consent or waived their right to object hereto, no restriction of record on the development or use of the Subject Property, nor any present or any presently existing estate or interest in the Subject Property, nor any lien, obligation, covenant, easement, limitation or encumbrance of any kind precludes, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration or the development of the Subject Property in accordance herewith.

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

ARTICLE I DEFINITIONS

1.01 Definitions.

All terms as used in this Declaration shall have the meaning set forth herein and, in addition, the following terms shall mean as follows:

- (a) “**AASHTO**” shall mean the American Association of State Highway and Transportation Officials.
- (b) “**ACS**” shall mean the New York City Administration for Children Services, or any successor to its jurisdiction.
- (c) “**Allee**” shall have the meaning set forth in Section 93-761 of the Zoning Resolution.
- (d) “**Alteration Permit**” shall mean a construction permit issued by DOB authorizing major or minor alterations (including, but not limited to, ‘ALT1’, ‘ALT2’ and ‘ALT3’ permits) to an existing building.
- (e) “**Applications**” shall have the meaning given in the Recitals to this Declaration.
- (f) “**Approval Date**” shall mean the date that the Applications are approved by the New York City Council.
- (g) “**Building Permit**” shall mean any of an Excavation Permit, Demolition Permit, Foundation Permit, or New Building Permit.
- (h) “**Caemmerer Rail Yard**” shall mean the John D. Caemmerer West Side Yard operated by the LIRR on property other than the Subject Property within Subdistrict F of the Special Hudson Yards District.
- (i) “**CEQR**” shall mean New York City Environmental Quality Review, pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated at 62 RCNY Section 5-01 et. seq.
- (j) “**Chair**” shall mean the Chair of the New York City Planning Commission, or any successor to his or her jurisdiction.
- (k) “**City**” shall mean the City of New York.
- (l) “**Connector**” shall have the meaning set forth in Section 93-764 of the Zoning Resolution.
- (m) “**Construction Commencement**” shall mean the issuance of the first Building Permit by DOB to Declarant for work on the Subject Property, whether in the form of an Excavation Permit, Foundation Permit, Demolition Permit, or New Building Permit.
- (n) “**CPC**” shall mean the New York City Planning Commission, or any successor to its jurisdiction.

- (o) “**DCP**” shall mean the New York City Department of City Planning, or any successor to its jurisdiction.
- (p) “**DEC**” shall mean the New York State Department of Environmental Conservation, or any successor to its jurisdiction.
- (q) “**Declarant**” shall have the meaning given in the Recitals of this Declaration; and shall include any Successor Declarant as defined in Section 3.07(a) of this Declaration.
- (r) “**Declaration**” shall mean this Declaration, as the same may be amended or modified from time to time in accordance with its provisions.
- (s) “**Demolition Permit**” shall mean a permit issued by DOB 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.
- (t) “**DEP**” shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.
- (u) “**DOB**” shall mean the New York City Department of Buildings, or any successor to its jurisdiction.
- (v) “**DOB Commissioner**” shall mean the Commissioner of the New York City Department of Buildings, or any successor to his or her jurisdiction.
- (w) “**DOT**” shall mean the New York City Department of Transportation, or any successor to its jurisdiction.
- (x) “**DPR**” shall mean the New York City Department of Parks and Recreation, or any successor to its jurisdiction.
- (y) “**EDC**” shall mean the New York City Economic Development Corporation, or any successor to its functions and responsibilities.
- (z) “**Effective Date**” shall mean the date that MTA delivers to Declarant leasehold title to and possession of the entirety of the Subject Property sufficient to allow Declarant to undertake the development of the Subject Property in the manner contemplated by this Declaration.
- (aa) “**Excavation Permit**” shall mean any permit issued by DOB authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property.
- (bb) “**FEIS**” shall have the meaning given in the Recitals to this Declaration.

- (cc) “**Foundation Permit**” shall mean any permit issued by DOB authorizing foundation work at the Subject Property.
- (dd) “**Garage**” shall mean the attended accessory parking garages authorized pursuant to ULURP Nos. C 090435 ZSM and C 090436 ZSM.
- (ee) “**GHG Credit Category**” shall have the meaning given in Exhibit D.
- (ff) “**High Line**” shall have the meaning set forth in Section 93-01 of the Zoning Resolution.
- (gg) “**HPD**” shall mean the New York City Department of Housing Preservation and Development, or any successor to its jurisdiction.
- (hh) “**LEED**” shall mean the Leadership in Energy and Environmental Design certification and rating system developed by the USGBC, or a successor rating or certification system thereto.
- (ii) “**LEED Certification**” shall mean ‘Certified’ or higher level of certification under the latest version of the USGBC LEED rating system that is in effect eighteen (18) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential use, shall refer to the LEED rating system for ‘New Construction’; and (ii) for a building developed primarily for office use, shall refer to the LEED rating system for ‘Core and Shell’.
- (jj) “**LEED Construction Review**” shall mean review of a ‘Construction Application’ submitted pursuant to the LEED ‘Split Design and Construction Review’ path.
- (kk) “**LEED Design Review**” shall mean review of a ‘Design Application’ submitted pursuant to the ‘Split Design and Construction Review’ path.
- (ll) “**LEED Silver Certification**” shall mean ‘Silver’ or higher level of certification under the latest version of the USGBC LEED rating system that is in effect eighteen (18) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential building use, shall refer to the LEED rating system for ‘New Construction’; and (ii) for a commercial building developed primarily for office use, shall refer to the LEED rating system for ‘Core and Shell’.
- (mm) “**LIRR**” shall mean the Long Island Rail Road Company and any successor to its jurisdiction.
- (nn) “**LPC**” shall mean the New York City Landmarks Preservation Commission, and any successor to its jurisdiction.

- (oo) “**Midblock Connection**” shall have the meaning set forth in Section 93-755 of the Zoning Resolution.
- (pp) “**MTA**” shall mean the Metropolitan Transportation Authority of the State of New York and its subsidiaries and affiliates (including LIRR), and any successor to its jurisdiction.
- (qq) “**New Building**” shall mean a new residential, mixed use, or commercial building on the Subject Property
- (rr) “**New Building Permit**” shall mean, with respect to any New Building, a work permit issued by DOB under a New Building application authorizing construction of the New Building.
- (ss) “**Northeast Plaza**” shall have the meaning set forth in Section 93-754 of the Zoning Resolution.
- (tt) “**Northern Garage**” shall mean the Garage described in Application No. C090435 ZSM.
- (uu) “**NYPD**” shall mean the New York City Police Department, and any successor to its jurisdiction.
- (vv) “**Open Space Maintenance and Repair Requirements**” shall have the meaning set forth in Section 2.02(g) hereof.
- (ww) “**OPRHP**” shall mean the New York State Office of Parks, Recreation and Historic Preservation, and any successor to its jurisdiction.
- (xx) “**Permanent Certificate of Occupancy**” or “**PCO**” shall mean a permanent certificate of occupancy issued by DOB for any new Building under Section 605 of the New York City Charter or any successor provision thereto.
- (yy) “**Platform**” shall mean the platform, together with the structural elements supporting the platform to be constructed within the Subject Property over the Caemmerer Rail Yard.
- (zz) “**Project**” shall mean all or any portion of the future development of the Subject Property as a mixed-use development and publicly accessible open space in accordance with the Zoning Resolution
- (aaa) “**Project Component Related to the Environment**” or “**PCRE**” shall refer to any one or all of the project components related to the environment for construction, set forth in Section 3.01 hereof; project components related to the environment for design and operation of any New Building, set forth in Section 3.02 hereof; and project

components related to the environment related to sustainability, set forth in Section 3.03 hereof.

- (bbb) “**Public Access Areas**” shall have the meaning set forth in Section 93-56 of the Zoning Resolution.
- (ccc) “**Public Access Area Phase**” shall mean a phase for development of a Public Access Area approved pursuant to Section 93-78 of the Zoning Resolution.
- (ddd) “**Publicly Accessible Open Spaces**” shall have the meaning set forth in Section 93-56 of the Zoning Resolution.
- (eee) “**Public School**” shall mean a PS/IS school of approximately 120,000 gross square feet, to be operated by the New York City Department of Education, and having approximately 750 seats (assumed in the FEIS to be 420 elementary and 330 intermediate seats) proposed to be located on the Subject Property in accordance with Section 3.04(a) hereof.
- (fff) “**SCA**” shall mean the New York City School Construction Authority, or any successor to its jurisdiction.
- (ggg) “**SEQRA**” shall mean the State Environmental Quality Review Act, New York State Environmental Conservation Law Sections 8-0101 et. seq. and the regulations promulgated thereunder at 6 NYCRR Part 617.
- (hhh) “**Site**” shall mean any or all of Sites 1, 2, 3, 4, 5 and 6 as defined on Map 6, Subdistrict F Site Plan, of the Special Hudson Yards District.
- (iii) “**Site and Landscape Plan**” shall have the meaning set forth in 93-78 of the Zoning Resolution.
- (jjj) “**Subject Property**” shall have the meaning given in the Recitals to this Declaration.
- (kkk) “**Technical Memorandum**” shall mean: (i) the SEQRA/CEQR Technical Memorandum issued by CPC and MTA on October 19, 2009; and (ii) any Technical Memorandum approved pursuant to Section 3.04(a)(ii)(ee).
- (lll) “**Temporary Certificate of Occupancy**” or “**TCO**” shall mean a temporary certificate of occupancy issued by DOB under Section 605 of the New York City Charter.
- (mmm) “**Temporary Public Access Area Plan**” shall have the meaning set forth in Section 93-781 of the Zoning Resolution.

- (nnn) “**Tier 1**”, “**Tier 2**” and “**Tier 3**” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR §89.112(a) as of the date hereof.
- (ooo) “**Tier 4**” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR §1039.101 and §1039.102, as of the date hereof.
- (ppp) “**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 of which Declarant has given DCP notice; (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; and (xii) unusual delays in transportation, as determined by the Chair in accordance with Section 3.08(a) of this Declaration.
- (qqq) “**USGBC**” shall mean the U.S. Green Building Council, the Green Building Certification Institute, or any successor organization that administers the LEED certification and ratings system.
- (rrr) “**Water Credit Category**” shall have the meaning given in Exhibit D.

- (sss) “**West 30th Street Corridor**” shall have the meaning set forth in Section 93-763 of the Zoning Resolution.
- (ttt) “**West 31st Street Extension**” shall have the meaning set forth in Section 93-762 of the Zoning Resolution.
- (uuu) “**West 32nd Street Extension**” shall have the meaning set forth in Section 93-761 of the Zoning Resolution.
- (vvv) “**Zoning Resolution**” shall have the meaning given in the Recitals to this Declaration.

**ARTICLE II
DEVELOPMENT OF THE SUBJECT PROPERTY**

2.01 Affordable Housing.

- (a) No fewer than twenty percent (20%) of all residential rental units developed on the Subject Property shall be developed to be affordable to persons of low income pursuant to the “80/20” or comparable program, subject to: (i) the allocation of sufficient tax-exempt bond cap or other equivalent low-cost financing to Declarant for each building with residential rental housing as and when required; and (ii) the availability to Declarant of such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of “80/20” housing in the City of New York.
- (b) In the event that Declarant utilizes the floor area bonus available under Section 93-23 of the Zoning Resolution for the provision of permanent affordable housing (the “Affordable Housing Bonus”), Declarant covenants and agrees to maintain all affordable units required to generate the Affordable Housing Bonus as affordable units for so long as the bonus floor area is included within the Project. In the event that Declarant does not pursue the Affordable Housing Bonus, Declarant shall have no obligation to maintain any residential units as affordable following the expiration of the term of the 80/20 program except pursuant to a future agreement with the City acceptable in all respects to Declarant. As an alternative to the provision of permanently affordable multi-family rental residential housing pursuant to the provisions of Sections 93-233 and 93-234 of the Zoning Resolution, Declarant may qualify residential buildings on the Subject Property as “generating sites” pursuant to the provisions of Section 23-90 *et. seq.* of the Zoning Resolution.
- (c) Declarant shall seek and apply for the allocation of tax-exempt bond cap or other equivalent low-cost financing and such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of “80/20” or comparable housing in the City of New York for all rental housing that Declarant elects to develop or locate on the Subject Property. If Declarant is unable to obtain financing for the development of “80/20” housing for any residential rental units in any New Building, it

shall similarly seek financing for the development of “80/20” housing for each subsequent New Building containing rental housing units. Nothing in this Section 2.01 shall be construed as preventing or precluding Declarant, at its option, from developing any New Building with other than rental housing units.

- (d) In the event that any New Building includes rental residential housing without affordable units pursuant to Paragraph (a), Declarant shall prepare and submit a report to the Chair and to the Commissioner of HPD documenting the reasonable efforts made by Declarant to obtain financing for the development of “80/20” housing and shall set forth the reasons why such financing was not obtained, and DOB shall not issue, and Declarant shall not accept, a New Building Permit for the New Building until sixty (60) days following the date such report has been submitted to the Chair and to the Commissioner of HPD. Declarant shall meet with the Chair and the Commissioner of HPD within such sixty (60) day period at the request of either the Chair or the Commissioner of HPD to discuss the findings of the report.

2.02 Public Access Areas.

Declarant shall construct, develop and maintain the Public Access Areas in accordance with the following:

(a) Public Access Areas Construction Phasing and Easement.

(i) Subject to compliance with the provisions of Section 93-78 of the Zoning Resolution, Declarant may construct the Public Access Areas on the Subject Property in such sequence as Declarant shall determine.

(ii) Subject to clause (v) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 93-78(d) of the Zoning Resolution that a Public Access Area Phase 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 “Public Access Area Easement”) in perpetuity, for the benefit of the general public, encompassing the area of the Public Access Area Phase, unobstructed from the surface thereof to the sky, for the purposes of: (aa) in the case of the Publicly Accessible Open Spaces (1) passive and active recreational use by the general public, and (2) pedestrian access over and through the area of the Public Accessible Open Spaces to and from other developed portions of the Subject Property and City streets; (bb) in the case of the Midblock Connection, the West 30th Street Corridor, and the Connector (1) pedestrian access over and through the Midblock Connection, the West 30th Street Corridor, and the Connector, as the case may be, to and from other developed portions of the Subject Property and City streets, and (2) access for fire, police and other emergency vehicles over the Connector; and (cc) in the case of the West 31st Street Extension and the West 32nd Street Extension, (1) pedestrian access over and through sidewalks with respect to both the West 31st Street Extension and the West 32nd Street Extension and, in the case of the West 32nd Street Extension, the Allee, to and from other developed

portions of the Subject Property and City streets, and (2) general vehicular and emergency vehicle ingress and egress through and over the West 32nd Street Extension and the West 31st Street Extension, subject in each case to all provisions of this Declaration applicable to the use of Public Access Areas.

(iii) 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, at and after the time of vesting of the Public Access Area Easement in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Area Easement.

(iv) The Public Access Area Easement shall commence for the benefit of and shall vest in the City commensurate with and on the date of substantial completion of each Public Access Area Phase and shall encompass all of the Public Access Area included in such Public Access Area Phase and all Public Access Areas completed in an earlier Public Access Area Phase, subject to clause (v) hereof. Declarant waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of the Public Access Area Easement.

(v) Notwithstanding anything to the contrary in this Section 2.02(a), Declarant shall be entitled to and hereby reserves and retains the right to close to the public any portion of a Public Access Area Phase that has been built by Declarant to the extent and for the period of time that such closure is reasonably required to allow for the construction of a New Building in a safe, efficient, and reasonable manner, or to replace temporary features under a Temporary Public Access Area Plan certified pursuant to Section 93-782 of the Zoning Resolution with permanent features under the Site and Landscape Plan approved pursuant to Section 93-78 of the Zoning Resolution, or to build a subsequent Public Access Area Phase, and the easement granted pursuant to clause (ii) of this Section 2.02(a) is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the Public Access Area Phase not less than sixty (60) days prior to such closure, and shall provide the Chair with a description of the need, extent and estimated period of time of closure reasonably required pursuant to this clause.

(b) Hours of Access and Closure.

(i) Declarant covenants that the Public Access Areas shall remain open and accessible to the public pursuant to the Public Access Easement as follows: (aa) Publicly Accessible Open Spaces shall be open each day between the hours of 6:00AM to 1:00AM, provided that the Northeast Plaza shall be open each day between the hours of 7:00 AM and 10:00 PM from April 15 to October 31 and from 7:00 AM to 8:00 PM from November 1 to April 14 or as otherwise provided in the Zoning Resolution; and (bb) the West 32nd

Street Extension, the West 31st Street Extension and the West 30th Street Corridor shall be open and accessible to the public at all times

(ii) Notwithstanding clause (i) of this Section 2.02(b), Declarant may close the Public Access Areas or the most limited portions thereof as may be necessary in order: (aa) to accomplish maintenance, repairs or replacements; (bb) to make emergency repairs to mitigate hazardous site conditions; (cc) to address other emergency conditions; and (dd) to allow for public events approved by the Open Space Advisory Board under Section 2.02(e) hereof. In addition, (aa) Declarant shall be entitled to close all or any portion of the Public Access Areas not more than one (1) day of each calendar year in order to preserve Declarant's ownership interest therein, provided that any closure made for such purpose shall not occur on a weekend or public holiday; and (bb) Declarant shall be entitled to close the Central Open Space, exclusive of the playground thereon, not more than four (4) times in any calendar year (and not more than one (1) such event shall occur within in any two (2) month period) for purposes of hosting a private event for the owners or occupants of any of the New Buildings. Such private events shall not take place on a public holiday and shall be for no more than six (6) hours. Declarant shall notify DCP of any such event not less than thirty (30) days prior to closure. "Emergency conditions" for which the Public Access Areas may be closed pursuant to this clause shall be limited to actual or imminent emergency situations, including but not limited to: security alerts, riots, casualties, disasters, hazardous or dangerous conditions 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 notified the NYPD or DOB, as appropriate, and having followed NYPD's or DOB'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 shall close or permit to be closed only those portions of the Public Access Areas which must or should reasonably be closed to effect the maintenance, repairs or replacements to be undertaken, and will exercise due diligence in the performance of such repairs or mitigation in order that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly.

