CITY PLANNING COMMISSION

June 7th, 2010 / Calendar No. 3 C 100187 ZSK

IN THE MATTER OF an application submitted by The Refinery LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) - to allow the distribution of floor area within the general large scale development without regard for zoning lot lines; and

2. Section 74-743(a)(2) - to modify the requirements of Section 23-532 (Required rear yard equivalents), 23-711 (Standard minimum distance between buildings), 23-852 (Inner court recesses), 23-863 (Minimum distance between legally required windows and any wall in an inner court), 62-332 (Rear yards and waterfront yards) and 62-341 (Developments on land and platforms),

to facilitate a mixed use development on property bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet westerly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead Line (Block 2414, Lot 1 and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a General Large-Scale Development, Borough of Brooklyn, Community District 1.

This application for a special permit pursuant to Section 74-743 "Special Provisions for Bulk Modification," was filed by The Refinery, LLC, on December 24, 2009, to facilitate a 2.75 million-square-foot general large-scale development located at 264-350 & 317-329 Kent Avenue, Community District 1, Brooklyn.

RELATED ACTIONS

In addition to the proposed zoning special permit (C 100187 ZSK), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 100185 ZMK Zoning map amendment to replace an M3-1 district with C6-2 districts and with R6 and R8 districts with C2-4 commercial overlays.

N 100186 ZRK Zoning text amendment relating to the Inclusionary Housing Program and regulations for non-conforming advertising signs.

C 100188 ZSK Special Permit pursuant to ZR section 74-744 to modify use regulations as part of a general large-scale development.

N 100190 ZAK Authorization pursuant to ZR section 62-822 to modify regulations pertaining to required waterfront public access areas.

N 100191 ZCK Chair Certification pursuant to ZR section 62-811 to show compliance with waterfront public access and visual corridor requirements.

N 100192 ZCK Chair Certification pursuant to ZR Section 62-812 to subdivide a waterfront lot.

In addition to these actions, the applicant proposed a special permit pursuant to ZR section 74-53 to exceed the maximum number of permitted parking spaces accessory to uses in a general large-scale development (C 100189 ZSK). This application was certified in conjunction with the above listed applications but was withdrawn by the applicant on June 2, 2010 in response to concerns raised by the Commission, Community Board 1, and the Brooklyn Borough President.

BACKGROUND

The Refinery LLC proposes the redevelopment of an approximately 11-acre former sugar refinery and packing plant located directly north of the Williamsburg Bridge on the East River waterfront in the Williamsburg neighborhood of Brooklyn, Community District 1.

The proposal would facilitate the construction of five new buildings and the adaptive reuse of the existing refinery building, which was designated as a New York City Landmark in 2007. The total project would encompass approximately 2.75 million square feet containing 2,200 dwelling units, 223,000 square feet of retail space, and 143,000 square feet of community facility space. The applicant has committed to providing 30% of these dwelling units as affordable. A publicly accessible open space of four acres would also be created along the waterfront.

The proposal is described here as certified. The Commission modifies that proposal herein, reducing the height of the northernmost tower as described in the Consideration section of this report.

Surrounding Area and Context

The project site is located in the Southside section of Williamsburg. The East River waterfront is developed with industrial properties in the immediate vicinity of the Domino site, and residential development of 15 to 40 stories farther to the north and south. These residential developments include the Northside Piers and Williamsburg Edge developments to the north and the Schaefer Landing development to the south. To the east, the upland areas are developed with residential and mixed use neighborhoods with buildings generally between 2 and 6 stories. The site is adjacent to the area rezoned by the 2005 Greenpoint-Williamsburg Rezoning. The Refinery was still in operation when the Greenpoint-Williamsburg Rezoning proposal was under consideration and was not included in that rezoning.

The blocks immediately adjacent to the project site contain a mix of light industrial, commercial, and residential uses. Grand Ferry Park is located immediately north of the project site. The Williamsburg Bridge, approximately 300 feet tall, is across South Fifth Street to the south. Beneath the bridge and beyond it lies a New York City Department of Transportation maintenance facility. Blocks to the east between Kent and Wythe Avenues host light industrial, commercial, and some residential uses in buildings up to 6 stories tall. One block east of the project site, the residential Esquire Shoe Polish Building rises to 16 stories and several loft-style

buildings rise to approximately 80 feet to the southeast of the site.

Several small playgrounds and parks are located near the project site, including Grand Ferry Park and William Sheridan Playground at PS 84, located two blocks east. The area is served by several bus lines, the L subway line at the Bedford Avenue stop, and the J-M-Z subway lines at the Marcy Ave stop.

The blocks immediately surrounding the site are zoned M3-1, MX8:M1-2/R6, and MX8:M1-2/R6B. Much of the upland area is zoned R6, R6A, and R6B, while MX8: M1-2/R6, M1-2/R6A, and M1-2/R6B mixed-use districts are mapped in areas that feature some industrial uses. A C4-3 district is mapped along Broadway. C1 and C2 overlays occur along commercial corridors in the residential districts along Bedford Avenue and Grand, Roebling, and Havemeyer streets.

Site Description

The project site is zoned M3-1 and consists of two parcels, a 9.8-acre waterfront parcel and a 1.3-acre upland parcel. The parcels are separated by Kent Avenue, a 60-foot wide one-way northbound street that runs through Williamsburg near the East River. The waterfront parcel measures approximately 1,300 feet long by 330 feet wide and is bounded by the East River, Grand Ferry Park and Grand Street, Kent Avenue, and South Fifth Street. The upland parcel measures approximately 320 feet long by 180 feet wide and is located on the other side of Kent Avenue between South 3rd and South 4th Streets. The waterfront parcel consists of land and a 40- to 90-foot wide platform over the East River that runs along its entire western edge. Both parcels slope downward to the west, toward the East River, with a total grade change on the upland parcel of approximately 16 feet on the upland parcel from its eastern to its western ends and of 11 feet on the waterfront parcel from Kent to the platform at the water's edge.