(c) Maintenance and Repair of Public Access Areas.

Declarant shall, at Declarant's sole cost and expense, operate, maintain and repair the Public Access Areas in a sound and good condition in accordance with the requirements set forth in the Maintenance and Repair of Public Access Areas schedule annexed to this Declaration as Exhibit E (the "Public Access Area Maintenance and Repair Requirements"). Notwithstanding the foregoing, at such time and in the event that Declarant establishes a Property Owners' Association in accordance with Section 2.02(g) hereof, the Property Owners' Association shall be responsible for the operation, maintenance, and repair of the Public Access Areas in accordance with the terms of this Restrictive Declaration.

(d) Operating Rules for Publicly Accessible Open Spaces.

The activities, uses and conduct permitted within Publicly Accessible Open Spaces 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 F. Declarant may modify the policies set forth in Exhibit F with the prior written approval of DCP, which shall not be unreasonably withheld, conditioned or delayed.

(e) Publicly Accessible Open Space Programming Management Advisory Board.

(i) Declarant shall have the right, at Declarant's election, to undertake and implement a program of public activities and events within the Publicly Accessible Open Spaces. Such public programming shall be limited to (aa) arts, music, theater or other cultural or similar events of a public character; and (bb) celebrations, participatory neighborhood events or similar activities of a public nature, all of which shall be open to the general public (the "Event Programming").

(ii) In order to develop any Event Programming, Declarant shall establish, at Declarant's sole cost and expense, a not-for-profit entity (the "Open Space Advisory Board" or "Board") to advise Declarant with regard to the possible programming of events in the Publicly Accessible Open Spaces. The Open Space Advisory Board shall be comprised of nine (9) members, five (5) of whom shall be appointed by the Declarant, and one (1) of whom shall be appointed by each of the Community Board, the local City Councilmember, the Manhattan Borough President, and the President of the Hudson Yards Development Corporation or any successor entity thereto.

(iii) The Open Space Advisory Board shall meet on a semi-annual basis, and at such additional times as may be requested in writing by a majority of the members of the Board to consider any additional proposals for Event Programming that may occur from time to time. Any Event (whether considered at a regularly scheduled semi-annual meeting or at a special meeting convened for such purpose) that would result in the use of any one or more of the Publicly Accessible Open Spaces for a period in excess of four (4) hours in any day, or an aggregate of more than eight (8) hours in any seven (7) day period, shall be subject to the approval of the Open Space Advisory Board. With the exception of the right to approve such Event Programming, the Open Space Advisory Board's role with respect to programming of Events shall be advisory.

(f) Property Owners' Association.

(i) In order to perform the Public Access Area Maintenance and Repair Requirements, Declarant may form a property-owners association under the New York State Not-For-Profit Corporation Law or as an unincorporated association, or a cooperative corporation under the New York State Business Corporation Law (any of the entities in any combination thereof hereinafter referred to separately or collectively as the "Property Owners' Association"). The decision of whether or not to create a Property Owners' Association shall be at the sole option of Declarant, provided that until such time as a

Property Owners' Association is formed complying with the terms of this Paragraph (f) and such Association assumes the obligations of the Declarant with respect to the Open Space Maintenance and Repair Requirements as set forth in clause (ii) of this Section, Declarant shall be responsible in all respects for the Public Access Area Maintenance and Repair Requirements.

(ii) If a Property Owners' Association is formed, it shall assume all of the obligations of the Declarant relating to the Public Access Area Maintenance and Repair Requirements with respect to all of the Public Access Areas, commencing at such time as each Public Access Area is determined to be substantially complete in accordance with the requirements of Section 93-78 of the Zoning Resolution, and shall be organized with all of the powers that may be necessary and proper to allow the Property Owners' Association to carry out the duties, obligations and requirements of this Declaration with respect to the Open Space Maintenance and Repair Requirements. Notwithstanding the foregoing, Declarant at its option may exclude the Public Access Area Maintenance and Repair Requirements as they apply to the Northeast Plaza from the area governed by the Property Owners' Association, in which event the Public Access Area Maintenance and Repair Requirements as they apply to the Northeast Plaza shall be the obligation of the fee owners of the New Building located on Site 2 or, if such New Building is subjected to a declaration of condominium, the board of managers of such condominium.

(iii) In connection with its obligations under this Section, the Property Owners' Association shall comply with the following requirements:

(aa) Members. The members of the Property Owners' Association (the "Association Members") shall consist of (1) the fee owners of any portion of the Subject Property other than any fee owner of the High Line and other than any fee owner of an individual condominium unit within any New Building that is the subject of a declaration of condominium, and (2) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

(bb) Powers. To the extent permitted by, law Declarant shall cause the Property Owners' Association to be established with the power, responsibility, and authority to:

(1) Undertake and be responsible for the Public Access Area Maintenance and Repair Requirements;

(2) Be subject to enforcement by DCP and the City in the event that it fails to comply with the Public Access Area Maintenance and Repair Requirements, including imposing liens therefor for the purposes of funding the Open Space Maintenance and Repair Requirements;

(3) In the event and at such time as Declarant existing as of the date of this Declaration no longer holds any interest in the Subject Property, allow for

the Property Owners' Association to undertake the design and construction of the Public Access Areas in accordance with Section 93-78 of the Zoning Resolution and Section 2.02(a) of this Declaration (the "Open Space Construction Obligation");

(4) Impose fees or assessments against the Association Members through a formula to be determined by Declarant in Declarant's discretion, for the purpose of collecting funds reasonably necessary and sufficient to fund the Public Access Area Maintenance and Repair Requirements, and to the extent that the Property Owners' Association has assumed the Open Space Construction Obligation, the Open Space Construction Obligation;

(5) Collect, receive, administer, protect, invest, and dispose of funds;

(6) Bring and defend actions under this Declaration, and negotiate and settle claims to recover fees or assessments owed to the Property Owners' Association either directly under the formation documents, or indirectly pursuant to any declaration of condominium imposed against any New Building or portion thereof;

(7) To the extent permitted by law, impose liens, fines or assessments against individual lot or unit owners for the purpose of collecting funds reasonably necessary and sufficient to fund the Public Access Area Maintenance and Repair Requirements and, to the extent that the Property Owners' Association has assumed the Open Space Construction Obligation, the Open Space Construction Obligation; and

(8) Exercise any and all such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Property Owners' Association in furtherance of the Property Owners' Association's purposes hereunder.

(cc) By-Laws. The by-laws and charter or certificate of incorporation of the Property Owners' Association shall be consistent in all respects with the terms of this Declaration and shall not allow for amendments or changes that are not consistent with this Declaration.

(iv) For purposes of this Declaration, any Property Owners' Association shall be deemed a successor and assign of Declarant and shall succeed to the obligations of Declarant under Paragraph (c) of this Section with respect to the portions of the Development Site governed by the Property Owners' Association.

(v) Declarant shall cause the Property Owners' Association to be authorized to act on behalf of each party holding legal title to an affected lot or unit so that it shall not be necessary for each lot- or unit-owner to execute or waive the right to execute an

application to modify, amend, cancel this Declaration in accordance with the provisions hereof or to approve the modified, amended or cancelled Declaration.

(g) High Line.

The provisions of Paragraphs (a), (b), (d) and (e) of this Section shall not apply to the High Line, and public access, hours of access and closure, operating rules, programming and other features relating to the operation of the High Line shall be as set forth in other agreements and understandings with respect thereto. Declarant's obligation to implement the provisions of Paragraph (c) of this Section with respect to the High Line, whether by Declarant or by means of a Property Owners' Association formed pursuant to Paragraph (f) of this Section, shall be only as set forth in such agreements and understandings as may be agreed to with respect maintenance and repair.

(h) High Line Access Points and Maintenance Facility.

(i) Declarant shall cooperate with the City with regard to the identification and provision of public pedestrian access to the High Line under a Site and Landscape Plan reviewed and approved pursuant to Section 93-78 of the Zoning Resolution. For that purpose, Declarant shall provide: (aa) a permanent public pedestrian access easement to and from the High Line consistent with Section 93-753 (General requirements for the Southwest Open Space) of the Zoning Resolution; and (bb) a permanent public pedestrian access easement to and from the High Line from the portion of Site 6 located at the corner of 11th Avenue and West 30th Street and/or the portion of the West 30th Street Corridor adjacent to the High Line at the corner of 11th Avenue and West 30th Street, consistent with Section 93-756(c) (Core Elements for the High Line) of the Zoning Resolution, if determined to be necessary by DCP and other relevant city agencies. Such pedestrian access easements shall accommodate one or more of a paved path, stairwell and elevator, as appropriate. The locations and dimensions of such easements shall be identified during preliminary planning for a Site and Landscape Plan for the High Line and easement agreements shall be delivered to the City upon approval thereof pursuant to Section 93-78 of the Zoning Resolution. Declarant acknowledges that the process of planning for and approval of a Site and Landscape Plan for the High Line pursuant to Section 93-78 may take place prior to Declarant's own design and construction of a New Building on Site 6 or development of a Site and Landscape Plan for the West 30th Street Corridor and that such shall not diminish Declarant's obligations under this clause. In the event that Declarant anticipates construction of a New Building on Site 6 and/or development of a Site and Landscape Plan for the West 30th Street Corridor prior to the City's own development of a Site and Landscape Plan for the High Line, it shall notify DCP at the earliest possible date and shall cooperate in good faith with DCP and other relevant city agencies to determine the location and dimensions of an access easement on Site 6 and/or the portion of the West 30th Street Corridor adjacent to the High Line at the corner of 11th Avenue and West 30th Street, if deemed necessary by DCP and such other agencies. As an alternative to provision of access to and from Site 6 and/or such portion of the West 30th Street Corridor, Declarant may propose to DCP and the other relevant city agencies

for their consideration an access point from the Eastern Rail Yard proximate to the corner of 11th Avenue and West 30th Street. If an access easement on Site 6 and/or such portion of the West 30th Street Corridor is identified pursuant to such discussions, Declarant shall design the New Building on Site 6 and/or the West 30th Street Corridor to accommodate such easement and shall deliver the easement agreement to the City prior to accepting a New Building Permit for the New Building on Site 6 and/or commencing work on the West 30th Street Corridor.

(ii) Declarant shall, consistent with Section 93-756 (c) (Core Elements for the High Line) of the Zoning Resolution, consider in good faith (without any obligation with respect thereto) a request by DCP or other relevant city agency to locate space on the Subject Property for support facilities for the operation, maintenance and public enjoyment of the High Line, as determined by DCP and other relevant city agencies during the planning process for the Site and Landscape Plan for the High Line.

2.03 Garage.

- (a) The Garage may be built by Declarant in one or more phases, at Declarant's sole option, provided that the occupancy of such shall be phased in accordance with this Section 2.03.
- (b) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the Garage or amended TCO or PCO for the Garage or any portion thereof allowing accessory parking spaces on the Subject Property: (i) equal to more than the sum of the following amounts: (aa) accessory parking to residential uses equal to a weighted average percentage, calculated by multiplying the number of market rate residential units located on the Subject Property from time to time by thirty percent (30%) and the number of affordable residential units located on the Subject Property from time to time by eight percent (8%); (bb) accessory parking to commercial office uses equal to the product of 0.16 and the amount of floor area used for commercial office space existing on the Subject Property from time to time divided by 1,000; and (cc) accessory parking to hotel uses equal to the lesser of (1) fifteen percent (15%) of all hotel rooms existing on the Subject Property from time to time, (2) 225, and (3) the product of 0.16 and the amount of floor area used for hotel space on the Subject Property from time to time divided by 1,000; (ii) which exceed in the aggregate 1,600 spaces accessory to residential and commercial uses; and (iii) which exceed 270 spaces for all parking accessory to commercial uses (office space and hotel) combined.
- (c) Notwithstanding the provisions of Paragraph (b) of this Section, and subject to the provisions of Paragraph (d) of this Section, at the time of issuance of a TCO for a New Building, Declarant may seek and accept an amended TCO or PCO for the Garage or any portion thereof for a number of parking spaces that is not more than twenty-five (25) parking spaces greater than the number of parking spaces otherwise allowed under Paragraph (b), subject to the further limitations that, at no time can the number of parking spaces accessory to commercial uses exceed 270, and that at the time of issuance of a TCO for the last New Building which may be constructed on the Subject Property

pursuant to the Zoning Resolution, Declarant shall not accept an amended TCO or PCO for the Garage or any portion thereof for a number of parking spaces any greater than is allowed under Paragraph (b).

- (d) The number of accessory parking spaces allowed under Paragraph (b) of this Section shall be reduced by the number of Car Sharing Spaces required pursuant to Section 3.03(e) of this Declaration.
- (e) All portions of the Garage located above the Platform shall be enclosed and shall either be located (i) behind occupiable commercial, community facility or residential floor area, or (ii) behind walls designed with materials and architectural or landscaping treatment to promote visual interest and be compatible with surrounding buildings. During design development of the Garage, and in any event no later than ninety (90) days prior to filing a Building Permit for the Garage or any portion thereof, Declarant shall provide DCP design drawings and other material demonstrating compliance with the provisions of this Section 2.03(e) and shall consider and respond to DCP comments and recommendations regarding its design approach with respect thereto.

2.04 Arts and Cultural Space.

- (a) The Project shall include a minimum of eight thousand (8,000) gross square feet of space to be made available for local cultural institutions or other local arts not-for-profits approved by Developer, in accordance with the terms of this Section 2.04 (the "Cultural Space Obligation"). At Declarant's sole option, the Cultural Space Obligation may be fulfilled in a single facility within the Project or in multiple facilities within the Project, provided that if Declarant elects to provide multiple facilities, each such facility shall have a minimum size of 1,200 gross square feet (each such facility, a "Cultural Space," and all of such facilities, the "Cultural Spaces").
- (b) The Cultural Spaces may be located in any New Building, at Developer's Option, and may be constructed in any phase of the Project as Developer sees fit, provided that any Cultural Space shall either be accessible from the main lobby of the building or directly from the outside at Developer's option.
- (c) The Cultural Spaces shall be leased to neighborhood theatrical, dance, arts or other similar local cultural organizations (each, a "Cultural Institution" and each such cultural use, a "Cultural Use") selected by Declarant in consultation with and based on the recommendation of the Community Board pursuant to a lease acceptable to Declarant and complying with the terms of Section 2.04(e) hereof (a "Cultural Facilities Lease"). Nothing herein shall be construed to require Declarant to accept a Cultural Institution as tenant if Declarant reasonably determines that such Cultural Institution does not have (or is reasonably likely in the future to not have) the financial wherewithal to fulfill, or is otherwise unable to comply (or is reasonably likely in the future to be unable to comply) with, any of its responsibilities under the Cultural Facilities Lease.

- (d) Declarant shall be responsible at Declarant's sole cost and expense for constructing the core and shell of the Cultural Spaces, including the distribution of reasonable base building systems to the Cultural Spaces. Declarant shall have no obligation to provide for the fit-out of any of the Cultural Spaces, including without limitation no obligation to provide: lighting; fixtures; distribution of utilities and mechanical systems within the Cultural Spaces; furniture; interior partitions; stage areas; or acoustical separation beyond that provided by the core and shell construction, all of which shall be the responsibility of the Cultural Institution, provided that at any Cultural Institution's request, Declarant agrees that it will enter into good faith discussions with such Cultural Institution to perform the fit-out work on the Cultural Institution's behalf and at the Cultural Institution's sole cost and expense.
- (e) Each Cultural Facilities Lease shall have a term of not less than ten (10) years or such longer term as may be agreed to by Declarant in its sole discretion and shall include a rent of one dollar (\$1.00) per year. Each Cultural Facilities Lease shall include terms reflecting the following:
 - (i) Providing that each Cultural Facilities Lease shall be triple net to the Cultural Institution, and shall require the Cultural Institution to pay for its proportional share of taxes, insurance, maintenance, and other operating costs applicable to the Subject Property;
 - (ii) Providing for review and approval rights by Declarant with respect to the design, construction, and construction logistics of the fit-out of the Cultural Spaces, and require that the Cultural Institution proceed with the fit-out in a timely, expeditious and first class manner without liability or loss to Developer;
 - (iii) Requiring Declarant approval of any assignment or sublease of any portion of the Cultural Spaces or other area covered by the Cultural Facilities Lease;
 - (iv) Requiring that the Cultural Institution maintain appropriate insurance covering the Cultural Space and the operations therein;
 - (v) Providing remedies for breach of the Cultural Facilities Lease by the Cultural Institution, including self-help remedies where appropriate; and
 - (vi) Providing other terms and conditions reasonably typical for a commercial tenant lease to allow for the fit-out, lease, and operation of the Cultural Space within a larger building.
- (f) Notwithstanding anything to the contrary contained herein, in the event that (i) the Community Board has failed to identify an acceptable Cultural Institution within two (2) years from the date that Developer notifies the Community Board in writing that a Cultural Space is expected to be completed in twelve (12) months time, (ii) an acceptable Cultural Institution has been identified by the Community Board but has failed to enter

into a Cultural Facilities Lease with Developer within twelve (12) months of the date such Cultural Institution was so identified, or (iii) a Cultural Facilities Lease has expired or otherwise been abandoned or terminated and the Community Board has failed to identify an acceptable alternate Cultural Institution within twelve (12) months of such termination or abandonment, then, in each case, Developer may, upon written notice to the Community Board, select a Cultural Institution to lease and occupy the Cultural Spaces without consultation with and solicitation of the recommendation of the Community Board pursuant to Paragraph (c) of this Section.