The site has been used since the 1850's as a sugar refinery, at one time the largest in the world. The upland parcel was used as a parking lot for refinery employees. The refinery was closed in 2004 and the site is currently vacant. The buildings on the waterfront parcel were built between the 1880's and the 1960's. Notable structures include the landmarked Refinery building and the

Bin building. The brick Refinery building, completed in 1884 and landmarked by the New York City Landmarks Preservation Commission in 2007, is located in the center of the site along Kent Avenue and rises to a height of 155 feet overall, and 110 feet at Kent Avenue. The steel and glass Bin building, built in the 1960s to a height of 140 feet, supports the iconic Domino sign. The Bin building is located directly south of the refinery, and is connected to it by conveyor chutes that join the Refinery building's southern face. Other buildings on the site were built at various times to house the rest of the Refinery's operations including warehousing, packaging, and research and development.

Project Description

The proposed project would include approximately 2,747,700 square feet of floor area including 2,200 dwelling units within 2,381,052 square feet of residential floor area, 223,570 square feet of retail uses, and 143,076 square feet of community facility uses. This constitutes a total FAR of 5.6 for the waterfront parcel and 6.0 for the upland parcel. As proposed, four new buildings would rise to between 200 and 400 feet on the waterfront parcel and one building would rise to 148 feet on the upland parcel, with streetwalls on both parcels between 60 and 110 feet tall. The refinery building would also be adaptively reused. As certified, on-site parking would be provided in four sub-grade facilities, totaling 1,694 spaces. Development would proceed in six phases starting with the upland block, and then proceeding north along the waterfront parcel from South 5th Street to Grand Street.

Commercial uses would generally be located on the ground floor with residential above, except for the northernmost tower, which would consist of an office tower with residential uses in adjacent base portions of the building. The refinery would be redeveloped with a mix of commercial, community facility, and residential uses. A waterfront esplanade and upland connections would also be provided, comprising approximately four acres of publicly accessible open space.

The applicant has stated an intention to designate at least 30% of the residential units (660 units) as affordable. According to the applicant, they intend to distribute these units in each building

with the exception of the refinery building. The applicant intends to target the affordable units as follows: 100 rental units affordable at 30% of AMI, 310 rental units affordable at 60% of AMI, 150 homeownership units affordable at 130% of AMI, and 100 rental units for senior citizens affordable at 50% of AMI.

On the Waterfront parcel, east-west vehicular and pedestrian connections are proposed at each street that meets the project site to extend the adjacent street grid through the site to the waterfront. New buildings would be built on blocks between these connections, with the exception of the central block between South 2nd and South 3rd Streets, which is occupied by the landmarked Refinery building. The Refinery would be adaptively reused as part of the plan. A waterfront public access and open space area would extend the entire length of the site along the water's edge, connecting to Grand Ferry Park to the north, and South 5th Street to the south. All existing structures except the refinery building would be demolished.

Retail uses would be located on the ground floor along Kent Avenue and at certain locations along the esplanade and retail or office uses would be located in the northernmost building. Residential uses would occupy the upper portions of the rest of the buildings and parking would be provided below grade.

Each building would have a base between 60 and 110 feet tall that would surround a central courtyard and front on Kent Avenue, the esplanade and the upland connections. The applicant proposes towers of 300 feet on the northernmost and southernmost buildings and 400 feet on the two more central buildings, which would rise from the seaward portion of the base. The building between South 1st and South 2nd streets also has a second smaller tower of 220 feet.

The arrangement of bulk has common features with the special bulk rules of the 2005 Greenpoint-Williamsburg Rezoning. Towers rise in the seaward portion of the site and heights are reduced closer to the upland area. Tower heights and dimensions comply with the rules applicable in the 2005 rezoning area. The base heights between 55 and 110 feet, are higher than 65 or 70 feet permitted on the Greenpoint-Williamsburg waterfront, but they are consistent with

the existing Refinery building, which fronts on Kent Avenue at a height of 110 feet.

The 205- and 300-foot towers have a maximum floorplate of 9,625 square feet and the 400-ft towers have a maximum floor plate of 13,200 square feet. The towers are arranged so as not to exceed 110 feet in width facing the water and 170 feet in width otherwise, which are the maximum dimensions permitted in the 2005 Greenpoint-Williamsburg Rezoning. The secondary 220-foot tower on the building between South 1st and South 2nd streets has a floor plate of 6,600 square feet. Periodic setbacks at intermediate heights cause a tapering effect that reduces the size of the towers as height increases. The highest 4 to 6 stories of each tower are limited to 3,600 square feet, with the exception of the 220-foot tower, for which only the top two stories are limited to 3,600 square feet.

Base segments of between 90 and 100 feet would front on the esplanade and upland connections. Along Kent Avenue, base segments have heights starting at 55 and 65 feet from curb level, at the northern and southern ends of the Kent Avenue frontage, and rising to match the Refinery building in the center, which is 110 feet tall at Kent Avenue.

The building exteriors are an important part of the design. The lower portions of the buildings are proposed to be clad in masonry. More transparent facades would be used in the upper portions of the buildings to break up their mass and to reduce the appearance of height and bulk in the towers. Each building segment with a different height is proposed to vary in color and façade composition to break up walls formed by multiple adjacent segments. The commercial tower would be clad in more glass to distinguish itself from the residential towers while remaining consistent with the overall design scheme for the development.