- (g) The Cultural Space Obligation is limited to reserving and making available eight thousand (8,000) gross square feet of space for a Cultural Use or Cultural Uses in accordance with Sections 2.04(a) to 2.04(e). Notwithstanding the foregoing, Declarant agrees to in good faith consider requests to provide an additional up to 8,000 gross square feet of space on the Subject Property for Cultural Uses acceptable to Declarant on such terms and conditions as may be agreed to by Declarant and such potential tenant.

ARTICLE III PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES

3.01 Project Components Related to the Environment for Construction.

Declarant shall implement and incorporate as part of its construction of New Buildings, as appropriate, the following PCREs:

(a) Construction Air Emissions Reduction Measures.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) related to the development of the Subject Property:

(aa) Non-road diesel vehicles and all equipment used in construction activities shall comply, at a minimum, with the United States Environmental Protection Agency (“EPA”) Tier 3 Non-road Diesel Engine Emission Standard, and, once Tier 4-compliant equipment is widely available, with the Tier 4 standard, and in all cases shall comply with the Tier 2 standard.

(bb) Gasoline-powered non-road engines used in construction activities shall meet the latest emissions standards for newly manufactured engines in effect at the time they are first rented, purchased or otherwise put into use for construction at the Subject Property.

(cc) All non-road, diesel-powered construction equipment with engine power output rating 50 horsepower or greater (except with respect to a diesel-powered non-road vehicle that is used to satisfy the requirements of a specific construction contract lasting fewer than twenty (20) calendar days) 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 verification programs.

(dd) All diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

(ee) Idling of all construction vehicles including non-road engines for longer than three minutes shall be prohibited on the Subject Property, and within 10 feet of the perimeter of the Subject Property, except for vehicles being used to operate a loading, unloading or processing device, or as required for engine maintenance and repair.

(ff) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of electric engines operating on grid power, and lighting devices and illuminated traffic control signals and signs operating on either grid power, on-site renewable, or solar power. Construction contracts shall require the use of electric engines where practicable. 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, tower cranes, personnel/material hoists, dewatering pumps, welders, saws, and small compressors. All forklifts (not including skylifts) shall be powered either by electricity from the grid or by compressed natural gas or liquid petroleum gas.

(gg) 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.

(hh) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in (cc) 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 40 CFR § 86.007–11).

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (a) as applicable with respect to such work.

(b) Fugitive Dust Control Plan.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop; and (b) thereafter implement, a plan for control of fugitive dust during construction ("Fugitive Dust Control Plan") in compliance with applicable rules pertaining to the prevention of the emission of dust from construction related activities, containing the following measures:

(aa) Fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils shall be controlled through water spraying.

(bb) Large piles of soil, rock or sediment 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.

(cc) 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.

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

(ee) 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.

(ff) 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.

(gg) In addition to regular cleaning by the City, roads adjacent to construction areas shall also be cleaned by Declarant on a regular basis using wet sweeping to minimize fugitive dust emissions.

(hh) Materials and waste during demolition shall be brought to grade by hoist. Alternatively, chutes shall be used for material drops during demolition. 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.

(ii) 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 Paragraph (b) consistent with such Fugitive Dust Control Plan as applicable with respect to such work.

(c) Construction Noise Reduction Measures.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property:

(aa) 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, Chapter 28 of Title 15 of the Rules of the City of New York.

(bb) Declarant shall develop and implement a plan for minimization of construction noise (the "Noise Mitigation Plan"). The Noise Mitigation Plan shall contain the following measures:

(1) 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 and LIRR operating and safety requirements, provided this subclause shall not be construed as requiring sound barriers around construction work conducted more than twelve (12) feet above the height of the Platform.

(2) The noise emission levels of all construction equipment shall not exceed those found in the Federal Highway Administration Roadway Construction Noise Model (the "FHWA RCNM").

(3) Construction laborers shall be trained in quieter work methods.

(4) Declarant shall maintain a website or implement another program to inform the affected public about the construction work schedule.

(5) Quieter-type adjustable backup alarms shall be used on all construction equipment.

(6) For construction activities involving the use of pile drivers, hoe-rams, jackhammers, or blasting, additional noise mitigation measures chosen

from a list of options to be set forth in the Noise Mitigation Plan shall be implemented where feasible.

(ii) If construction work will occur after 6:00 PM or before 7:00 AM, Declarant shall prepare an additional noise mitigation plan (the “Alternative Noise Mitigation Plan”) in accordance with the City Noise Control Code prior to commencing such nighttime work.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) consistent with such Noise Mitigation Plan and, if applicable, Alternative Noise Mitigation Plan, as applicable with respect to such work.

(d) Construction Soil Erosion and Sediment Reduction Measures.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) 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 New York State Standards and Specifications for Erosion and Sediment Control (the “Soil Erosion and Sediment Control Plan”), containing the following measures:

(aa) 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, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations, where practicable.

(bb) Rinse water from the wheel wash 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.

(cc) 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.

(dd) 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.

(ee) 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; chemical 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 Paragraph (d) consistent with such Soil Erosion and Sediment Control Plan, as applicable with respect to such work.

(e) Construction Dewatering Plan.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement a plan for dewatering during construction ("Dewatering Plan"), which shall set forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property. Such plan shall:

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

(bb) Identify the necessary permits required from DEP and/or DEC to discharge dewatering water into the City's sewers or surface waters.

(cc) Require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to reuse on the Subject Property or discharged into the City's sewer system or surface waters, require the water in such tanks to be tested periodically for pH, turbidity and contaminants, and if unacceptable levels of turbidity or contaminants are identified, require treatment prior to discharge off site in accordance with applicable DEP or DEC regulations.

(dd) Suitable drainage means shall be provided for the removal of surface runoff from the site and sludge which drains from the operation.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (e) consistent with such Construction Dewatering Plan, as applicable with respect to such work.

(f) Construction Pest Management Plan.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement an integrated plan for construction pest management ("Construction Pest Management Plan") for all construction activities (including demolition and excavation) related to the development of the Subject Property, to control pests (unwanted vermin, insects and weeds) in accordance with DOB requirements. Such plan shall contain the following requirements:

(aa) Food waste shall be segregated from construction waste and deposited in covered bins.

(bb) Vegetation fostering vermin shall be kept trimmed.

(cc) Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.

(dd) Standing water shall be pumped out before the water becomes septic.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (f) consistent with such Construction Pest Management Plan, as applicable with respect to such work.

(g) Hazardous Materials Remediation and Protection Measures.

(i) Prior to Construction Commencement, Declarant shall undertake a pre-demolition survey of any buildings to be demolished for asbestos containing materials (“ACM”), lead-based paint (“LBP”) and equipment suspected to contain polychlorinated biphenyls (“PCBs”). If such materials are identified during the survey, Declarant shall develop and implement procedures for pre-demolition removal of such materials, as part of the Construction Health and Safety Plan (“CHASP”) described in clause (ii) below.

(ii) Prior to Construction Commencement, Declarant shall prepare and submit to DEP a site-specific CHASP describing in detail precautionary measures and safety procedures to be followed to minimize pathways of exposure to contaminants. The CHASP shall include the following:

(aa) If determined necessary following the pre-demolition survey, the CHASP shall include an ACM management plan, which shall set forth procedures for handling, removal and disposal of ACM in conformance with federal, New York State, and New York City requirements. The ACM management plan shall provide for appropriate engineering controls (e.g., wetting and other dust control measures) to minimize asbestos exposure throughout demolition of existing buildings on the Subject Property.

(bb) If the pre-demolition survey finds that LBP-coated surfaces are present in any structures to be demolished on the Subject Property, the CHASP shall include an LBP management plan. This plan shall require that an exposure assessment be performed to determine whether lead exposure may occur during demolition activities. If the exposure assessment indicates the potential to generate airborne dust or fumes with lead levels exceeding health-based standards, a higher personal protection equipment standard shall be required to counteract the exposure. In all cases, appropriate methods to control dust and air monitoring, as required by the

Occupational Health and Safety Administration, shall be required during demolition activities.

(cc) The CHASP shall require that suspected PCB-containing equipment that will be disturbed by construction activities on the Subject Property shall be removed and disposed of in accordance with applicable federal, State, and local regulations. Unless labeled “non-PCB”, types of equipment usually suspected to contain PCBs (e.g., transformers, electrical feeder cables, hydraulic equipment, and fluorescent light ballasts) shall be tested or assumed to contain PCBs and disposed of at properly licensed facilities.

(dd) The CHASP shall include a Materials Handling Plan identifying specific protocols and procedures for stockpiling, testing, loading, transporting, and properly disposing of all excavated material, in accordance with applicable regulations.

(ee) The CHASP shall designate appropriate personnel to ensure the implementation of its requirements, including a Health and Safety Officer (“HSO”) and an on-site Site Safety Officer (“SSO”). The HSO shall oversee the SSO and be responsible for coordinating and reporting all health and safety activities. The HSO must have completed a 40-hour Hazardous Waste Operations training course, supervisory training, and updated annual refresher courses pursuant to requirements codified in 29 CFR Part 1910, Occupational Safety and Health Standards. The SSO shall be a highly competent person who is responsible for the implementation of the CHASP. The SSO shall have the authority to stop work upon determination of an imminent safety hazard, emergency situation, or other potentially dangerous situation. If the HSO is to be absent from the construction area, the HSO shall designate a suitably qualified replacement who is familiar with the CHASP.

(ff) The CHASP shall impose training requirements for all construction personnel entering the Subject Property in the vicinity of areas where intrusive activities are being performed. Before entering the Subject Property at such times and at such locations, all construction personnel shall be required to attend a training meeting, conducted by the HSO, SSO, or other suitably trained individuals to: (1) make workers aware of the potential hazards they may encounter; (2) provide the knowledge and skills necessary for them to perform the work with minimal risk to health and safety; (3) make workers aware of the purpose and limitations of safety equipment; and (4) ensure that they can safely avoid or escape from emergencies. Others who enter the Subject Property during intrusive activities without having attended a training session shall be accompanied by a trained construction worker.

(gg) The CHASP shall provide that all excavation shall be continuously monitored for the presence of buried tanks, drums, or other containers; sludges; or soil that shows evidence of potential contamination, staining, or odors, and shall

include contingency response plans to be implemented upon detection of any of these items.

(hh) The CHASP shall include an emergency response plan to be implemented in the event that monitoring data indicate a potential major hazard.

(ii) The CHASP shall define protocols for reporting spills or other concerns to relevant government agencies.

(jj) The CHASP shall set forth dust control measures to be implemented during all soil-disturbing activities, comprised of the measures set forth in Section 3.02(b).

(kk) The CHASP shall identify measures to be taken to address contaminated material that will remain on the Subject Property after construction is completed, including the use of impermeable barriers to achieve isolation from contaminants such as semi-volatile organic compounds.

(ll) DOB shall not issue, and Declarant shall not accept, any Building Permit for work at the Subject Property, until DCP shall have certified to the DOB Commissioner that: (1) a CHASP consistent with the provisions of this Paragraph (g) has been approved by DEP; and (2) Declarant has included enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (g) consistent with such CHASP, as applicable with respect to such work.

(iii) Declarant shall undertake investigations, as appropriate, to evaluate the extent of soil, groundwater, and soil vapor contamination present at the Subject Property in accordance with relevant regulatory protocols for site investigations and remediation.

(iv) Declarant shall have no responsibility for the remediation associated with the known petroleum spill at the Subject Property (DEC Spill No. 04-07411) to be completed in accordance with the existing DEC consent order, which remediation shall be the responsibility of the MTA.

(v) Soil Vapor Mitigation.

(aa) Declarant shall, if required by DEP, install appropriate soil vapor barrier measures to protect New Buildings constructed within the terra firma portion of the Subject Property.

(bb) Declarant shall have the opportunity to propose to DEP soil vapor mitigation measures it deems appropriate based on soil and/or groundwater testing, the proposed building parameters (e.g., building layout, foundation type, operation of HVAC systems, etc.), and environmental influencing factors (e.g., current soil and

groundwater conditions, underground conduits, contaminant source location and concentration, etc.).

(cc) DOB shall not issue, and Declarant shall not accept, a New Building Permit for a New Building to be constructed within the terra firma portion of the Subject Property, until DCP shall have certified to the DOB Commissioner that DEP has either (1) approved in writing Declarant's proposal for soil vapor barrier measures for such New Building, or (2) determined that Declarant has demonstrated to DEP's satisfaction that no soil vapor mitigation measures are required for such New Building .

(dd) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof shall reflect and be consistent with any soil vapor measures approved by DEP and Declarant shall construct the New Building in accordance with such plan.

(ee) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a soil vapor mitigation measure without the approval of DEP.

(h) Historic Resource Protection Measures.

(i) Prior to commencing construction within ninety (90) feet of the High Line, Declarant shall develop a Construction Protection Plan ("CPP") in coordination with OPRHP and LPC to avoid any adverse physical, construction-related impacts to the High Line, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery and shall submit same to DCP.

(ii) DOB shall not issue, and Declarant shall not accept, a Building Permit allowing work within ninety (90) feet of the High Line until DCP shall have certified to the DOB Commissioner that both OPRHP and LPC have determined that the CPP is acceptable.

(iii) All construction activities (including demolition and excavation) within 90 feet of the High Line shall be undertaken in accordance with the CPP.

(iv) 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 and OPRHP. The CPP shall also follow the requirements established in DOB's *Technical Policy and Procedure Notice #10/88*, in addition to the guidelines set forth in Section 523 of the *CEQR Technical Manual*.

(v) Construction procedures included in the CPP to protect the foundations and structures of the High Line shall be developed and monitored by structural and foundation engineers.

(vi) The CPP shall:

(aa) Describe in detail the demolition, excavation and construction procedures anticipated to occur.

(bb) Provide for the inspection and reporting of existing conditions.

(cc) Establish protection procedures, including the types and locations of barriers that will be used to protect the High Line during construction activities.

(dd) Establish a monitoring program to measure vertical and lateral movement and vibration.

(ee) Establish methods and materials to be used for any repairs.

(ff) 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 High Line, 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

(gg) Authorize the structural and foundation engineers to issue ‘stop work’ orders to prevent damage to the High Line and establish procedures for the recommencement of work following same.

(i) Construction Materials.

Declarant shall 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 Paragraph (i), “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 Commencement of Construction, Declarant shall provide DCP with an annual report, due January 31st of each year until issuance of a TCO for all of the floor area to be included in the New Buildings on the Subject Property, describing the amounts of locally purchased and recycled materials utilized in construction during the prior year and any proposed measures to increase such amounts in future construction.

(j) Maintenance and Protection of Traffic Plan.

(i) Prior to Construction Commencement, Declarant shall prepare a Maintenance and Protection of Traffic (“MPT”) plan and submit it to DOT for review and approval, provided that completion of the MPT shall not be necessary for preliminary site work unless DOT determines that an MPT is required. Such plan shall provide diagrams of proposed temporary lane and sidewalk alterations, including the duration such alterations will be implemented, and the width and length of affected segments.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

(iii) Subject to DOT’s approval, the MPT plan shall include the following provisions:

(aa) At no time shall access to existing occupied buildings on the Subject Property be closed, and at no time shall access by LIRR personnel and equipment to any Caemmerer Rail Yard facilities be restricted without consent of the LIRR.

(bb) In areas where temporary sidewalk closure is required, either (1) the pedestrian path shall be relocated to the curb lane and a barrier shall be erected to separate motor vehicle traffic from pedestrian traffic; or (2) if access to the adjacent lot is not needed, pedestrians shall be routed to the opposite side of the street at the nearest crosswalk.

(cc) The width of any relocated or modified pedestrian path shall be at least five (5) feet.

(dd) Emergency access to fire hydrants, fire alarm boxes, and critical utility vaults and chambers shall be maintained.

3.02 Project Components Related to the Environment for Design and Operation of New Buildings.

Declarant shall implement and incorporate the following PCREs relating to design and operation of New Buildings:

(a) Operational Air Emissions Controls.

(i) Declarant shall: (a) prior to acceptance of a New Building Permit, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (b) thereafter implement, the following controls relating to emissions from the heating systems of New Buildings (“HVAC Controls”):

(aa) For all New Buildings, the use of fuel oil shall be restricted to the four (4) winter months (December, January, February, and March). During other months, natural gas shall be used to power heating systems.

(bb) Boiler exhaust stacks on all New Buildings shall be a minimum of twenty (20) feet in height, except where a greater minimum height is specified below.

(cc) For New Building WC-1 (Site 2), there shall be one boiler exhaust stack located at the center of the roof. Air intake ducts on the south and west facades of this New Building shall be located at a minimum height of 400 feet. Air intake ducts on the east facade of this New Building shall be located at a minimum height of 650 feet.

(dd) For New Building WR-1 (Site 4), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; (2) if the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, at the northern end of the roof; or (3) if the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, at the northwest corner of the roof.

(ee) For New Building WR-2 (Site 6), there shall be one boiler exhaust stack, which shall be located at the southern end of the roof.

(ff) For New Building WR-3 (Site 6), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; or (2) if either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, at the southwest corner of the roof.

(gg) For New Building WR-4 (Site 5), there shall be one boiler exhaust stack, which shall be located at the center of the roof. If either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, the stack shall be a minimum of 40 feet in height.

(hh) For New Building WR-5 (Site 3), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; (2) if the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, at the southwest corner of the roof; or (3) if the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, at the southeast corner of the roof. If either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, the stack shall be a minimum of 40 feet in height.

(ii) For New Building WR-6 (Site 1), there shall be one boiler exhaust stack, which shall be located at the center of the roof.

(jj) For New Building WR-7 (Site 1), there shall be two boiler exhaust stacks, which shall be located at the western end of the roof.

(ii) In the event that the building height for a New Building differs from that shown in Table 19-9 of the FEIS, Declarant shall demonstrate to the satisfaction of DCP, that the HVAC Controls for such building set forth in clause (i) remain adequate. Alternatively, Declarant shall propose adjustments to the HVAC Controls which, upon review and approval by DCP, shall become the applicable HVAC Controls for that building. Notwithstanding the foregoing, Declarant shall be allowed to modify the location of stacks and the location of air intake vents if Declarant demonstrates to DCP, based on the technologies employed and the height and location of other New Buildings on the Subject Property, that the Project with such controls will not result in any significant adverse air quality impacts not identified in the FEIS.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof shall reflect and be consistent with such controls.

(iv) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify an HVAC Control unless Declarant shall have obtained the written approval of DCP authorizing such change, and DOB shall not issue, and Declarant shall not accept, a Demolition Permit or Alteration Permit from DOB which would result in elimination or modification of any such HVAC Control. In no event shall this clause (iv) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the HVAC system (including replacement of any element with a more efficient or cleaner system), provided same is consistent with the terms of this Section 3.02(a).

(b) New Building Noise Attenuation.

(i) Declarant shall: (a) prior to acceptance of a New Building Permit, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (b) thereafter implement the following noise attenuation requirements for New Buildings:

(aa) New Building WR-1 (Site 4) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its northern and southern facades; (2) 30 dBA of window/wall attenuation on its western facade; and (3) 40 dBA of window/wall attenuation on its eastern facade.

(bb) New Building WR-2 (Site 6) shall have a closed window condition providing a minimum of (1) 30 dBA of window/wall attenuation on its northern facades and shorter western facade (at the northern end of the building); (2) 35 dBA of

window/wall attenuation on its westernmost facade; and (3) 40 dBA of window/wall attenuation on its easternmost and southern facades.

(cc) New Building WR-3 (Site 6) shall have a closed window condition providing a minimum of (1) 30 dBA of window/wall attenuation on its northern and western facades; and (2) 35 dBA of window/wall attenuation on all of its other facades.

(dd) New Building WR-4 (Site 5) shall have a closed window condition providing a minimum of (1) 40 dBA of window/wall attenuation on its northwestern and southwestern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(ee) New Building WR-5 (Site 3) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its western and southern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(ff) New Building WR-6 (Site 1) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its western and northern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(gg) New Building WR-7 (Site 1) shall have a closed window condition providing a minimum of (1) 40 dBA of window/wall attenuation on its western facade; and (2) 35 dBA of window/wall attenuation on all of its other facades.

(hh) If either the 'Maximum Commercial Scenario' or the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, New Building WC-1 (Site 2) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its eastern facade; (2) 25 dBA of window/wall attenuation on its westernmost facade; and (3) 30 dBA of window/wall attenuation on all of its other facades.

(ii) If the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, New Building WC-1 (Site 2) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its eastern facade; (2) 25 dBA of window/wall attenuation on its westernmost facade; and (3) 30 dBA of window/wall attenuation on all of its other facades.

(jj) For all New Buildings, an alternative form of ventilation shall be provided.

(ii) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a noise attenuation measure unless DCP has approved such modification or elimination in accordance with Section 3.06(b) hereof. DOB shall not issue, and Declarant shall not accept, a Demolition Permit or Alteration Permit from DOB which would result in elimination or modification of any such noise attenuation measure. In no event shall this clause (ii) 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 3.03(a).

(c) Pedestrian Wind Conditions.

(i) During architectural design development for a New Building and, in any event, prior to preparation of a final architectural design, Declarant shall cause a qualified consultant (“Wind Conditions Consultant”) to undertake wind tunnel testing to assess the effect of the architectural design on pedestrian-level wind conditions. Where the results of wind tunnel testing indicate that implementation of the architectural design would have the potential to result in pedestrian-level wind conditions exceeding the performance criterion referenced in Appendix K to the FEIS (the “Appendix K Criteria”), Declarant shall incorporate design features into the final architectural design, which: (aa) are determined through further testing to be effective in reducing or eliminating such exceedance; (bb) are compatible with the overall architectural design and location of the New Building and are consistent with the bulk and urban design controls contained in the Zoning Resolution; and (cc) are feasible from a structural, engineering and cost standpoint (the “Wind-Reduction Design Modifications”). Wind tunnel testing pursuant to this Section 3.02(c) shall be conducted in accordance with a methodology and protocol acceptable to DCP.

(ii) No later than ninety (90) days prior to obtaining a New Building Permit from DOB, Declarant shall submit copies of a draft report to DCP describing: (aa) the results of wind tunnel testing and (bb) in the event such testing shows the potential for exceedance of the Appendix K Criteria based on the proposed design, an explanation and description of any Wind-Reduction Design Modifications which have been incorporated into the final architectural design (the “Wind Conditions Report”). In the event that Wind-Reduction Design Modifications have not been incorporated into the final architectural design, or have been incorporated but do not fully eliminate all exceedances of the Appendix K Criteria, then such report shall be accompanied by a written joint certification of the Wind Conditions Consultant and Declarant stating either that: (aa) no Wind-Reduction Design Modifications are required to cause the Project to meet the Appendix K Criteria; (bb) no Wind-Reduction Design Modifications or additional Wind-Reduction Design Modifications are available that would be effective in materially reducing or eliminating the potential for an exceedance of the Appendix K Criteria; or (cc) potential Wind-Reduction Design Modifications are not compatible with the overall architectural design and location of the New Building, do not comply with the bulk or urban design controls contained in the Zoning Resolution, or are not feasible from a structural, engineering or cost standpoint. DCP shall, from the date of receipt, have thirty (30) days to review the draft Wind Conditions Report and provide Declarant with written comments. Declarant shall thereafter cause the Wind Conditions Consultant to submit a final Wind Conditions Report to DCP, which shall incorporate responses to such comments. DOB shall not issue, and Declarant shall not accept, any New Building Permit for a New Building until DCP shall have certified in writing to DOB that a final Wind Conditions Report has been

submitted in compliance with this clause (ii) and that such report reflects a reasonable application of the standards set forth herein.

(iii) Implementation of any Wind-Reduction Design Modifications identified in a final Wind Conditions Report submitted in accordance with this Section 3.02(c) shall be deemed a requirement of this Declaration and any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof shall reflect and be consistent with such Wind-Reduction Design Modifications.

(iv) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a Wind-Reduction Design Modification identified in a final Wind Conditions Report submitted in accordance with this Section 3.02(c) except as set forth in this clause (iv) or pursuant to Section 3.06 hereof. DOB shall not issue, and Declarant shall not accept a Demolition or Alteration Permit which would result in elimination or modification of any such Wind-Reduction Design Modification unless and until the Chair shall have certified to the DOB Commissioner that Declarant has demonstrated to the satisfaction of DCP that such Wind-Reduction Design Modification is no longer required or that an alternate Wind-Reduction Design Modification will be incorporated that will result in equivalent or improved wind conditions on and around the Subject Property. In no event shall this clause (iv) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair, replacement of or improvement to any portion of a Wind Reduction Design Modification provided that the same is consistent with this Section 3.02(c).

(v) The provisions of clauses (i)-(iv) of this Paragraph (e) shall not apply to a New Building in the event that Declarant demonstrates to the satisfaction of the Chair, based on a report and analysis prepared by a consultant expert and experienced in the field of wind conditions analysis, that the New Building, by virtue of its size, location, massing or other features, does not have the potential to result in an exceedance of the Appendix K Criteria, such that wind tunnel testing of its architectural design as provided in this Section 3.02(c) is not required under the circumstances. In that event, the Chair shall certify to the DOB Commissioner that DOB may issue a New Building Permit. Such certification shall apply to the relevant New Building only and shall have no application to any other New Building on the Subject Property.

(d) Ventilation Fan Plants.

(i) Declarant shall ensure that exterior noise levels from the ventilation system for the Platform shall comply with the City Noise Control Code through implementation of the following measures (“Ventilation Noise Controls”):

(aa) Ventilation operations shall not increase the noise levels by 3 dBA or more over the levels identified in the FEIS as the Future No Build Noise Levels, and shall comply with all applicable provisions of the City Noise Control Code. Declarant shall meet these requirements by establishing appropriate noise-related

specifications for the ventilation system, including ventilation duct work, airflow velocities, louvered openings in the ventilation plant exterior walls, fan type, fan size, pressure drop, and silencer characteristics.

(bb) Fan noise shall be controlled using a combination of in-duct splitter attenuators that can achieve between 20 to 30 dBA reductions in noise, sound absorptive plenums (large rooms enclosed by acoustic materials that can achieve between 10 and 15 dBA reductions), and acoustic louvers.

(cc) The ventilation plants shall be designed structurally to accommodate HVAC and mechanical equipment within the plants to minimize noise and ground-vibration impacts to adjacent sensitive uses and public areas.

(dd) Silencers and/or enclosures and anti-vibration mounts for fans and motors shall be used.

(ii) Following construction of the Platform, Declarant shall not eliminate or modify a Ventilation Noise Control except pursuant to Section 3.06 hereof and with such approval as may be required by the LIRR. In no event shall this clause (ii) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Ventilation Fan Plant (including replacement of any element with a more efficient and quieter system), provided same is consistent with the terms of this Section 3.03(d).

(e) Use of LIRR Outfall.

(i) Declarant shall install drainage mechanisms on the Subject Property that shall direct all stormwater runoff from Sites 5 and 6 to LIRR's existing 43" by 68" box culvert, which drains the Caemmerer Rail Yard directly into the Hudson River ("LIRR Outfall"). Additional Sites may use the LIRR Outfall based upon the DEP Approved Drainage Plan for the Subject Property.

(ii) Use of the LIRR Outfall, including any use of such outfall by Sites other than Sites 5 and 6, shall also be governed by an agreement between MTA/LIRR and Declarant.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof for construction on any of the Sites shall reflect and be consistent with the DEP Approved Drainage Plan.

(f) Tri-Generation Energy Supply System.

If Declarant chooses to install tri-generation energy supply systems in New Buildings (to generate electricity, heat and cooling), such systems shall use exclusively natural gas for fuel. In supplemental boilers installed in all New Buildings, the use of fuel oil shall be restricted to the four winter months (December, January, February, and March). During

other months, natural gas shall be used to power the supplemental boilers. Declarant shall adhere to all HVAC Controls set forth in Section 3.02(a), and shall obtain and comply with all required DEP and DEC permits in connection with the operation of such tri-generation system.

3.03 Project Components Related to the Environment Relating to Sustainability.

Declarant shall implement and incorporate as part of its design and operation of New Buildings, the following PCREs relating to sustainability:

(a) Energy Efficiency.

(i) Declarant shall incorporate energy efficiency measures with respect to fuel consumption and energy use (“EEMs”) in each New Building that will result in at least 14% less energy consumption in building systems and by building tenants than the standard set forth in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) standard 90.1-2007 in effect as of the date hereof (the “Minimum Energy Savings”). EEMs may include, but are not 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, and use of EnergyStar appliances.

(ii) Declarant shall cause to be prepared by a qualified building energy consultant (the “BEC”), a report identifying the EEMs for a New Building that will result in the Minimum Energy Savings (the “Energy Report”). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve and maintain 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 to DOB, 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 and maintain the Minimum Energy Savings. DOB shall not issue, and Declarant shall not accept, any New Building Permit for a New Building until DCP shall have certified in writing to the DOB Commissioner that a final Energy Report has been submitted in accordance with the procedures of this clause (iii).

(iv) Implementation of the EEMs identified in the final Energy Report submitted in accordance with this Paragraph shall be deemed a requirement of this Declaration, provided that Declarant may modify the EEMs incorporated in any New Building as such New Building is being constructed provided that such alternate EEM is approved by DCP in accordance with Section 3.06 hereof.

(b) LEED Silver Certification.

(i) Except as otherwise provided in this Section 3.01(b), Declarant shall design and construct each New Building in accordance with the standards and criteria required to achieve a minimum of LEED Silver Certification, and shall apply for and use reasonable and good faith efforts to obtain LEED Silver Certification from the USGBC.

(ii) DOB shall not issue, and Declarant shall not accept, any New Building Permit for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(aa) A LEED checklist for the New Building demonstrating that the number of points Declarant intends to pursue during LEED 'Construction Review' will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that Declarant is providing a minimum of 32% of possible points in the GHG Credit Categories, as set forth in Exhibit D; and 50% of possible points in the Water Credit Categories, as set forth in Exhibit D (collectively, the "GHG and Water Credit Requirements"). New Buildings for which Declarant seeks LEED Silver Certification under future versions of the USGBC LEED rating system shall demonstrate performance at least equivalent to that which would have been required to meet the GHG and Water Credit Requirements under version 2009 of the USGBC LEED rating system.

(bb) A signed affirmation from a LEED-accredited professional stating that he or she has reviewed the plans and drawings submitted or to be submitted to the DOB for purposes of a New Building Permit and that such plans and drawings are consistent with the LEED checklist and meet the intent of the criteria for LEED Silver Certification of the New Building.

(iii) DOB shall not issue, and Declarant shall not accept, any TCO, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(aa) Documentation demonstrating that Declarant has completed LEED 'Design Review' and showing the number of points 'anticipated' as a result of the LEED 'Design Review'. In the event that USGBC has 'denied' any points applied for by Declarant in the LEED 'Design Review', Declarant shall provide a report describing the following: (1) the basis for the USGBC determinations, as well as any related technical advice provided by the USGBC review team; and (2) the

steps taken by Declarant in response to the USGBC determinations, including appeals thereof.

(bb) A LEED checklist for the New Building, demonstrating that the number of points ‘anticipated’ by the USGBC during LEED ‘Design Review’, in combination with the number of points that Declarant intends to pursue during LEED ‘Construction Review’, will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that the GHG and Water Credit Requirements will be met.

(iv) DOB shall not issue, and Declarant shall not accept, a PCO for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(aa) If the New Building has received LEED Silver Certification:

(1) Documentation demonstrating that the New Building has received LEED Silver Certification, in the form of a USGBC ‘Certificate of Recognition’ or equivalent document.

(2) A LEED checklist for the New Building demonstrating the number of LEED points that the New Building was ‘awarded’ by the USGBC. Such checklist shall demonstrate that the GHG and Water Credit Requirements have been met.

(bb) If the application for LEED ‘Construction Review’ is still pending:

(1) Documentation demonstrating that the complete application for LEED ‘Construction Review’ was submitted to the USGBC within nine (9) months of receiving the Final TCO for the New Building and Declarant has thereafter diligently pursued its application for LEED Silver Certification.

(2) A LEED checklist for the New Building demonstrating that the number of points ‘anticipated’ by the USGBC during LEED ‘Design Review’, in combination with the number of points that Declarant has applied for in LEED ‘Construction Review’, will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that the GHG and Water Credit Requirements are anticipated to be met.

(3) A signed affirmation from a LEED-accredited professional stating that he or she has reviewed the application submitted to USGBC for LEED ‘Construction Review’, and that the application is consistent with the

checklist and meets the intent of the criteria for LEED Silver Certification of the New Building.

(cc) In the event that the New Building has failed to receive LEED Silver Certification after Declarant has accepted the final results of the LEED 'Construction Review', a report including the following:

(1) Documentation describing: (I) USGBC determinations which resulted in an inability to receive LEED Silver Certification, including a list of standards or criterion for which points were 'denied' during LEED 'Design Review' or LEED 'Construction Review' ("USGBC Denial Determination"), the basis for such determinations and any related technical advice provided by the USGBC review team; (II) the steps taken by Declarant in response to the USGBC Denial Determination, including appeals thereof; and (III) alternative elements proposed by Declarant to the USGBC in order to receive LEED Silver Certification, and USGBC determinations with respect thereto .

(2) Documentation demonstrating that Declarant has (I) designed and constructed the New Building according to the LEED Silver Certification standards or criteria then in effect, but without the standards or criterion which were subject to the USGBC Denial Determination; and (II) applied for and used reasonable good faith and efforts to obtain LEED Certification from the USGBC for the highest level of LEED Certification available in absence of such standards or criterion. The provisions of Section 3.02(b)(ii)(II) shall continue to apply with respect to the categories equivalent to the GHG Credit Categories and Water Credit Categories, except to the extent that the USGBC Denial Determination is applicable to such standard or criterion.