The landmarked Refinery building would be redeveloped pursuant to a Certificate of Appropriateness approved by the Landmarks Preservation Commission in June of 2008. Due to the complexity of the industrial structure's current design, all internal components of the Refinery would be removed, the exterior walls braced, and a new structure built within it. A steel and glass addition of between 3 and 4 stories would be added to the top of the western

portion, bringing the total height of the structure to 195 feet. From its current location on the Bin building, the yellow Domino Sugar sign would be placed atop the addition, rising to 224 feet. Steel and glass balconies would be added to the southern wall between the 5th and 9th floors. These balconies would be designed in an industrial style and would point upward toward the former location of the Bin building, evoking the existing conveyor chutes, which would be demolished. A 1-story segment would also be added to the western wall of the refinery. This would accommodate parking and loading entrances without requiring new openings in the historic structure, and a comfort station on the western end facing the lawn area. Within the building, a courtyard would be established in the eastern portion of the building at the level of the first residential floor (5th floor), to bring light and air to the center of the floorplate.

Retail uses would generally be located on the ground floor along Kent Avenue and at certain locations along the waterfront open space and upland connections. Community facility uses would be located primarily on the 2nd through 4th floors of the refinery building and in the office tower in the northernmost building. The School Construction Authority has determined that the Refinery is an acceptable location for a new elementary school and the project's EIS projects that there may be a need for such a school. As a condition of the Special Permit, the applicant would enter into a restrictive declaration binding the site owner to work with SCA to provide a school in the Refinery building should SCA determine that one is needed. Residential uses would occupy the remainder of the development with the exception of the northernmost building. The tower portions of the northernmost building, throughout their entire height, would be occupied by office, retail, or community facility uses, and base portions would be residential above the ground floor.

Ground floor retail entrances would be located primarily along Kent Avenue and the four prolongations of the streets that run through the site. In addition, some establishments would have entrances onto the esplanade to activate that public space. The main entrances to the residential buildings and the office tower would be located at the vehicular turnarounds in the interior of the site, and some residential entrances would also be located on Kent Avenue. The waterfront esplanade would be accessed from the prolongations of the streets that run through the

site, and from South 5th Street to the south and Grand Street and Grand Ferry Park to the north.

Parking would be provided in four below grade structures: one beneath the two new buildings between Grand and South 2nd streets, one beneath the two new buildings between South 3rd and South 5th streets, one beneath the refinery building, and one beneath the new building on the upland parcel. Parking and loading would be accessed via the upland connections. As certified, the project would provide for a total of 1,694 parking spaces. Following the Commission's public hearing, the related application for a special permit for the northernmost parking garage (C100189 ZSK), which would have permitted that facility to exceed the permitted capacity by 266 spaces, was withdrawn. As a result, the project would provide 1,428 spaces in total. All four parking facilities remain in the proposal, with the northernmost facility reduced in size from 782 spaces to 516 spaces.

The project also includes approximately four acres of publicly accessible open space, 1.6 acres more than the approximately 2.4 acres required under waterfront zoning. The waterfront public access area would largely occupy the platform at the seaward edge of the site. The applicant intends to transfer ownership of this open space to the Department of Parks and Recreation upon completion.

Due to the length of shoreline on the site (almost a quarter mile), the applicant has sought to create a series of spaces that provide a variety of experiences within a single design that is anchored by an almost 1-acre central lawn area. A 12-foot wide clear path is provided throughout the entire shore public walkway with planting along its length to provide shade and greenery. The northern and southern halves are differentiated by using a curvilinear design scheme in the southern half, and a more angled design scheme in the northern half. In addition, different species would be planted in the northern and southern halves of the esplanade to differentiate them from each other. All planters would be flush with the paving and surrounded by a 6-inch curb.

Four supplementary areas would be provided including the central lawn. Each of these spaces

provides a different experience including large open spaces, and play equipment. A variety of social and bench-style seating is provided throughout the open space including key locations such as entrances. Shade structures and social seating are provided at the northeastern and southeastern corners, making these overlooks into social spaces. Bike racks are also provided at entrances and other locations throughout the open space. Restaurants or other retail uses are required to front on the esplanade at its northeast corner, and at the end of the South Third street connection.

The design has two types of upland connections along the prolongations of the streets through the site. At South 1st and South 4th streets, connections would be 60 feet wide, prolonging the existing streets east of Kent Avenue and widening to 80 feet at the vehicular turnaround. Twelve- to thirteen-foot wide sidewalks are provided on either side of the central roadbed. These connections are level with Kent Avenue (11 feet above the esplanade) for approximately 200 feet before descending to the esplanade with a stair and ADA accessible ramp. This is necessary to accommodate subgrade parking garages beneath the connections. Seating steps adjacent to the stair allows this area to be used for recreation as well as circulation. At South 2nd and South 3rd Streets, the connections descend evenly from Kent Avenue to the esplanade. They are also 60 feet wide but widen to only 70 feet at the turnarounds. Sidewalks are between 10 and 21 feet wide

The upland parcel would be built to an FAR of 6.0, with 345,576 square feet including 35,134 square feet of ground floor retail use and 300 residential units. Retail uses would be located throughout the first floor, oriented toward Kent Avenue. The building is set back 5 feet along Kent Avenue to provide a 15-foot sidewalk. Residential entrances would be located along South 3rd and South 4th Streets. A parking garage would be built beneath the property, and would be accessed from South 4th Street

The building employs the same architectural scheme as that of the waterfront parcel with the building surrounding two Central courtyards located in the middle of the parcel. The buildings rise to between 60 and 80 feet at the street. There would be a taller portion on the eastern part of

the site that rises to 148 feet and is set back from south 3rd street by 50 feet and from south 4th Street by 20 feet. These heights are taller than most existing development in the area with the exception of the 16-story Esquire Shoe Polish Building located two blocks to the north, but are considerably shorter than the proposal for the waterfront block.

Zoning Map Amendment – C 100185 ZMK

The entire project site is currently zoned M3-1. M3-1 permits heavy industrial and some commercial uses to an FAR of 2.0. Height is limited to 60 feet at the street. Maximum height is limited to 110 feet on the waterfront parcel and is governed by the sky-exposure plane on the upland parcel.

The applicant proposes an R8 district on most of the waterfront parcel, and an R6 district for the upland parcel. C2-4 overlays are proposed for the entirety of the R6 and R8 districts. The area occupied by the refinery building and the northernmost proposed building that would contain the office tower would be rezoned to C6-2. The C6-2 districts permit commercial uses on multiple floors when residences are located above and are proposed to permit the proposed program in the refinery building and the office tower.

Pursuant to the proposed text amendments (N 100186 ZRK), the R8 district would permit residential and community facility uses to an FAR of 4.88 if no affordable housing is provided, and to an FAR of 6.5 if affordable housing is provided under the Inclusionary Housing Program. Height would be limited to 70 feet along streets and waterfront public access areas, and 210 feet after setbacks. With a penthouse, buildings can rise to 250 feet. Parking would be required for 40% of residential units. The C6-2 district is an R8 equivalent, and would permit residential, community facility, and commercial uses according to bulk and density rules similar to the R8 district described above.

Pursuant to the proposed text amendments and special permits, the R6 district would permit residential and community facility uses to an FAR of 2.43 if no affordable housing is provided, and to an FAR of 2.75 if affordable housing is provided under the Inclusionary Housing

Program. Height would be limited to 60 feet along streets, and 150 feet after setbacks. Parking would be required for 70% of residential units.

The C2-4 districts would permit ground floor local retail uses throughout the project site to an FAR of 2.0.

Zoning Text Amendments – N 100186 ZRK

Sections 23-953, 62-35, 62-352, and Appendix F of the Zoning Resolution would be modified to apply the Inclusionary Housing Program to the project site using the base and bonus FAR structure that is applicable in the waterfront area rezoned by the 2005 Greenpoint-Williamsburg Rezoning. As described above, R6 would have a 2.43 base FAR bonusable to 2.75 and R8 would have a 4.88 base FAR bonusable to 6.5. Any exceedence of the base FAR would require provision of 20% of the floor area for low-income households or 25% of the floor area for a combination of low- and moderate-income households.

Section 52-83 would also be amended to facilitate the relocation of the Domino sign pursuant to a Certificate of Appropriateness from the New York City Landmarks Preservation Commission for the landmarked refinery building. This change would allow non-conforming advertising signs to be relocated to landmark buildings pursuant to a Certificate of Appropriateness and as part of a General Large Scale Development. This provision would apply only within Community District 1 of Brooklyn.

Currently, non-conforming advertising signs may not be moved to another location on the same lot. Because the site is no longer used to manufacture or sell sugar, the Domino sign is an advertising sign that would be non-conforming in the C6-2 district proposed for the refinery building. This text amendment is needed to allow the sign to be moved to the refinery building from its current location on the bin building, which is to be demolished.

Special Permit to Modify Bulk Regulations as part of a General Large Scale Development (74-74) – C 100187 ZMK

This special permit would establish an envelope that would follow the proposed variation in height and building articulation, granting specific modifications to height and setback regulations as required. A series of design controls would also be established to ensure transparency on the ground floor at retail areas, and to require the proposed use of façade materials to break up the building masses as proposed by the applicant. The special permit would allow the transfer of floor area from the waterfront parcel to the upland parcel and limit development to 5.6 FAR on the waterfront parcel and 6.0 FAR on the upland parcel.

Transfer of Floor Area

Pursuant to ZR 74-743(a)(1), which permits the distribution of floor area within a general large scale plan without regard to zoning lot lines, the applicant proposes to transfer 187,187 square feet of floor area from the waterfront parcel to the upland parcel. This would increase the total amount of floor area permitted on the upland parcel from 158,389 square feet (or 2.75 FAR) to 345,576 square feet (or 6.0 FAR).

Modification of Height and Setback Regulations

Nine different types of waivers would be required to permit this envelope.

1. *Maximum Base Height/Required Setback Distance* [ZR 62-341(a)(2) & 62-341(c)(1)]: Along streets and waterfront public access areas a 10-to 15-foot setback is required at a height of 60 feet on the upland parcel and 70 feet on the waterfront parcel. On the upland parcel, heights within the initial setback distance are between 60 and 90 feet and on the waterfront parcel they are between 60 and 110 feet for base segments and up to 350 feet for tower segments.

2. *Maximum Building Height* [ZR 62-341(c)(2)]: With the exception of a 40 foot penthouse, buildings are not permitted to exceed 110 feet in height on the upland parcel and 210 feet

on the waterfront parcel. One portion of the building on the upland parcel rises to 148 feet. Portions of buildings on the waterfront parcel rise to 300 and 400 feet.

3. *Maximum Tower Floorplates* [ZR 62-341(c)(4)]: On the waterfront parcel, buildings are prohibited from having a floorplate larger than 8,100 square feet above a base height of 70 feet. While the maximum permitted base height is 70 feet on the waterfront parcel, proposed base heights range from 60 to 110, and most building segments exceed 70 feet. Therefore, the floorplates above 70 feet include most of the base of these buildings, creating floorplates up to 45,444 square feet. However, the largest contiguous floorplate within the actual tower portions of the buildings would be limited to 13,200 square feet. In addition, because the towers taper as they rise, the floorplate of the upper portions of the towers are considerably smaller. Also, the refinery addition has a maximum floorplate of 14,643 square feet. It is proposed at this scale in order to maintain dimensions in proportion to the existing landmarked building.

   On the upland parcel, buildings are prohibited from having contiguous floorplates larger than 7,000 square feet at a level above a base height of 60 feet. The base portions of this building range between 60 and 90 feet tall, producing a contiguous floorplate above the base height of 41,443 sf. The floorplate of the taller eastern portion is limited to 6,050 sf.