(v) In the event that, subsequent to October 19, 2009, any LEED Silver Certification standards or criterion change materially (including any new rating or guideline system as successor to the foregoing), and Declarant determines both that: (aa) implementation of the new standards or criterion would be impracticable from a design or engineering standpoint or would materially increase the costs of construction or operation of a New Building in and above any costs that are associated with implementation of the LEED Silver Certification standards or criterion in effect as of October 19, 2009 ("LEED 2009"); and (bb) as a result of such material change, it cannot otherwise qualify for LEED Silver Certification through alternative measures (the "LEED Silver Changed Criteria Determination"), it shall so notify DCP during the design development process for a New Building and, in any event, prior to filing an application for a New Building Permit for the New Building. In the event that, within sixty (60) days following receipt of such notice, DCP provides Declarant with a written determination disputing the LEED Silver Changed Criteria Determination, then such disagreement shall be resolved through a dispute resolution procedure mutually agreeable to the parties. For the purposes of this

clause (v), any change in a standard or criteria that would result in an incremental cost (above the cost to construct in accordance with LEED 2009) to Declarant that Declarant has reasonably demonstrated will not be recovered within five (5) years from the first date of occupancy subsequent to receiving a TCO shall be deemed a material increase in the cost of construction or operation of a New Building. If it is found or determined through such dispute resolution procedure that the LEED Silver Changed Criteria Determination has a sound and reasonable basis, such that Declarant cannot otherwise qualify for LEED Silver Certification through alternative measures, then Declarant shall (aa) design and construct the New Building according to the LEED Silver Certification standards or criteria then in effect, but without the standard or criterion which was the subject of the LEED Silver Changed Criteria Determination, and shall document compliance therewith in a manner acceptable to DCP, as a condition for receipt of a PCO for the New Building; and (bb) apply for and use reasonable and good faith efforts to obtain LEED Certification from the USGBC for the highest level of LEED Certification then available in the absence of compliance with such standard or criterion, in accordance with the provisions of this Paragraph. The provisions of Section 3.02 (b)(ii)(bb) shall continue to apply with respect to the categories equivalent to the GHG Credit Categories and Water Credit Categories, except to the extent that the LEED Silver Changed Criteria Determination is applicable to such standards or criterion.

(vi) Within three (3) years of either (aa) LEED Silver certification for the New Building, or (bb) substantial occupancy of the New Building (the decision as to which point begins the three (3) year period to be at Declarant's discretion), Declarant shall provide DCP with a report summarizing the results of any measurement and verification and/or corrective action performed pursuant to the LEED 'Measurement and Verification Plan'. In addition, if not available prior to PCO, documentation demonstrating that the New Building has received LEED Silver Certification, in the form of a USGBC 'Certificate of Recognition' or equivalent document within three months of Declarant's receipt thereof.

(c) Stormwater Management Measures.

(i) Prior to Construction Commencement, Declarant shall prepare and submit to DEP a Stormwater Pollution Prevention Plan ("SWPPP") for construction activities and post-construction stormwater management. The SWPPP shall incorporate feasible measures to reduce runoff rates below baseline levels and shall implement stormwater management techniques to address water quality concerns associated with the uncontrolled discharge of stormwater runoff into the Hudson River, and shall provide for: (aa) the capture of stormwater from New Building roofs for beneficial reuse as cooling tower makeup and irrigation for site landscaping; (bb) incorporation of softscapes and features into the design of the Subject Property that shall serve to retain stormwater runoff; and (cc) green roofs on other selected buildings. The SWPPP shall be subject to review and approval by DEP, and by DEC to the extent required under applicable law or regulation.

(ii) DOB shall not issue, and Declarant shall not accept, a Building Permit for work at the Subject Property until DCP shall have certified to the DOB Commissioner that a SWPPP

has been approved by DEP in accordance with applicable law and regulation and, to the extent required by applicable law or regulation, by DEC.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a Building Permit shall reflect and be consistent with the SWPPP.

(iv) Declarant shall have the right to modify and add to the SWPPP as development of the Project proceeds, as may be approved by DEP and to the extent required by law or regulation DEC, in order to address additional New Buildings on the Subject Property and new Public Access Areas on the Subject Property, provided that such revised SWPPP is consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that provisions of the SWPPP required for that New Building have been implemented.

(d) Water Conservation Measures.

(i) Dishwashers and clothes washers installed in all residential New Buildings shall be water-conserving models meeting at least EnergyStar standards for water-conservation.

(ii) Water-conserving toilets and faucets shall be installed in all New Buildings.

(iii) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that provisions of clauses (i) and (ii) of this Paragraph (d) have been implemented for such New Building.

(e) Car Sharing Spaces.

(i) Declarant shall, subject to the provisions of clause (iv) hereof, dedicate spaces in the Garage for parking of automobiles owned or operated as part of an automobile rental establishment use as listed in Section 32-17 (UG 8) of the Zoning Resolution in association with use of the Garage for accessory parking which: (aa) makes available to and permits customers to utilize its automobiles for hourly periods, or longer, in exchange for a fee seven days a week and for such hours as the Garage is open to other vehicles; and (bb) allows customers to reserve, pick up and return automobiles at the Subject Property through a self-service method (the "Car Sharing Service"), and shall cause the Car Sharing Service to be operated for so long as the Garage remains in service.

(ii) Declarant shall not accept a TCO or PCO for all or any portion of the Garage that would result in excess of 400 spaces accessory to the residential use on the Subject Property, unless and until Declarant has commenced the Car Sharing Service and has provided a minimum of twenty (20) spaces within the Garage for the exclusive use by the Car Sharing Service. Thereafter, Declarant shall not accept a TCO or PCO for all or any portion of the Garage that would allow for in excess of 800 spaces accessory to the residential use on the Subject Property, unless and until Declarant has provided an

additional ten (10) spaces within the Garage for the exclusive use of the Car Sharing Service, and shall not accept a TCO or PCO for all or any portion of the Garage that would allow for in excess of 1,200 spaces accessory to the residential use on the Subject Property, unless and until Declarant has provided an additional ten (10) spaces within the Garage for the exclusive use of the Car Sharing Service (the foregoing spaces, the “Car Sharing Spaces”).

(iii) The number of residential accessory parking spaces in the Garage allowed pursuant to Section 2.03 of this Declaration shall be reduced by the number of Car Sharing Spaces required to be provided under this Section 3.03(e).

(iv) Notwithstanding the foregoing, in the event that Declarant demonstrates to the reasonable satisfaction of the Chair that the Car Sharing Service cannot generate lease rates comparable to those charged to residential occupants for accessory parking spaces, or that the number of Car Sharing Services required under this Declaration exceeds the demand by Car Sharing Service operators for spaces on the Subject Property, then Declarant may use spaces otherwise required under this Section 3.03(e) to be utilized as Car Sharing Spaces as residential accessory parking spaces, subject to the provisions of Section 2.03 of this Declaration.

(f) Electric Vehicle Battery-Charging Station.

(i) Declarant shall install one or more battery-charging stations within the Garage for use by residents and occupants of the Subject Property who own, lease or otherwise use electric-powered vehicles. In determining the number of battery-charging stations to be installed in the Garage, Declarant shall evaluate trends at the time of the construction of the Garage 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 Garage allowing for parking spaces for more than 400 accessory residential vehicles, the Declarant shall certify to DCP that provisions of clause (i) have been implemented and in connection therewith shall provide to DCP a written explanation of its determination as to the number of battery-charging stations to be included in the Garage. Installation of battery-charging stations may be phased in relation to increases in the number of parking spaces allowed at any given time pursuant to Section 2.03 of this Declaration.

(iii) Notwithstanding the provision of clauses (i) and (ii), Declarant shall not be required to install battery-charging stations in the Garage 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 New 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 Garage infeasible or cost-prohibitive.

(g) Base Flood Elevation.

(i) All New Buildings on Sites 5 and 6 within the terra firma portion of the Subject Property: (aa) shall be consistent with the New York City Building Code requirement that residential buildings have a finished floor elevation at or above the base flood elevation for the 100-year flood; (bb) shall meet the minimum elevation requirements for the lowest floor relative to the design flood elevation as specified in Appendix G, "Flood Resistant Construction," of the New York City Building Code for the applicable building category (see Table 1604.5 of the New York City Building Code or Table 1-1 of Appendix G to the New York City Building Code); and (cc) in the case of a New Building to be located on Site 5, the elevation of the lowest floor shall be no less than one foot above the base flood elevation.

(ii) Declarant shall prior to acceptance of a New Building Permit for a New Building on Site 5, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with clause (i) of this Section 3.03(g).

3.04 Environmental Mitigation.

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

(a) Public School.

(i) Declarant shall, subject to clause (iv) hereof, perform the following with respect to the Public School: (aa) engage in a collaborative design development process with SCA, which shall include collaboration on schematic design, design development and contract documentation; (bb) perform construction of 'School Base Building Work', as defined under the SCA Agreement; (cc) enter into a condominium regime with respect to the Public School and the remainder of the building, or other regime acceptable to SCA and Declarant, as a means of transferring the Public School to SCA; and (dd) transfer the Public School to SCA ((aa) to (dd) 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 a School Design, Construction, Funding and Purchase Agreement with SCA (the "SCA Agreement") intended to be entered into pursuant to the October 16, 2009, Letter of Intent executed by the SCA and accepted and agreed to by Declarant, attached to this Declaration as Exhibit G (the "SCA Letter of Intent").

(ii) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(aa) Within three (3) months of the date of this Declaration, Declarant shall send written notice to SCA asking whether SCA is prepared to commence negotiations on the SCA Agreement in anticipation of the development of the Public School. If SCA responds in writing that it is prepared to commence negotiations, Declarant shall promptly commence negotiations with SCA on the SCA Agreement and shall diligently and in good faith pursue such negotiations with SCA in order to finalize and execute the SCA Agreement. If SCA responds in writing that it is not prepared to commence negotiations, or fails to respond within fifteen (15) days of the written notice from Declarant, Declarant shall have no obligation to commence discussions, but shall repeat such written notice and request every six (6) months thereafter until such time as SCA advises Declarant that SCA is prepared to commence negotiations on the SCA Agreement, at which time Declarant shall promptly commence negotiations with the SCA and thereafter diligently pursue the completion and execution of the SCA Agreement.

(bb) Not less than eighteen (18) months prior to the date Declarant anticipates filing for either (I) a New Building Permit which, if granted, would permit in excess of 712 residential units in aggregate to be constructed on the Subject Property (the date of such anticipated filing, the "School Threshold Date"), or (II) a New Building Permit for a New Building on Site 6 regardless of the number of residential units that would be permitted to be constructed on the Subject Property as a result thereof, 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 a location within the base of such New Building for the Public School (the "Proposed School Site"). Following delivery of the School Election Notice:

(1) If SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA accepts the Proposed School Site as the location for the Public School, 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 the New Building in accordance with the SCA Agreement. DOB shall not issue, and Declarant shall not file for or accept, a New Building Permit for a New Building 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 core and shell of the Public School, as more particularly set forth in the SCA Agreement.

(2) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA (A) does not accept the Proposed School Site as the location of the Public School, (B)

has not yet determined whether it intends proceed with the Public School on the Subject Property, or (C) does not have or does not reasonably anticipate having the capital funding to undertake and complete the Public School at the Proposed School Site, and in any event if the SCA fails to respond to Declarant's notice within such thirty (30) day period, SCA shall be deemed to have rejected the Proposed School Site, and Declarant shall be permitted to construct the New Building identified in the School Election Notice without including a Public School in the New Building, and Declarant shall have no further obligation under this Section 3.04(a) with regard to such New Building, but shall comply with the requirements of subclause (3) hereof with respect to any subsequent New Building Permit.

(3) In such event that SCA has rejected a Proposed School Site in accordance with subclause (2) hereof, Declarant shall issue a new School Election Notice prior to issuance of any subsequent New Building Permit for a New Building containing residential units in the same manner as provided for the initial Public School Notice in this subclause (bb), and shall repeat such process until the earlier of (A) SCA accepting a Proposed School Site as the location of the Public School, and (B) receipt of New Building Permits in accordance with the provisions of this Section 3.04 (a) for construction of New Buildings on each of Sites 1, 4, and 6.

(4) Declarant covenants to seek a New Building Permit for a New Building on Site 6 as one of the first three New Building Permits issued for New Buildings containing residential units, provided that if SCA has already accepted a Proposed School Site in a New Building on a Site other than Site 6 and Declarant has obtained a New Building Permit for such other New Building incorporating the Public School, this obligation shall not apply.

(cc) Provided that the SCA has accepted a Proposed School Site and has agreed to proceed with the Public School in the manner set forth in subclause (bb) above and in the SCA Agreement, DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property until such time as (I) Declarant has completed the core and shell of the Public School, and (II) has delivered the core and shell 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, provided that in no event shall this subclause (cc) be construed in any manner to preclude DOB from issuing or Declarant from accepting TCOs or PCOs for any residential unit located in a New Building constructed pursuant to a New Building Permit issued prior to the New Building Permit for the New Building containing the Public School.

(dd) Declarant shall have the additional right, at Declarant's sole option and without obligation, to offer SCA a location in a New Building on Site 2 as the Proposed School Site. In the event that SCA accepts Site 2 as the Proposed School Site, (I) DOB shall not issue, and Declarant shall not file for or accept, a New Building Permit for any New Building that would result in more than 712 residential units being located on the Subject Property, unless and until the SCA has approved the construction documents for the core and shell of the Public School and a New Building Permit has been filed for the core and shell of the Public School, and (II) DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property until such time as Declarant has completed the core and shell of the Public School, and has delivered the core and shell 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.

(ee) The School Threshold Date set forth in this clause (ii) 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 FEIS.

(iii) For purposes of this Section 3.04(a), 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 Public School pre-development and construction costs; (dd) a failure or delay in review of design submissions in accordance with time frames established under the SCA Agreement; (ee) a failure or delay in reimbursement of Declarant through progress payments in accordance with the SCA Agreement; and (ff) a failure or delay in change orders initiated or otherwise caused by SCA.

(iv) Notwithstanding anything to the contrary contained in this Section 3.04(a), in the event that, following the date hereof, the SCA, following consultation with the Chair, notifies the Chair and Declarant that it will not construct the Public School on the Subject Property, Declarant shall no longer be obligated to provide the Public School on the Subject Property or to perform any of the Public School Obligations, and shall have no further responsibilities under this Section 3.04(a).

(b) Open Space.

(i) DOB shall not issue, and Declarant shall not accept, a TCO for any residential building on the Subject Property, which together with any residential building for which a TCO has previously been issued, would result in the number of residential units on the Subject Property totaling five hundred (500) or more, until DCP shall have certified to DOB that Declarant has paid into an account (the "Open Space Fund") an amount that is equal to

\$500,000, as increased 3% per annum from the Approval Date to the date of payment. Following such initial contribution to the Open Space Fund, DOB shall not issue, and Declarant shall not accept a TCO for any of the three successive residential buildings constructed on the Subject Property, until DCP shall have certified to DOB that Declarant has contributed to the Open Space Fund, with respect to each such building, an amount that is equal to \$500,000, as increased 3% per annum from the Approval Date to the date of payment. Nothing herein shall be construed as limiting the ability of Declarant to deposit funds in the Open Space Fund at earlier dates than required under this Paragraph.

(ii) The Open Space Fund shall be solely for purposes of programs or improvements which would improve or increase capacity for active recreation within Community Board 4, Manhattan, including, but not limited to: (aa) creation of new active open space; (bb) renovation or repairs to existing park facilities; (cc) expansion of hours of operation of existing facilities; and (dd) funding of active recreation programs at park facilities. The Open Space Fund shall not be used for any other purpose and the City shall not use the Open Space Fund to reduce its level of support for open space programs, facilities and activities within Community Board 4. DPR shall identify its priorities for use of the Open Space Fund to Declarant, Community Board 4, Manhattan and the local Council Member, and shall consult with Community Board 4, Manhattan and the local Council Member with regard thereto, prior to any expenditure from the Open Space Fund.

(iii) Declarant's contribution to the Open Space Fund shall be made by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. Such funding shall be disbursed by Declarant to DPR pursuant to a funding agreement reasonably acceptable to Declarant, which funding agreement shall among other things provide that the Open Space Fund shall be dedicated for use within Community Board 4 for the purposes set forth in clause (ii) hereof.

(c) Day Care.

(i) Following the issuance of a TCO or PCO for the first New Building containing residential rental units, Declarant shall contact the ACS at its Division of Child Care and Head Start and request a day-care needs assessment 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 shown on Figure 5-3 to the FEIS. In the event ACS determines that such development would result in a need for additional day care capacity within such study area boundary, the Declarant shall offer ACS approximately 10,000 sf of ground floor space suitable for use as a child care center, in a New Building or at another existing location within the study area boundary identified in the FEIS as the study boundary in Chapter 5 (Community Facilities), at a rate affordable to ACS providers (currently \$10 psf). The ACS shall notify Declarant in writing ninety (90) days of receipt of Declarant's request, whether such offer is accepted, either for some or all of the 10,000 sf space, subject to all City requirements governing the leasing of property. Alternatively, ACS may request Declarant to implement other

measures within such study area boundary, or other proximate locations within Community District 4, Manhattan, which would result in program or physical improvements at existing child care centers to support additional capacity. Declarant shall consider any such request in good faith, but shall have no obligation under this Declaration to implement alternative measures.

(ii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the second New Building containing residential rental units constructed on the Subject Property until DCP notifies DOB that DCP has either (aa) received a determination by ACS that the provisions of this Paragraph (c) have been complied with, or (bb) that ACS failed to respond to Declarant's request made pursuant to clause (i) within ninety (90) days of receipt thereof (in which case Declarant shall not be precluded from obtaining a TCO or PCO with respect to such second New Building).

(d) Traffic/Pedestrians.