4. *Maximum Length of Wall Facing the Shoreline* [ZR 62-341(c)(5)]: On the waterfront parcel, buildings are prohibited from having walls longer than 100 feet facing the shoreline above the base height of 70 feet. Most of the base segments on the waterfront parcel exceed 70 feet, producing walls facing the water up to 240 feet long. Walls of actual towers facing the water do not exceed 110 feet, which is the width permitted in the 2005 Greenpoint-Williamsburg Rezoning area. The refinery addition has a maximum width facing the water of 230 feet. Again, this is meant to keep the addition in proportion to the existing structure, which is 250 feet wide.

5. *Distance between Windows in an Inner Court*. [ZR 23-863]: A minimum distance of 60 feet is required between legally required windows for taller portions of the proposed buildings that front on the inner courtyards. The applicant requests waivers for the two northernmost buildings and the southernmost building to provide minimum dimensions of 57 feet, 50 feet, and 55 feet respectively.

6. *Minimum Distance between Buildings* [ZR 23-711]: A minimum of 60 feet is required between legally required windows in two buildings or building segments. On the building between South 1st and South 2nd, the applicant requests a waiver to provide 50 feet in one location.

7. *Dimensions of Inner Court Recesses* [ZR 23-852]: Inner court recesses are required to have a width to depth ratio of at least 2:1 unless the recess is greater than 60 feet wide. The approved envelope permits the building between South 1st and South 2nd streets to have a width to depth ratio as low as 0.84:1 where it is 50 feet wide.

8. *Required Rear Yard* [23-533]: A rear yard equivalent 60 feet wide is required on the interior of the upland parcel. The proposed building does not provide such rear yard equivalent, but instead provides two 60-foot by 60-foot courtyards. The cross element and the taller portion in the eastern part of the parcel are located within the required rear yard equivalent.
9. *Required Waterfront Yard* [62-322]: A 40-foot deep waterfront yard is required along the shoreline on waterfront lots. The proposal provides this waterfront yard with the exception of locations near South 5th Street where the lot depth decreases and at Grand Street near the connection to Grand Ferry Park. The proposed buildings reduce the width of the waterfront yard in the former location to 36 feet over a distance of approximately 5 feet and in the latter location to 11 feet over a distance of approximately 3 feet.

A series of urban design controls would also be incorporated into this special permit to ensure that the development includes key design elements of the current proposal. These are listed below.

1. *Tower Top Glazing*: The applicant has proposed the use of glass in upper portions of the buildings to break up the mass of the buildings and reduce the sense of bulk at height in the development. To ensure that this is implemented, the top 40% of each tower segment would be required to be at least 66% glazed.

2. *Variation in Façade Material*: The applicant has proposed a specific scheme of variation in façade material to break up the mass of the buildings at the street level along the longer building frontages, and also at the scale of the entire development. To ensure that this is implemented, changes in façade material would be required at or near locations where the permitted building envelope changes height. This will provide consistent variation over the entire development, while also allowing flexibility in how the variation is achieved.

3. *Tower Top Equipment Limitation*: To ensure that rooftop mechanical equipment does not alter the highly sculpted profile of the towers, mechanical equipment located on rooftops would be required to be enclosed. The enclosures would be required to be no more than 50 % as wide as the roof on which they are located, and they must share common materials with the façade of the stories below the roof.

4. *Streetwall Articulation*: To ensure a varied streetwall, any portion of the development with a consistent building height over a distance longer than 100 feet would be required to set back from the streetline 15 feet over at least 20% of that streetwall. The setback would be made at a height no higher than 10 feet lower than the overall streetwall height.

5. *Required Retail Locations*: To activate the street and public spaces around the development, local retail uses would be required in the ground floor frontages along Kent Avenue on both the upland and waterfront parcels, and at two locations along the

waterfront public access areas (at the end of the South 3rd Street connection and at the northwestern corner of the northernmost building).

6. *Transparency at Required Retail Locations*: To ensure lively interaction between the buildings and the surrounding public spaces, the required retail frontages described in item 5 above would be required have 70% of their area to a height of 10 feet be transparent.

7. *Canopies, Awnings, and Marquees*: To avoid obstructions to views of the water or through the waterfront public access areas, canopies, awnings, and marquees for entrances on frontages other than Kent Avenue on the waterfront parcel would be limited in size (maximum of 250 square feet), dimension (maximum projection of 12 feet from building wall), and height (minimum height of 15 feet).

8. *Balconies*: To prevent balconies from interfering with the intended profile of the buildings, balconies would be required to be above a height of 110 feet on the waterfront parcel and 85 feet on the upland parcel. Permitted balconies would be required to have at least 50% of the perimeter of the balcony bounded by the building walls

Special Permit to Modify Use Regulations as Part of a General Large Scale Development (74-74) – C 100188 ZSK

Section 74-744(b) permits the modification of use regulations for General Large Scale Developments. The applicant is requesting such a modification for the office tower in the northernmost building.

Section 32-422 requires that, in mixed-use buildings, commercial uses be located on a level below the lowest level of residential occupancy. This northernmost building would contain commercial uses on all floors (1 through 19 of the tower portion of the building). These uses would be on the same level as residential uses in adjacent base segments of the building but would have entirely separate circulation and entrances.

Special Permit for an Accessory Group Parking Facility in a General Large Scale Development (74-53) – C 100189 ZSK

At certification, the applicant requested a special permit to exceed the maximum number of permitted spaces in the northernmost parking facility between Grand and South 2nd Streets. With required and permitted accessory parking, the facility would have been permitted to contain 516 spaces. The applicant proposed to provide 782 spaces in the facility. This application was withdrawn by the applicant on June 2, 2010,

Waterfront Authorization (62-822) – N 100190 ZAK

The applicant requests an Authorization to modify the dimension, seating, planting, and buffer requirements of ZR 62-50 and 62-60, and to approve a phasing plan for open space development.

Waterfront Public Access Requirement Modifications

The applicant seeks to modify the provisions of ZR 62-50, General Requirements for Visual Corridors and Waterfront Public Access Areas pursuant to 82-822(a).

1. *Minimum Width of Shore Public Walkway* [ZR 62-53(a)(2)]: The shore public walkway is required to be a minimum of 40 feet wide along the entire shoreline. The proposed buildings encroach on this width at one point near South 5th Street and at another point near Grand Street. Near South 5th Street, the width is reduced to 36 feet over a distance of approximately 5 feet due to a reduced depth of the property at this location. At Grand Street, the shore public walkway wraps around the edge of the platform adjacent to Grand Ferry Park and extends 40 feet from the shoreline in Grand Ferry Park. At the terminus of the Shore Public Walkway, landward of the connection to the park, the building reduces the width of the shore public walkway to 11 feet over a distance of approximately 3 feet.

The applicant seeks to modify provisions within ZR 62-513 and 62-60, Design Requirements for Waterfront Public Access Areas pursuant to ZR 62-822(b).

62-513

1. *Permitted obstructions in the visual corridor* [ZR 62-513]: Visual corridors are required to be open from their lowest level to the sky. The lowest level is defined as a plane from Kent Avenue, sloping downward to the platform at the parcel's seaward edge. Beneath the South 1st and South 4th Street upland connections, subgrade parking structures are proposed that are level with Kent Avenue for approximately 200 feet before descending to the platform via steps and ramps. The portion of the parking structure above the lowest level is considered an obstruction in the visual corridor.

62-60

1. *Required Screening Buffer* [ZR 62-62(c)(2)]: A 10-foot-wide screening buffer is required along the boundary of the shore public walkway and supplemental public access areas where they meet private portions of the property. This requirement does not apply in certain areas where interaction between public and private portions of the property are encouraged, such as at cafes and building entrances. The proposed design generally provides a 10-foot wide planted screening buffer, though the width is reduced to between 5 and 10 feet in certain small areas to accommodate the curvilinear and angular designs of the proposed planters. In areas where less than 10 feet of planting are provided, vertical planting screens that accommodate full-coverage evergreen vine vegetation would be installed.

   In addition, where the screening buffer described above abuts proposed buildings, a 5-foot strip of the buffer would be retained by the applicant to facilitate maintenance of the building walls. This area would not be included in the waterfront public access area and therefore would not count as buffer for the purposes of zoning compliance. However, the applicant would commit through restrictive declaration to plant and maintain this 5-foot wide area as if it were part of the screening buffer. The net result is that over most of the

site, 10 feet of planted buffer is provided, both in the waterfront public access area and on private property via restrictive declaration.

2. *Planted Area (Waterfront Public Access Area*) [62-62(c)(1)]: Fifty percent of the shore public walkway and supplemental public access areas are required to be planted. This design has only 44.5 % planted within these areas.

3. *Planted Area (Upland Connection)* [62-64(c)(1) and 62-64(c)(3)]: Forty percent of the area within the Type 1 upland connections and transition areas must be planted. The transition areas comprise the 40-foot portion of the upland connections seaward of the vehicular turnarounds and the Type I upland connections continue from the transition areas seaward to the shore public walkway. The South 1st and South 4th street upland connections have approximately 9% of the transition areas planted and 23.1% and 19.3% of the Type 1 upland connections, respectively. The South Second Street upland connection has only 34.5% of the transition area planted but complies with the Type I upland connection planting requirement.

4. *Additional Planting (Waterfront Public Access Area)* [62-62 (c)(3)(ii)]: Specific plantings in the form of trees, shrubs, or lawn panel are required for every 1,250 sf of shore public walkway and supplemental public access area. The total requirement for this proposal is 98 trees. This proposal provides only 74 additional trees. These trees are in addition to 97 canopy trees that are provided pursuant to a separate requirement.

5. *Seating (Waterfront Public Access Area)* [62-62(b)]: One linear foot of seating is required for every 75 square feet of shore public walkway and supplemental public access area. The total requirement for this proposal is 1,632 feet of seating. The proposal provides only 1,570.5 feet.

6. *Clear Path (Upland Connections)* [62-64(a)(2)]: A 10-ft wide clear path is required in upland connections adjacent to a vehicular turnaround. At South 2nd Street, a 10-ft sidewalk is provided, but light posts are located within it, resulting in an approximately 8-foot wide clear path for most of the upland connection. At the end of the turnaround, there is a slight pinch point, resulting in one location along the path with 7'-2" feet in width.

Waterfront Public Access Phasing

The applicant requests approval of a phasing plan for the waterfront public access area improvements. The zoning requires that all waterfront public access areas on a zoning lot be completed prior to issuance of certificates of occupancy for any development on that zoning lot. However, the applicant proposes to build the site out in phases, with each building constituting a separate phase. The applicant plans to start with the upland parcel, and then build out the waterfront parcel from south to north.

The upland parcel has no waterfront access requirements because it is not a waterfront lot. The phasing plan for the waterfront parcel starts with the southernmost building and moves northward. Each phase of building construction is accompanied by a phase of open space located adjacent to that building. Each open space phase contains a percentage of the total proposed area of open space that is greater than or equal to the percentage of total proposed floor area contained in the associated construction phase. Each open space phase also includes at least two points of access and egress. Under the project's restrictive declaration, the applicant would be entitled to receive certificates of occupancy for each building on the waterfront parcel upon completion of the associated public access area under the phasing plan.

The applicant proposes an alternate phasing plan that would be used if the School Construction Authority were to request a delay in reconstruction of the refinery building in order to allow for its further consideration whether the refinery should be used to accommodate a school. In that instance, redevelopment of the refinery would be postponed and the building north of the refinery would proceed directly after the building south of the refinery. Following development

of the building north of the refinery, the applicant would return to the refinery as the next phase of development. In the event of this phasing 'switch', the majority of the central lawn would be improved with temporary grading and lawn planting and the adjacent clear path along the waterfront would be improved as proposed in order to connect the open space constructed along with the building north of the refinery, with that which will have been constructed in the southern portion of the waterfront parcel.