(i) Declarant shall not accept a Building Permit for any work on the Subject Property, unless and until:

(aa) Declarant has sent written notice to the DOT (which notice shall include an anticipated construction schedule) no later than sixty (60) days prior to acceptance of such Building Permit, requesting that the DOT implement the construction period traffic and pedestrian mitigation measures set forth in the FEIS, or measures having comparable benefits as specified by DOT based on any determinations as of such date under the Hudson Yard Traffic and Pedestrian Monitoring and Management Program (the "HYTPMMP"), as may be identified by DOT as necessary to be implemented during construction of the stage of development being proposed on the Subject Property pursuant to such Building Permit; and

(bb) Declarant has notified DOT of its willingness to enter into an agreement, acceptable to DOT and consistent with DOT requirements, concerning the operational period traffic and pedestrian measures set forth in Exhibit H or measures having comparable benefits as specified by DOT based on any determinations as of such date under the HYTPMMP, identified by DOT as necessary to be implemented in connection with operation of the stage of development being proposed on the Subject Property which is facilitated by such Building Permit. To the extent that DOT deems unnecessary one or more of the traffic measures set forth in Exhibit H, and has not identified measures having comparable benefits based on the results of the HYTPMMP, Declarant shall have no further obligation under this subclause (bb).

(ii) Declarant shall not accept a TCO for any New Building on the Subject Property, unless and until:

(aa) Declarant has sent written notice to DOT no later than ninety (90) days prior to acceptance of such TCO, requesting that DOT implement the traffic and pedestrian mitigation measures set forth in Exhibit I, or measures having comparable benefits as specified by DOT based on any determinations as of such date under the HYTPMMP, which DOT may identify as necessary to be implemented in connection with operation of such New Building; and

(bb) Declarant has implemented the traffic and pedestrian measures set forth in the agreement entered into pursuant to subclause (bb) of clause (i) hereof, which DOT has identified as necessary to be implemented in connection with operation of such building, unless, as previously directed by DOT, Declarant has paid DOT/City of New York for the ordinary and customary costs, if any, of implementing such improvements (including but not limited to the reasonable costs of the design and construction of capital improvements). Declarant shall submit all of the required drawings/designs as per DOT specifications for DOT review and approval. To the extent that, prior to acceptance by Declarant of a TCO for such New Building DOT deems no longer necessary one or more of the traffic or pedestrian measures set forth in the agreement entered into pursuant to subclause (bb) of clause (i), Declarant shall have no further obligation under this subclause (bb).

(iii) Declarant shall not accept, a TCO for the Northern Garage, unless and until:

(aa) Declarant has sent written notice to the DOT requesting that the DOT implement a traffic signal at 12th Avenue and 33rd Street, or a measure having comparable benefits as may be specified by DOT based on any determinations as of such date under HYTPMMP.

(bb) Declarant has implemented such measures as directed by DOT, or, if directed by DOT, has paid DOT/City of New York for the ordinary and customary costs, if any, of implementing the traffic signal (including but not limited to the reasonable costs of the design and construction thereof). To the extent DOT deems unnecessary the traffic signal at 12th Avenue and 33rd Street, and has not identified a measure having comparable benefits based on determinations under the HYTPMMP, Declarant shall have no further obligation under this subclause (bb).

3.05 Inconsistencies with the FEIS.

If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FEIS, 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 FEIS and as incorporated in this Declaration, the more restrictive provision shall apply.

3.06 Innovation; Alternatives; Modifications Based on Further Assessments.

(a) Innovation and Alternatives.

In complying with Sections 3.01, 3.02, 3.03 or 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 Project 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, 3.02, 3.03, or 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 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.

3.07 Appointment and Role of Independent Monitor.

- (a) Declarant shall, with the consent of DCP, appoint an independent 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 Section 3.01 and Section 3.04(d)(i) of this Declaration (the "Construction Monitoring Measures" or "CMMs"). The Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the CMMs. In the event that the Declarant that is signatory to this Declaration shall have sold, leased transferred or conveyed to a third party (other than MTA) fee title to, or a ground or net lease of, one or more tax lots within the Subject Property, then such, third party shall be deemed a successor Declarant (a "Successor Declarant") with respect to such lots so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP, there may exist more than one Monitor with respect to multiple developments 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 Monitoring 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 will not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within sixty (60) 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 New 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 a 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; (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; and (iii) liaise with any Construction Consultation Committee established under Section 6.01 of this Declaration, as directed by DCP. 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: (i) have full access to the

Subject Site, 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; (ii) be provided with access to all books and records of Declarant either on or outside the Subject Property pertaining to the development of the Project which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (iii) 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 coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and shall be conducted in a manner that will minimize any interference with the Project. 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) Declarant shall be responsible for payment of all fees and expenses due to the Monitor in accordance with the terms of the Monitoring Agreement and any consultants retained by the Monitor as may be necessary to determine Declarant's compliance with the CMMs, in accordance with the terms of the Monitor Agreement.
- (e) If the Monitor determines, either in a monthly report or otherwise, that Declarant has failed to implement or to cause its contractors to implement a CMM, the Monitor shall notify DCP and Declarant of such alleged violation, and provide documentation establishing the basis for its determination. If DCP determines, based on consultation with the Monitor and others, as appropriate, that there is a basis for concluding that such a violation has occurred, 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 6.07. Notwithstanding any provisions to the contrary contained in Section 5.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) business days; (ii) seek to demonstrate to DCP in writing within two (2) 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 two (2) business days of receipt of the CMM Default Notice that a cure period greater than three (3) business days would not be harmful to the environment (such longer cure period, a "Proposed Cure Period"). If DCP accepts within one (1) business day 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 one (1) 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 one (1)

business day of after receipt of a writing from Declarant with respect thereto, the three (3) day cure period for the alleged violation shall be deemed to continue unless and until 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 acceptable to DCP, convene a meeting at the Site with the Monitor and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing and 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 that it has cured the violation.

3.08 Uncontrollable Circumstances Involving a PCRE or Mitigation Measure.

- (a) Notwithstanding any provision of Section 5.05 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 FEIS.

3.09 DCP Review.

- (a) Not less than ninety (90) days prior to the date Declarant anticipates (i) to be the date of Construction Commencement, and (b) obtaining any Building Permit from DOB, 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.

- (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 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 DOB that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that DCP has failed to respond in writing to Declarant within forty five (45) days of receipt of the Permit Notice, or (y) has failed to respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under clause (iii) of this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.
- (c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any New Building on the Subject Property, Declarant shall send written notice to 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 New Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigations Measures required to be incorporated into the New Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. DOB shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to DOB, within five (5) days following any such inspection advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the New Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet promptly 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, and upon the completion of such steps to the satisfaction of DCP, 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
EFFECTIVE DATE; CANCELLATION; AMENDMENT OR MODIFICATION OF THIS
DECLARATION**

4.01 Effectiveness of Declaration.

This Declaration and the provisions and covenants hereof shall become effective upon the Effective Date.

4.02 Recording.

Promptly, and no later than ten (10) business days after the Effective Date, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest, in the Office of the New York City Register for New York County (the "Register's Office"), indexing them against the Subject Property, and deliver to DCP within ten (10) days of the date of any such submission for recording, a copy of such documents as submitted for recording (the "Recording Documents"), together with an affidavit of submission for recordation, recording and endorsement cover pages for each document submitted for recording and recording payment receipts. Declarant shall deliver to DCP a copy of all Recording Documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents. If Declarant fails to record the Recording Documents, then the City may record duplicate originals of the Recording Documents; however, all fees paid or payable for the purpose of recording the Recording Documents and obtaining certified copies thereof, whether undertaken by Declarant or by the City, shall be borne by Declarant.

4.03 Cancellation.

Notwithstanding anything to the contrary contained in this Declaration, if the Approvals are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging them may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to 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 shall provide a copy thereof certified by the Register's Office to the CPC. Notwithstanding the foregoing, the MTA may terminate this Declaration in accordance with Paragraph 4 of the consent attached as Exhibit C-1 to this Declaration.

4.04 Modification and Amendment.

- (a) This Declaration may be amended or modified (other than pursuant to Section 4.04(b) hereof) only upon application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a Successor Declarant, except that Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration shall not be modified in any respect without the prior written consent of the MTA. In the event that at any time Declarant or a Successor Declarant does not have an interest in a portion of the Subject Property, this Declaration may be amended with respect to such portion of the Subject Property upon application by MTA, subject to the applicable provisions of this Section 4.04.
- (b) Notwithstanding the provisions of Section 4.04(a), any change to this Declaration 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) Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration shall not be modified in any respect without the prior written consent of the MTA; and (b) 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 CPC.
- (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 4.04(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.
- (d) For so long as Declarant has an interest in the Subject Property or any portion thereof, all Parties-in-Interest (other than Declarant) and 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 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 Party-in-Interest's consent or waiver of rights. Notwithstanding the foregoing, Sections 6.04 and 6.08 of this Declaration (in the case of Section 6.08, insofar as such Section relates to the MTA) shall not be modified in any respect without the prior written consent of the MTA.

ARTICLE V COMPLIANCE; DEFAULTS; REMEDIES

5.01 Default.

Except as otherwise provided in Sections 3.07 and 5.02 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 6.07 hereof written notice of such alleged violation, and upon receipt of such notice Declarant 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 6.07 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 5.05 of this Declaration.

5.02 Denial of Public Access.

Notwithstanding any provisions of Sections 5.01 of this Declaration to the contrary, in the event of a denial of public access to a Public Access Area of an on-going nature in violation of the Public Access Easement established under Section 2.02(a) of this Declaration, Declarant shall have the opportunity to effect a cure within twenty four (24) hours after receipt of notice thereof from the Chair. 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 a Public Access Area 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.

5.03 Benefits to Subject Property and City.

Except to the extent otherwise explicitly provided herein, this Declaration is for the benefit of the City and Declarant only and creates no enforceable interest or rights in any third person or entity, other than the express rights granted herein to MTA. The City, acting through the agencies described in this Declaration, shall be deemed to be the only entity with standing to enforce the provisions of this Declaration against Declarant, and nothing herein contained shall be deemed to confer upon any other person or entity, public or private, any interest or right in enforcement of any provision of this Declaration against Declarant or any document or instrument executed or delivered in connection with the Applications, including any claim by any public or private landowner to be the beneficiary of any privileges of access appurtenant to lands adjoining the Subject Property which could or might be affected by enforcement of the provisions of this Declaration. Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Subject Property and benefit the City, and consents to enforcement by the City, administratively, at law or equity, of the covenants, obligations, conditions and restrictions contained herein.

5.04 Indemnification of Certain City Expenses.

If Declarant is found by a court of competent jurisdiction to have been in default 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

5.05 Uncontrollable Circumstances.

- (a) In the event that, as the result of Uncontrollable Circumstances, Declarant is unable to perform or complete any requirement of this Declaration (an "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 5.05

ARTICLE VI MISCELLANEOUS

6.01 Construction Consultation Process Committee and Liaison.

Declarant shall participate in a construction consultation process (the “CPP”), as described below, if the Borough President of the Borough of Manhattan and/or Community Board 4, Manhattan, shall hereafter elect to conduct such process. If such a CCP Committee (the “Committee”) is hereafter established, the Declarant shall designate an individual as a liaison (“Liaison”) to the Committee before Construction Commencement. Upon request of the Committee, and during the course of construction at the Subject Property, the Liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues. The Liaison and the Declarant shall, in good faith and promptly, work with the Committee and others, if necessary, to address such questions and concerns, as appropriate. Declarant’s obligations hereunder shall expire when TCOs have been issued for all New Buildings on the Subject Property.

6.02 Incorporation by Reference.

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

6.03 Binding Effect.

The provisions of this Declaration shall be considered covenants running with the Subject Property and shall inure to the benefit of and be binding upon Declarant and all heirs, successors, legal representatives, assigns, sublessees and mortgagees of Declarant's interest or any portion thereof in the Subject Property. Subject to Section 6.04 of this Declaration, the obligations contained in this Declaration shall be binding upon Declarant and any other individual or entity, 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 and upon the sale, transfer, assignment or conveyance (each, a "Disposition") of the Declarant's interest in the Subject Property or a portion of such interest, Declarant shall be released from and have no further obligations with respect to this Declaration or any covenant, obligation or indemnity undertaken, provided or given hereunder as to the entire Subject Property (upon Disposition of Declarant's interest in the entire Subject Property) or (in the case of a Disposition of a portion of the Property), as to such portion(s).

6.04 MTA.

Declarant, and any Successor Declarant, for so long as Declarant and/or Successor Declarant is (i) the lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or (ii) the owner in fee of all or any portion of the Subject Property, shall be solely responsible for satisfying the obligations of Declarant set forth in this Declaration. In no event shall MTA have any responsibility or liability for the obligations of Declarant as set forth in this Declaration, nor shall MTA be deemed a Successor Declarant for purposes of this Declaration, nor shall MTA's interest in the Subject Property or in the Yards Parcel (as defined and described in the Declaration of Easements) 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. In the event that at any time that MTA shall be the fee owner of all or a portion of the Subject Property and there shall cease to exist a ground or net lease of such portion of the Subject Property, MTA shall not be obligated to perform or otherwise be liable for the obligations of Declarant as set forth in this Declaration, but any disposition by MTA to a party which is not affiliated with MTA ("Subsequent MTA Transferee"), by sale or lease or otherwise, of such portion of the Subject Property shall be subject to the terms of this Declaration, and such a Subsequent MTA Transferee shall be deemed a Successor Declarant with respect to such portion of the Facility Airspace Parcel. Notwithstanding the foregoing, a Subsequent MTA Transferee shall have no liability for, nor shall the rights of a Subsequent MTA Transferee to obtain a building permit, certificate of occupancy, or otherwise to use, develop and occupy its portion of the Subject Property pursuant to this Declaration be impaired by any default under this Declaration by Declarant or a Successor Declarant on any other portion of the Subject Property,

6.05 Laws of the State of New York.

This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

6.06 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.

6.07 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 c/o The Related Companies, L.P., 60 Columbus Circle, New York, N.Y. 10023, New York, New York 10023, Attention: Jay Cross, with a copy to Fried Frank Harris Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attention: Melanie Meyers, Esq.;
- (b) If to the City, DCP or the Chair, Attention: Office of the General Counsel, NYC Department of City Planning, 22 Reade Street, New York, New York 10007 (or the then official address); and
- (c) If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

Declarant, the City, DCP, the Chair and any Mortgagee may, by notice provided in accordance with this Section 6.07, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (a) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after mailing; (b) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder one business day after placed under the control of the delivery service, provided that a receipt for the delivery is obtained, or (c) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

6.08 Limitation of Liability.

Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, or its successors and assigns or the subsequent holders of any interest in the Subject Property (but excluding MTA and its 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 trustees, partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other

enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event Declarant shall hereafter sell one or more Sites to a third party and the City shall, prior to such sale, obtain a judgment against Declarant, the City shall look only to the estate and interest of the Declarant in the portions of the Subject Property still owned by such Declarant at the time of levy, execution or other enforcement procedure for the satisfaction of the City's remedies and shall not pursue such remedies against the portion of the Subject Property that has been sold. In the event that any building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Owner's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Owner's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the total assessment imposed by the Board of Managers or other governing body of the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners' unpaid Individual Assessment Interest, which lien shall include such Unit Owner's obligation for the costs of collection of such Unit Owners' unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of any such condominium for unpaid common charges of the condominium. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, and the Board of Managers of any condominium association. In the event that a condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the Board of Managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

6.09 Parties-in-Interest.

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.

6.10 Applications.

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

6.11 Right to Convey.

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

6.12 Yards Parcel Not Subject to Declaration.

In no event shall the Subject Property mean or include the Yards Parcel, or any portion thereof, as defined and described in the Declaration of Easements.

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[Signature Page Follows]

RG WRY LLC

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

LIST OF EXHIBITS

- Exhibit A: Metes and Bounds Description of Subject Property
- Exhibit B: Certification of Parties-in-Interest
- Exhibit C-1: Consent to Execution of Restrictive Declaration and Agreement to Subordinate Future Fee Encumbrances
- Exhibit C-2: Waiver and Subordination
- Exhibit D: LEED Credit Categories
- Exhibit E: Maintenance and Repair of Public Access Areas
- Exhibit F: Rules and Regulations for Public Use of Publicly Accessible Open Space
- Exhibit G: SCA Letter of Intent
- Exhibit H: Declarant: Traffic and Pedestrian Mitigation Measures
- Exhibit I: City: Traffic and Pedestrian Mitigation Measures

EXHIBIT A - METES AND BOUNDS DESCRIPTION OF THE SUBJECT PROPERTY

EXHIBIT B - CERTIFICATION OF PARTIES-IN-INTEREST

EXHIBIT C-1

**CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT
TO SUBORDINATE FUTURE FEE ENCUMBRANCES**

THIS CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT TO SUBORDINATE FUTURE FEE ENCUMBRANCES (this "Consent") made this _____ day of _____, 200_ by METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 (the "MTA").

W I T N E S S E T H:

WHEREAS, MTA is the owner of fee title in and to certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Western Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of ___, 20___, made by MTA, as Declarant, and recorded in the Office of the City Register, New York County, at Reel ___, Page ___ (the "Declaration of Easements"), and designated for real property tax purposes as Lot(s) ___ and ___ of Tax Block ___, and as more particularly described on Schedule A to this Consent (the "Subject Property");

WHEREAS, MTA has leased the Subject Property to RG WRY LLC, a Delaware limited liability company ("Declarant"), pursuant to a lease dated as of _____ (the "WRY Lease"), a memorandum of which is intended to be recorded in the Office of the City Register, New York County, immediately prior to the recordation of the Restrictive Declaration (as hereinafter defined);

WHEREAS, Declarant is concurrently herewith executing a Restrictive Declaration encumbering its leasehold interest in the Subject Property, in the form to which this Consent is attached as an exhibit (the "Restrictive Declaration"; all capitalized terms used but not defined in this Consent have the respective meanings set forth in the Restrictive Declaration);

WHEREAS, the Restrictive Declaration, which is intended to be recorded in the Office of the City Register, New York County, simultaneously with the recording hereof, subjects the Subject Property to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the City and Declarant have requested that MTA execute and record this Consent with respect to the Restrictive Declaration, and MTA has agreed to do so.