Zoning Certifications

The applicant also requests two Certifications from the Chair of the City Planning Commission:

1. N 100191 ZCK: Certification pursuant to ZR 62-811 that a site plan has been submitted that complies with waterfront public access requirements of Article 6 Chapter 2 as modified by the related Authorization.
2. N 100192 ZCK: Certification pursuant to ZR 62-812 that the proposed waterfront zoning lot subdivision would not result in a reduction in required waterfront public access area.

ENVIRONMENTAL REVIEW

This application (C 100187 ZSK), in conjunction with the related applications, 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 CEQR number is 07DCP094K. The lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration and a Draft Scope of Work was issued on June 29th, 2007 and distributed, published and filed. A Public Scoping Meeting was held on the Draft Scope of Work on July 31st, 2007. A Final Scope of Work, reflecting the comments made during the scoping, was issued on December 30th, 2009.

The applicant prepared a Draft Environmental Impact Statement (DEIS) and a Notice of Completion for the DEIS was issued December 30th, 2009. On April 28th, 2009, a joint public hearing was held on the DEIS pursuant to SEQRA regulations and CEQR procedures in conjunction with the Uniform Land Use Review Procedure (ULURP) applications. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on May 28th, 2010.

The FEIS identified the following significant adverse impacts and proposed the following mitigation measures:

Community Facilities

The proposed project would introduce 2,400 residential units to the ½-mile study area in CSD 14. The proposed project would generate approximately 696 elementary, 288 intermediate, and 336 high school students in the ½-mile study area by 2020. The assessment concludes that the student population introduced by the proposed project would not result in any significant adverse impacts on schools within the CSD 14 study area or on high schools. However, the new population introduced by the proposed project would result in a significant adverse impact on elementary and intermediate schools within the ½-mile study area surrounding the project site.

The shortfall of seats identified within the ½-mile study area and Sub-district 3 is based on conservative assumptions regarding future background growth that includes 12,712 new housing units that would be developed in Sub-district 3 of CSD 14 by 2020, in addition to the proposed project. Because the proposed project parcels would be developed sequentially, the potential to result in a significant adverse impact on elementary schools and intermediate schools could occur, respectively, when the proposed project completes construction of 554 and 805 residential units that introduce public school children. Should the high level of background growth not occur, the shortfall of elementary school seats in Sub-district 3, as well as the ½-mile study area,

would be reduced but not eliminated. Based on these factors, the potential significant adverse impact on elementary schools could occur with the development of Site D, and the potential significant adverse impact on intermediate schools could occur with the development of Site C.

In order to address the proposed project's significant adverse impact on schools, the applicant will enter into an agreement with the New York City School Construction Authority (SCA) to provide an option to locate an approximately 100,000-square-foot public elementary and intermediate school within the community facility space in the Refinery complex. SCA and NYC Department of Education (DOE) would monitor school utilization rates as the project is built and determine whether a school is needed within the Refinery complex.

An action may generate a sufficient number of eligible children to affect the availability of slots at publicly funded child care facilities if it produces substantial numbers of subsidized, low-to moderate-income family housing units. It is assumed for the purposes of the community facilities analysis that the proposed project could introduce up to 720 new low- to moderate-income units by 2020, and therefore it would result in an increase in demand on public child care facilities. The 720 low- to moderate-income units introduced by the proposed project are projected to introduce approximately 128 children eligible for publicly funded child care. This number of eligible children in the future with the proposed project would exacerbate a deficit of slots within the study area over the No Action condition, and would constitute an increase of more than five percent of the collective capacity of the study area's public child care facilities. Therefore, the proposed project would result in the potential for a significant adverse impact on publicly funded child care and Head Start facilities.

Because the proposed project parcels would be developed sequentially, the potential to result in an increase in a deficiency of available child care slots by five percent or more could occur when the proposed project completes construction of 559 affordable

residential units that introduce children eligible for publicly funded child care (upon completion of Site B). The number of affordable housing units that could result in a significant adverse impact on child care facilities would be exclusive of senior rental housing units, and the affordable homeownership units.

Possible mitigation measures for this significant adverse impact include adding capacity to existing facilities if determined feasible through consultation with the New York City Administration for Children's Services (ACS), or providing a new child care facility within or near the project site. As the proposed project is developed, the applicant will coordinate with ACS to consider the need for and the implementation of measures to provide any needed additional capacity in day care facilities within the 1-½ mile study area or within Community Board 1. The proposed project would need to provide 27 child care slots to reduce the increase in the utilization rate to less than 5 percent. Absent the implementation of any needed mitigation measures, the proposed project would have an unmitigated significant adverse impact on child care facilities.

Shadows

The proposed project's development on Site A would result in a significant adverse shadow impact on the 1.8-acre Grand Ferry Park. During the fall, winter, and early spring the utility of the park will be significantly impacted due to increased shadows on sun-sensitive features used by park visitors (e.g., benches, picnic tables, etc.) and the park's vegetation would also be adversely affected. The significant adverse impact would occur upon full construction of Site A, which is projected to be completed in 2020.

During the warmer months (April through October), all areas of Grand Ferry Park would continue to get several hours of sun in the morning, and most areas of the park would get sun later in the afternoon as well. New shadow cast by the proposed building at Site A would move west to east across the park over the course of several hours in the middle of the day. The new shadow would not last for more than about two-and-a-quarter hours on any one particular location, but the total duration of time from its entry at the western

edge of the park to its exit at the eastern edge would range from about six-and-a-half hours at the equinoxes to three-and-three-quarters hours at the summer solstice. In December, under the No Action condition, sunlight is already limited throughout the day, and the proposed project would remove all or most of the remaining sunlight for about two hours around midday. Portions of the park would continue to receive direct sunlight throughout the day during the spring, summer, and fall.