NOW, THEREFORE, MTA hereby consents and agrees as follows:

1. MTA consents to the execution by the Declarant of the Restrictive Declaration and recording of the Restrictive Declaration against the Subject Property.

2. MTA consents to be bound by, and to benefit from, the provisions of Sections 6.04, 6.08 and 6.09 of the Restrictive Declaration, and any other provisions of the Restrictive Declaration which specifically reference MTA and/or LIRR.

3. MTA agrees and acknowledges that any liens or encumbrances imposed on MTA's fee interest in the Subject Property following the Effective Date of the Declaration (a "MTA Future Lien") shall be subject and subordinate to the lien of the Declaration, and no foreclosure of any MTA Future Lien shall extinguish the Declaration.

4. MTA is executing this Consent solely for the purpose of facilitating the development of the Subject Property by Declarant or Successor Declarant in accordance with the provisions of Article IX, Chapter 3 of the Zoning Resolution. If at any time (i) the WRY Lease is no longer in full force or effect, (ii) MTA is the sole party-in-interest (as defined in Section 12-10 of the Zoning Resolution) with respect to the Subject Property, and (iii) no development or enlargement pursuant to Article IX, Chapter 3 of the Zoning Resolution has been constructed on the Subject Property, and no building permit for any development or enlargement within Subdistrict F of the Special Hudson Yards District is then in full force and effect, MTA shall be entitled at its sole discretion to terminate the Declaration with respect to the Subject Property by executing and recording a termination thereof, and no consent of Declarant, the City or any other person or entity shall be required for such termination.

5. Nothing in this Consent shall be deemed to constitute a waiver of MTA's rights and exemptions under New York law, including without limitation New York Public Authorities Law §1266(8); provided that MTA acknowledges and agrees that the City may enforce the provisions of Article IX, Chapter 3 of the Zoning Resolution and of this Restrictive Declaration against Declarant and any Successor Declarants which are developing the Subject Property pursuant to Article IX, Section 3 of the Zoning Resolution.

6. This Consent shall be binding upon MTA and its legal representatives, successors and assigns.

IN WITNESS WHEREOF, the MTA has duly executed this Consent as of the date and year first above written.

**METROPOLITAN TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Schedule A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT C-2 - WAIVER AND SUBORDINATION

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND
SUBORDINATION OF MORTGAGE, made this _____ day of _____, 200_ by
_____, a _____ (the
“Mortgagee”), having its principal place of business at
_____.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated
_____ (the “Mortgage”) made by _____, a
_____ (the “Mortgagor”), in favor of the Mortgagee, in the original principal
amount of \$ _____, recorded in the Office of the Register/Clerk of the City of
New York, County of _____, on _____ in Reel _____,
Page _____; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the “Premises”)
known as Block _____, Lot(s) _____ on the Tax Map of the City of New York, County of
_____, and more particularly described in Schedule A attached hereto and made a
part hereof, and any improvements thereon (such improvements and the Premises are
collectively referred to herein as the “Subject Property”), which Subject Property is the subject
of a restrictive declaration dated _____, (the “Declaration”), made by
_____; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof
to certain restrictions, covenants, obligations, easements and agreements contained in the
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to
execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York
County of _____

On the ____ day of _____ in the year ____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Schedule A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT D - LEED CREDIT CATEGORIES

GHG Credit Categories	
Optimize Energy Performance	EA cr. 1 in LEED NC v. 3.0, EA cr. 1 in LEED CS v. 3.0
Enhanced Commissioning	EA cr. 3 in LEED NC v. 3.0, EA cr. 3 in LEED CS v. 3.0
Measurement & Verification	EA cr. 5 in LEED NC v. 3.0, EA cr. 5.1 & 5.2 in LEED CS v. 3.0
Recycled Content	MR cr. 4 in LEED NC v. 3.0, MR cr. 4 in LEED CS v. 3.0
Regional Materials	MR cr. 5 in LEED NC v. 3.0, MR cr. 5 in LEED CS v. 3.0
Certified Wood	MR cr. 7 in LEED NC v. 3.0, MR cr. 6 in LEED CS v. 3.0
Alternative Transportation – Low Emitting and Fuel Efficient Vehicles	SS cr. 4.3 in LEED NC v. 3.0, SS cr. 4.3 in LEED CS v. 3.0

Water Credit Categories	
Stormwater Design – Quantity Control	SS cr. 6.1 in LEED NC v. 3.0, SS cr. 6.1 in LEED CS v. 3.0
Heat Island Effect – Non-Roof (except only credits achieved through means of a vegetated green roof)	Option 2 of SS cr. 7.1 in LEED NC v. 3.0, Option 2 of SS cr. 7.1 in LEED CS v. 3.0
Heat Island Effect – Roof (except only credits achieved through means of a vegetated roof that covers at least 50% of the roof area)	Option 2 of SS cr. 7.2 in LEED NC v. 3.0, Option 2 of SS cr. 7.2 in LEED CS v. 3.0
Water Efficient Landscaping	WE cr. 1 in LEED NC v. 3.0, WE cr. 1 in LEED CS v. 3.0
Innovative Wastewater Technologies	WE cr. 2 in LEED NC v. 3.0, WE cr. 2 in LEED CS v. 3.0
Water Use Reduction	WE cr. 3 in LEED NC v. 3.0, WE cr. 3 in LEED CS v. 3.0

EXHIBIT E – MAINTENANCE AND REPAIR OF PUBLIC ACCESS AREAS

A. Publicly Accessible Open Space Maintenance and Repair Work

Declarant shall be responsible for the following maintenance and repair activities.

1. Cleaning.

(a) Dirt, litter and obstructions shall be removed as needed and trash and leaves collected and removed as needed so as to maintain the Publicly Accessible Open Space in a clean, neat and good condition.

(b) All walkways, sidewalks and all other improvements and facilities installed in the Publicly Accessible Open Space shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(c) Graffiti shall be regularly and promptly painted over or removed as appropriate to the nature of the surface.

(d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled by winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

2. Snow Removal. Snow and ice shall be removed from all walkways so as not to interfere with safe passage in a prompt fashion, and from all other paved surfaces used for pedestrian movement within twenty-four (24) hours after each snowfall or accumulation of ice.

3. Landscape Maintenance. A maintenance program for the planted portions of the Publicly Accessible Open Space shall be implemented consisting of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season”.

(a) Spring Start-up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the fourth week of April of each calendar year. Declarant shall complete the following work annually during the Spring Start-up Period:

(i) Remove any winter protectives from trees, shrubs and other planting materials.

(ii) Remove all landscape debris including leaves and dead branches.

- (iii) Prune and trim trees as necessary to maintain natural form.
- (iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.
- (v) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.
- (vi) Remove any sand deposited as a result of winter sandings.
- (vii) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.
- (viii) Reseed grass areas as needed.

(b) Season Closing Period: The Season Closing Period shall begin not later than October 15th and shall terminate not later than November 30th of each calendar year. Declarant shall undertake and complete the following work annually during the Season Closing Period:

- (i) Rake and collect leaves.
- (ii) Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.
- (iii) Apply fertilizer to all lawn areas as needed.
- (iv) Reseed grass areas as needed.

(c) Growing Season: The Growing Season shall commence with the commencement of the Spring Start-up Period and shall terminate at the end of the Season Closing Period. Declarant shall undertake and carry out the following work during the Growing Season:

- (i) Inspect trees on a regular basis and spray when necessary.
- (ii) 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 any City or State regulations governing water usage.

(iii) Mow lawn areas on a not less than bi-weekly basis and reseed as needed.

(iv) Weed as needed, no less than on a bi-weekly basis.

4. Repairs and Replacement. Repair and replacement of all facilities within the Publicly Accessible Open Space shall be performed as needed to maintain such facilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and shall complete the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed so as to be substantially compliant with the Site and Landscape Plan approved for the Publicly Accessible Open Space under Section 93-78 of the Zoning Resolution. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Publicly Accessible Open Space:

(a) Benches or Other Seating: Undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.

(b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced.

(c) Paving: All paved surfaces shall be maintained so as to be safe and attractive.

(d) Signage: All graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.

(e) 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.

(g) 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 of reasonable size.

(h) Construction Defects & Hazardous Conditions: Declarant shall periodically inspect the Publicly Accessible Open Space for construction defects and hazardous conditions, shall promptly repair or replace any portion or feature of the Publicly Accessible Open Space that exhibits such defects or hazardous conditions, and shall institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers, during the period of repair or replacement work.

B. Maintenance and Repair of West 31st Street Extension and West 32nd Street Extensions

1. Declarant shall maintain the street and sidewalk areas of the West 31st Street Extension and West 32nd Street Extension in a good state of repair and cleanliness, including but not limited to the following:

- (a) Maintaining the paved surfaces of the streets in good repair;
- (b) Maintaining street and sidewalk lights, if any, in good working order;
- (c) Assuring that street and sidewalk lights, if any, operate during hours of darkness;
- (d) Replacing street and sidewalk lights, if any, when needed;
- (e) Snow plowing at such times as the accumulated snow fall so requires; and
- (f) Maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner.

EXHIBIT F - RULES AND REGULATIONS FOR PUBLIC USE OF PUBLICLY ACCESSIBLE OPEN SPACE (“PAOS”)

1. No person shall throw or deposit any litter within a PAOS.
2. No persons shall affix or post any commercial or non-commercial handbill, poster or notice in or upon a PAOS, 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 PAOS (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 PAOS 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 PAOS (except to the extent required for persons with disabilities or Declarant employees performing security, maintenance or repair work).
6. No persons shall loiter for illegal purposes in or upon a PAOS, 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 PAOS, unless authorized in writing by Declarant pursuant to the provisions of Section 2.02 of the Declaration 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 PAOS or

in connection with any scheduled event authorized in accordance with Paragraph 9.);

- 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.



October 16, 2009

RG WRY LLC
c/o The Related Companies, LP
60 Columbus Circle
New York, New York 10023
Attention Mr. Jay Cross

Re: Proposed Construction of a Public School at the
Western Rail Yard in Manhattan

Dear Mr. Cross:

Set forth below are the basic terms upon which RG WRY LLC or an affiliate ("Developer") proposes to enter into a School Design, Construction, Funding and Purchase Agreement (the "School Funding Agreement") with the New York City School Construction Authority ("SCA") for construction of a public school facility serving pre-kindergarten through eighth grade students at the Western Rail Yard in Manhattan:

**WESTERN RAILYARD
SITE SCHOOL**

The site is a portion of the block bounded by 30th Street to the south, Twelfth Avenue to the west, 33rd Street to the north, and 11th Avenue to the east, such portion identified as Site 6 or another Site on the block if accepted by DOE/SCA in accordance with the Restrictive Declaration, as shown in more detail on Exhibit A hereto.

THE DEVELOPMENT

Developer intends to construct on the Western Rail Yard Site, subject to the receipt of the necessary public approvals, a mixed-use development comprised of residential, commercial, and retail uses, and, subject to the School Funding Agreement (as defined below), the Public School facility (as defined below) contemplated by this letter of intent (the "Development").

THE PUBLIC SCHOOL

The school facility will provide approximately 750 seats serving public school students in pre-kindergarten through eighth grade. The facility shall consist of approximately 120,000 gross square feet (the "Public School"). The Public School will be constructed as part of the Development pursuant to a school program, including outdoor playground space on the site, to be developed within the reasonable discretion of the DOE/SCA at the appropriate time and provided to Developer. Such Public School will be an independently functioning facility located within the base of the building on Site 6 or another building, if accepted by DOE/SCA in accordance with the terms of the Restrictive Declaration, and the Public School and school program will be constructed and operated without cost or liability to Developer, except as provided below under "Developer Responsibility for Change Order and Delays".

CONSTRUCTION OF THE PUBLIC SCHOOL BY DEVELOPER

Developer will complete the design of the Public School and perform the construction of the School Base Building Work and, if agreed between the parties, any School Fit-Out Work in accordance with the School Funding Agreement. SCA shall be responsible for the purchase and installation of all furniture, fixtures and equipment and, if determined between the parties, the School Fit-Out Work. The parties hereto agree that the definitions and scope of "School Base Building Work" and "School Fit-Out Work" will be agreed to between the parties during the negotiation of the School Funding Agreement.

THE CONDOMINIUM

Upon completion of the School Base Building Work or, if Developer undertakes the School Fit-Out Work, the School Fit-Out Work, Developer and SCA shall enter into a

condominium regime with respect to the Public School and the remainder of the Development as a means of conveying the Public School to SCA; however, the parties may also consider alternative means (e.g., a long-term ground lease) for conveying the Public School to SCA in lieu of a condominium regime. The unit to be conveyed for the public school, whether pursuant to the condominium regime or otherwise, is hereinafter referred to as the "Public School Unit".

PURCHASE OF PUBLIC SCHOOL UNIT

Upon completion of the School Base Building Work and the School Fit-Out Work, if applicable, in accordance with the School Funding Agreement, Developer shall transfer the Public School Unit to SCA (or a public entity designated by SCA), for \$1.00.

COLLABORATIVE DESIGN DEVELOPMENT PROCESS

Commencing promptly after execution and delivery of a School Funding Agreement and notice of the availability of funds pursuant thereto, Developer and SCA shall engage in a collaborative design development process as shall be set forth in the School Funding Agreement.

COMPETITIVE BIDDING

In the event Developer performs School Fit-Out Work, Developer shall comply with the SCA's procurement and prequalification requirements,.

SCA REIMBURSEMENT OF DEVELOPMENT COSTS

Upon commencement of work pursuant to the School Funding Agreement and continuing through final completion of the School Base Building Work, and, if applicable, the School Fit-Out Work, SCA shall reimburse Developer in accordance with the School Funding Agreement for all costs in connection with the design and construction thereof, including without

limitation Developer's hard and soft costs of construction, through customary progress payments (i.e., requisitions based on percentage completion, with agreed retainage).

SCA RESPONSIBILITY FOR CHANGE ORDERS AND DELAYS

SCA shall be responsible for all costs of change orders initiated or otherwise caused by SCA that impact the costs of the School Base Building Work and, if applicable, School Fit-Out-Work. SCA shall be responsible for any additional costs incurred by Developer because of delays caused by SCA (including without limitation delays caused by change orders initiated or otherwise caused by SCA).

DEVELOPER RESPONSIBILITY FOR CHANGE ORDER AND DELAYS

Developer shall be responsible for all costs of change orders that impact the Public School if, and to the extent, they are caused by Developer changes to the scope of the School Based Building Work after commencement of construction, design defects that are the responsibility of the Development architect, or defects or material deviations in construction.

Developer shall be responsible for any additional costs incurred by SCA directly related to the Public School because of delays caused by Developer after commencement of construction (including without limitation delays caused by change orders initiated by Developer).

TRANSFER TAXES

Developer is proceeding upon the assumption that no transfer taxes will be payable by Developer in connection with the transfer of the Public School Unit.

**SCHOOL FUNDING
AGREEMENT**

Following execution of this letter of intent by the parties, Developer and SCA will commence negotiating in good faith, a School Construction, Design, Funding and Purchase Agreement (the "School Funding Agreement") in form mutually acceptable to the parties thereto, providing, among other things, for completion of the design; development and budgeting process in accordance with an agreed scope; construction of the School Base Building Work and if applicable, School Fit-Out Work, by Developer; reimbursement by SCA of Developer's costs allocable to the Public School; transfer of the Public School Unit to SCA; and such other matters as the parties may agree.

AVAILABILITY OF FUNDS

SCA acknowledges that funds for development and construction of the Public School must be included in SCA's five year capital plan in order for work to begin under the School Funding Agreement. SCA will furnish Developer evidence of available funds, prior to its commencement of work under the School Funding Agreement.

NO BROKER

Developer and SCA each represents and warrants that it has dealt with no broker or finder in connection with this transaction. Each party hereby indemnifies and holds the other harmless against any claims, cost, losses or liabilities (including, without limitation, reasonable attorney's fees) arising from a claim for a commission or other compensation asserted by a broker or finder alleging dealings with the such party in connection with this transaction.

**LETTER OF INTENT NOT
BINDING**

By executing this letter of intent, the parties are merely expressing their interest in negotiating a mutually acceptable School Funding Agreement. Except for the

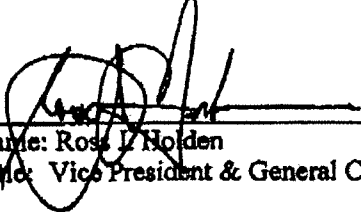
immediately preceding paragraph concerning brokerage, neither party shall be bound unless and until a School Funding Agreement, with all required consents and approvals, has been obtained by the parties.

If the foregoing is consistent with your understanding, please counter-sign and return the enclosed duplicate copy of this letter of intent.

Very truly yours,

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

By:


Name: Ross J. Holden
Title: Vice President & General Counsel

RG WRY, LLC

By:

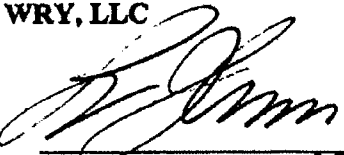

Name: L. JAY CROSS
Title: AUTHORIZED SIGNATORY

EXHIBIT H – Declarant: Operational TRAFFIC AND PEDESTRIAN MITIGATION MEASURES

3.04(d) Traffic/Pedestrians

Mitigation Measure Description
Traffic and Pedestrian Striping
Removal of Bollards (on Route 9A to allow for crosswalk widening)
Installation of Cross Walk Markings
Traffic Signal
Installation of Traffic Signal at intersection of W 33rd Street and 12th Avenue
Miscellaneous Pedestrian Improvements
Bulb Out Installation (assumed 6 ft x 20 ft dimensions)
Bulb Out Installation with Relocation of Utilities or Catch Basins
Maintenance & Protection of Traffic
Temporary Maintenance & Protection of Traffic Allowance

EXHIBIT I – City: Operational TRAFFIC AND PEDESTRIAN MITIGATION MEASURES

3.04(d) Traffic/Pedestrians

Mitigation Measure Description
Traffic and Pedestrian Striping
Removal of Exclusive Lane Markings (Arrows)
Removal of Lane Striping
Installation of Lane Striping
Installation of Exclusive Lane Markings (Arrows)
Installation of Cross Walk Markings
Traffic Signage
Removal of Traffic Signs
Installation of Parking Signs
Traffic Signals
Installation of Traffic Signal at intersection of West 47th Street and 12th Avenue
Miscellaneous Pedestrian Improvements
Bulb Out Installation (assumed 6 ft x 20 ft dimensions)
Maintenance & Protection of Traffic
Temporary Maintenance & Protection of Traffic Allowance

Exhibit C
Western Rail Yard

Restrictive Declaration for the Eastern Rail Yard

RESTRICTIVE DECLARATION FOR THE EASTERN RAILYARD

This RESTRICTIVE DECLARATION made as of the [] day of [], 2010 (the "Declaration"), by RG ERY LLC having an office located c/o The Related Companies, 60 Columbus Circle, New York, New York 10023 (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is, as of the date hereof, the lessee of certain real property located in New York County, City and State of New York consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) dated as of _____ made by Metropolitan Transportation Authority of the State of New York ("MTA") as declarant, and recorded in the Office of the City Register, New York County, at Reel __, Page __ (the "Declaration of Easements"), and designated for real property tax purposes as Lot(s) __ and __ of Tax Block 702 and Lots __, __ and __ of Tax Block 704 commonly known by the street address 383-405 Tenth Avenue, New York, New York (the "Subject Property") and more particularly described in Exhibit A annexed hereto and made part hereof¹; and

WHEREAS, MTA is, as of the date hereof, the fee owner of the Subject Property; and

WHEREAS, [] has issued a Certification of Parties in Interest, annexed hereto as Exhibit B and made a part hereof, that as of [], Declarant and [], hereinafter also referred to as the "Parties-in-Interest", are the only Parties-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York [the "Zoning Resolution"]) in the Subject Property; and

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

WHEREAS, MTA has agreed to permit this Declaration to be recorded by Declarant against the Subject Property in the form of a consent annexed hereto as Exhibit D, with the intention of binding the interest of Declarant as lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or as the subsequent owner in fee of all or any portion of the Subject Property, and upon the provisions of Paragraph 8 with respect to MTA's interest in the Subject Property; and

WHEREAS, Declarant proposed to amend the text of the Special Hudson Yards District of the Zoning Resolution of the City of New York and in connection therewith filed with the New York City Department of City Planning ("DCP") pursuant to New York City Charter

¹ Legal Description to refer to ERY Facility Airspace Parcel created pursuant to Declaration of Easements by MTA recorded at Closing.

(“Charter”) Section 200 an application numbered N090211ZRM (the “Application”) for amendments that include a change in the text (the “Text Change”) to permit a residential development to be located in the southwest corner of the Subject Property (the “Southwest Corner Residential Development”); and

WHEREAS, the Text Change was approved by the City Planning Commission on March 4, 2009 (Cal No.11) pursuant to Charter Section 200 and by the New York City Council on April 2, 2009 (Resolution No.1920-2009) pursuant to Charter Section 197-d; and

WHEREAS, the Text Change would permit development on the Subject Property in a different configuration than would be permitted on the Subject Property in absence of the Text Change but would not otherwise change the type of use or the amount of floor area (as such term is defined in the Zoning Resolution) allowed to be developed on the Subject Property; and

WHEREAS, an environmental assessment (CEQR #09DCP031M, the “EAS”) of the Text Change and other amendments in the Application was prepared in connection with the Application pursuant to the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”); and

WHEREAS, this Declaration is for the purpose of ensuring that the locations of certain heating, ventilation and air conditioning stacks (collectively, “HVAC Stacks”) are consistent with the EAS in the event that Declarant wishes to proceed with the construction of the Southwest Corner Residential Development; and

WHEREAS, this Declaration is for the further purpose of mitigating certain adverse shadow impacts that would occur as a result of the development of certain property located immediately to the west of the Subject Property (the “WRY Development”), as more particularly described in the Final Environmental Impact Statement for the Western Rail Yard (CEQR # 09DCP007M), issued October 9, 2009 (the “Western Rail Yard FEIS”); and

WHEREAS, Declarant intends this Declaration to benefit all land owners and tenants including the City of New York (the “City”), without consenting to the enforcement of this Declaration by any party or entity other than the City.

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the environment and the value and desirability of the Subject Property and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. HVAC Controls for Southwest Corner Residential Development. The purpose of this Declaration is to establish certain controls on the location of HVAC Stacks solely in the event that the Declarant, or any successor in interest, wishes to construct the Southwest Corner Residential Development. In the event that the Southwest Corner

Residential Development is constructed, Declarant shall implement the following controls relating to emissions from the HVAC Stacks:

- a. The HVAC Stack for the Southwest Corner Residential Development, identified as “Building F” in the site plan attached hereto as Exhibit E (the “EAS Plan”), shall be located a minimum of 165 feet from any portion of an adjacent building that is the same height or taller than the Southwest Corner Residential Development;
- b. The HVAC Stack for any community facility development located along West 30th Street (identified as “Building E” in the EAS Plan) shall be located a minimum of 100 feet from any portion of an adjacent building on the Subject Property that is the same height or taller than such community facility building.
- c. The HVAC Stack for any office building in the northeast corner of the Subject Property (identified as “Building B” in the EAS Plan) shall be located a minimum of 165 feet from any portion of an adjacent building on the Subject Property that is the same height or taller than such building.
- d. The HVAC Stack for any residential building fronting on Tenth Avenue shall be located a minimum of 230 feet from any portion of an adjacent building on the Subject Property that is the same height or taller than such building.

In the event that the Southwest Corner Residential Development is proposed to be located on the Subject Property, Declarant shall, prior to filing any application to the New York City Department of Buildings (“Buildings”) for a new building permit for the Southwest Corner Residential Development, provide DCP with plans previously approved by DOB for other development on the Subject Property incorporating all applicable controls set forth in this Paragraph 1 for such development, as such controls may have been modified pursuant to Paragraph 2 hereof. In the event that applicable controls have not been incorporated into one or more previously approved plans, Declarant shall neither seek nor accept a new building permit for the Southwest Corner Residential Development unless and until: (i) such plans are modified to incorporate the applicable controls and, as modified, are approved by DOB; or (ii) Declarant demonstrates to DCP that that either (a) the location(s) of HVAC stacks set forth on such plans or (b) alternative HVAC controls to be implemented by Declarant on the Subject Property, provide comparable protection of the environment as would be afforded by the applicable controls. Declarant shall submit any such demonstration in writing to DCP, which shall review and respond to such demonstration within forty-five days of receipt thereof. Anything to the contrary herein notwithstanding, neither this Declaration nor the HVAC Controls contained in this Paragraph 1 shall apply in the event the Subject Property is developed without the Southwest Corner Residential Development.

2. Alternative HVAC Controls. In the event that the HVAC Controls set forth in Paragraph 1 of this Declaration would be applicable because of the construction of the Southwest Corner Residential Development, Declarant shall have the right, notwithstanding the provisions of Paragraph 1, hereof, to implement alternative HVAC controls upon a demonstration to the City, submitted to DCP, that such alternative HVAC controls provide comparable protection of the environment as are afforded by the controls set forth in Paragraph 1 hereof. Declarant shall submit any such demonstration in writing to DCP, which shall review and respond to such demonstration within forty-five days of receipt thereof. As used in this Declaration, the term “comparable protection of the environment” shall mean causing no significant adverse air quality impacts from HVAC stacks on the Subject Property.
3. Open Space. The publicly accessible open space areas located on the Subject Property (the “Open Spaces”) shall be designed and developed by Declarant in a manner that takes into account the incremental shadows that would be cast on the Opens Spaces as a result of the WRY Development as identified in the Western Rail Yard FEIS. Such design measures shall include the use of shade tolerant vegetation for landscaping in the areas experiencing incremental shadows due to the development of the Western Rail Yard, and the placement of features that may require sunlight in areas of the Open Spaces experiencing more direct sun. Copies of final landscape plans for the Open Spaces , or portions thereof, demonstrating compliance with this paragraph shall be provided to the New York City Department of City Planning prior to implementation.
4. Declarant Representations. Declarant represents and warrants with respect to the Subject Property that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property, nor any lien, encumbrance, obligation, or covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.
5. Interested Party. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.
6. Binding Effect. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof,
7. Liability. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, subject to the following provisions:

The City and any other party relying on this Declaration will look solely to the interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant, including its officers, managers and members, shall have no personal liability under this Declaration. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

8. Limitations. The obligations, restrictions and agreements herein shall be binding on the Declarant only for the period during which the Declarant holds an interest in the Subject Property. In no event shall MTA, or any subsequent owner of fee title to the Subject Property (other than Declarant or a successor in interest to Declarant), have any liability whatsoever for the obligations of Declarant hereunder, nor shall MTA's interest in the Subject Property or in the Yards Parcel (as hereinafter defined) 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. In the event that at any time that MTA shall be the fee owner of all or a portion of the Subject Property and there shall cease to exist a ground or net lease of such portion of the Subject Property, MTA shall not be obligated to perform or otherwise be liable for the obligations of Declarant as set forth in this Declaration, but any disposition by MTA to a party which is not affiliated with MTA ("Subsequent MTA Transferee"), by sale or lease or otherwise, of such portion of the Subject Property shall be subject to the terms of this Declaration, and such a Subsequent MTA Transferee shall be deemed to be the Declarant with respect to such portion of the Subject Property. Notwithstanding the foregoing, a Subsequent MTA Transferee shall have no liability for, nor shall the rights of a Subsequent MTA Transferee to obtain a building permit, certificate of occupancy, or otherwise to use, develop and occupy its portion of the Subject Property pursuant to this Declaration be impaired by, any default under this Declaration by Declarant on any other portion of the Subject Property. The obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure. In no event shall this Declaration encumber the Yards Parcel (as defined in the Declaration of Easements) or any interest therein, or be binding upon the holder of any interest in the Yards Parcel.
9. Indemnity. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and

administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant.

10. Future Parties in Interest. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of “zoning lot” set forth in Section 12-10 of the Zoning Resolution) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.
11. Effective Date. This Declaration and the provisions hereof shall become effective as of the date of execution of this Declaration. Within ten (10) business days of the date of this Declaration, Declarant shall submit this Declaration for recording or shall cause this Declaration to be submitted for recording in the Office of the County or City Register, where it will be indexed against the Subject Property. Declarant shall promptly deliver to DCP proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to DCP as soon as a certified copy is available.
12. Amendments.
 - a. This Declaration may be amended or modified (other than pursuant to Paragraph 12(b) hereof) only upon application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC’s jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a Successor Declarant, except that Paragraphs 8 and 14(d) of this Declaration shall not be modified in any respect without the prior written consent of the MTA. In the event that at any time Declarant or a Successor Declarant does not have an interest in a portion of the Subject Property, this Declaration may be amended with respect to such portion of the Subject Property upon application by MTA, subject to the applicable provisions of this Paragraph 12.
 - b. Notwithstanding the provisions of Paragraph 12(a), any change to this Declaration 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, except that Paragraphs 8 and 14(d) of this Declaration shall not be modified in any respect without the prior written consent of the MTA. Minor modifications shall not be deemed amendments requiring the approval of the CPC.

- 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 Paragraph 12(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.
- d. Notwithstanding the foregoing, the MTA may terminate provisions of this Declaration in accordance with Paragraph 4 of the consent annexed hereto as Exhibit D.

13. Notices. Any submittals, requests, approvals, consents, or notices necessary or provided for under this Declaration shall be addressed as follows:

If to Declarant: RG ERY LLC
c/o The Related Companies
60 Columbus Circle
New York, New York 10023
Attn: Jay Cross

If to MTA: Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

If to DCP: New York City Department of City Planning
22 Reade Street
New York, New York 10007
Attn: General Counsel

14. Miscellaneous.

- a. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.
- b. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

- c. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

- d. In no event shall the Subject Property mean or include the Yards Parcel, or any portion thereof, as defined and described in the Declaration of Easements and designated for real property tax purposes as Lot(s) ___ and ___ of Tax Block 702 and Lots __, __ and __ of Tax Block 704.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

RG ERY LLC

By: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 2010 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B
CERTIFICATION OF PARTIES IN INTEREST

EXHIBIT C
PARTIES-IN-INTEREST WAIVER

EXHIBIT D

**CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT
TO SUBORDINATE FUTURE FEE ENCUMBRANCES**

THIS CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT TO SUBORDINATE FUTURE FEE ENCUMBRANCES (this “Consent”) made this _____ day of _____, 200_ by METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 (the “MTA”).

WITNESSETH:

WHEREAS, MTA is the owner of fee title in and to certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Eastern Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of ___, 20___, made by MTA, as Declarant, and recorded in the Office of the City Register, New York County, at Reel ___, Page ___ (the “Declaration of Easements”), and designated for real property tax purposes as Lot(s) ___ and ___ of Tax Block ___, and as more particularly described on Schedule A to this Consent (the “Subject Property”);

WHEREAS, MTA has leased the Subject Property to RG ERY LLC, a Delaware limited liability company (“Declarant”), pursuant to a lease dated as of _____ (the “ERY Lease”), a memorandum of which is intended to be recorded in the Office of the City Register, New York County, immediately prior to the recordation of the Restrictive Declaration (as hereinafter defined);

WHEREAS, Declarant is concurrently herewith executing a Restrictive Declaration encumbering its leasehold interest in the Subject Property, in the form to which this Consent is attached as an exhibit (the “Restrictive Declaration”; all capitalized terms used but not defined in this Consent have the respective meanings set forth in the Restrictive Declaration);

WHEREAS, the Restrictive Declaration, which is intended to be recorded in the Office of the City Register, New York County, simultaneously with the recording hereof, subjects the Subject Property to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the City and Declarant have requested that MTA execute and record this Consent with respect to the Restrictive Declaration, and MTA has agreed to do so.

NOW, THEREFORE, MTA hereby consents and agrees as follows:

1. MTA consents to the execution by the Declarant of the Restrictive Declaration and

recording of the Restrictive Declaration against the Subject Property.

2. MTA consents to be bound by, and to benefit from, the provisions of Sections 7 and 11 of the Restrictive Declaration, and any other provisions of the Restrictive Declaration which specifically reference MTA and/or LIRR.
3. MTA agrees and acknowledges that any liens or encumbrances imposed on MTA's fee interest in the Subject Property following the Effective Date of the Declaration (a "MTA Future Lien") shall be subject and subordinate to the lien of the Declaration, and no foreclosure of any MTA Future Lien shall extinguish the Declaration.
4. MTA is executing this Consent solely for the purpose of facilitating (i) the development of the Southwest Corner Residential Development by Declarant in accordance with the Text Change, and (ii) the WRY Development in accordance with the provisions of Article IX, Chapter 3 of the Zoning Resolution. If at any time (i) the ERY Lease is no longer in full force or effect and (ii) MTA is the sole party-in-interest (as defined in Section 12-10 of the Zoning Resolution) with respect to the Subject Property, then (x) so long as the Southwest Corner Residential Development has not been constructed, and no building permit for the Southwest Corner Residential Development is then in full force and effect, MTA shall be entitled at its sole discretion to terminate the provisions of paragraphs 1 and 2 of the Restrictive Declaration, and/or (y) so long as the WRY Development has not been constructed pursuant to Article IX, Chapter 3 of the Zoning Resolution and no building permit for the WRY Development pursuant to Article IX, Chapter 3 of the Zoning Resolution is then in full force and effect, MTA shall be entitled at its sole discretion to terminate the provisions of paragraph 3 of the Restrictive Declaration, in either case by executing and recording a modification and/or termination of the Restrictive Declaration, and no consent of Declarant, the City or any other person or entity shall be required for such modification and/or termination.
5. Nothing in this Consent shall be deemed to constitute a waiver of MTA's rights and exemptions under New York law, including without limitation New York Public Authorities Law §1266(8); provided that MTA acknowledges and agrees that the City may enforce the provisions of Article IX, Chapter 3 of the Zoning Resolution and of this Restrictive Declaration against Declarant and any successors to Declarant which are developing the Subject Property pursuant to Article IX, Chapter 3 of the Zoning Resolution.
6. This Consent shall be binding upon MTA and its legal representatives, successors and assigns.

IN WITNESS WHEREOF, the MTA has duly executed this Consent as of the date and year first above written.

**METROPOLITAN TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On the ____ day of _____ in the year ____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Schedule A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT E
THE EAS PLAN