The several hours of incremental midday shadow would cause a significant adverse impact to the users of this open space during the fall, winter, and early spring, and would likely also adversely impact the park's vegetation. Most trees and many plants require a minimum of between four to six hours of sunlight per day to maintain healthy growth during normal conditions. While certain trees and other plants in Grand Ferry Park would continue to get six hours of sun in the spring and fall with the proposed project, the two-and-a-quarter hours of new shadow that many of the trees would experience could potentially significantly impact their ability to survive. In the late spring and summer, all the trees and plants would get more than seven hours of sunlight.

Due to the physical constraints of the site, relocating facilities within the park to avoid sunlight loss is not a viable mitigation option. Potentially feasible mitigation for the significant adverse impact on Grand Ferry Park could include replacing some vegetation with more shade-tolerant species; undertaking additional maintenance to reduce the likelihood of species loss; providing additional maintenance funding and/or helping to enhance other nearby open spaces. The applicant has consulted with the Departments of Parks and Recreation (DPR) and City Planning (DCP) to develop the mitigation program. In order to address the significant adverse shadows impacts on Grand Ferry Park, the applicant would be required to provide funding for monitoring and maintenance of affected plantings within Grand Ferry Park and replacement, as necessary, with shade-tolerant species. While these funds would be used to enhance the quality of Grand Ferry Park, they would not reduce the incremental shadows cast by the proposed project. Therefore, the significant adverse shadows impact to Grand Ferry Park would only be

partially mitigated by these measures.

Historic Resources

The buildings on the project site have been determined eligible for listing on the State and National Registers of Historic Places (S/NR). The proposed project would demolish all structures—with the exception of the Refinery—on the project site. Therefore, the proposed project would have a significant adverse impact on architectural resources. This adverse impact would occur when the S/NR-eligible buildings are demolished on the site.

Measures to partially mitigate significant adverse impacts would be implemented in consultation with the State Historic Preservation Office (SHPO) and would be set forth in either a Memorandum of Agreement (MOA) or Letter of Resolution (LOR) to be signed by the applicant, SHPO, and other involved agencies. Mitigation measures include preparation of Historic American Engineering Record (HAER) documentation of the buildings on the site, which would include photographic documentation, historic plans, and an accompanying historical narrative; and consultation with SHPO with respect to the adaptive reuse design of the Refinery at the pre-final and final design stages. In addition, industrial artifacts would be included as part of an interpretive display, to include signage, as part of the proposed open space design. Items that are considered for salvage include machinery, crane rails, syrup tanks, elements of larger structures, and historic signage. The design intent of the interpretive display is to place the artifacts in a linear fashion to represent the sugar production process that took place on the site. The applicant will salvage the three sets of original wood doors on the Refinery's Kent Avenue façade and seek to incorporate them into the design of the rehabilitated Refinery. Pursuant to the terms of the MOA or LOR, the salvage and reuse of industrial artifacts would be contingent upon their feasibility for salvage and reinstallation.

Traffic

Traffic conditions were evaluated at 55 intersections for the weekday and Saturday conditions. The analysis indicates that in the future with the proposed project there would

be the potential for significant adverse impacts at a total of 18 signalized and 14 unsignalized intersections during one or more of the peak hour periods analyzed, including: 24 intersections during the weekday AM peak hour, 11 intersections during the weekday midday peak hour, 31 intersections during the weekday PM peak hour, and six intersections during the Saturday midday peak hour at one or more lane-groups or approaches.

All of the potential traffic impacts at the 18 signalized and 14 unsignalized locations identified above would be mitigated by implementing a variety of mitigation measures including signal timing modifications, lane restripings, changes to parking regulations, changes to bicycle lane classifications, new stop controls, and installation of new traffic signals. These mitigation measures are detailed below for each of the impacted intersections.

Kent Avenue and Metropolitan Avenue

The impact at the northbound through-and-right-turn movement of this intersection during the weekday PM peak hour could be mitigated by applying the following measures: a) reduce the northbound approach buffer separating the exclusive left-turn lane and the through lane by 3 feet; b) restriping the northbound approach through lane from 11-foot to 14-foot wide; and, c) shifting 5 seconds of green time from the eastbound/westbound phase to the northbound phase.

Kent Avenue and South 3rd Street

The impact at the northbound through-and-right-turn movement of this intersection during the weekday PM peak hour could be mitigated by installing a No Standing Anytime regulation sign on the east curb of the northbound approach. In addition, reducing the buffer separating the exclusive left-turn lane and the through lane on the northbound approach by 2 feet and restriping the northbound approach to provide an 11-foot through lane and a 10-foot right-turn lane are also required. The geometric changes identified above would result in a loss of approximately 5 on-street parking spaces and would prohibit curbside loading/unloading activities along the east curb of Kent Avenue.

Kent Avenue and Broadway

The impact at the northbound through-and-right-turn movement of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 3 seconds and 2 seconds of green time, respectively, from the eastbound/westbound phase to the northbound phase.

Wythe Avenue and Metropolitan Avenue

The impacts at the westbound and southbound approaches during the weekday AM peak hour could be mitigated by daylighting the westbound and southbound approaches. The impact at the southbound approach during the weekday midday peak hour could be mitigated by shifting 1 second of green time from the eastbound/westbound phase to the southbound phase. The impacts at the westbound and southbound approaches during the weekday PM peak hour could be mitigated by daylighting the westbound approach and by shifting 1 second of green time from the eastbound/westbound phase to the southbound phase. The daylighting at the westbound approach would prohibit parking at approximately 4 on-street parking spaces during the weekday AM and PM peak hours. The daylighting at the southbound approach would result in a loss of approximately 8 on-street parking spaces during the weekday AM peak hour.

Wythe Avenue and Broadway

The impact at the southbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by daylighting the southbound approach. The daylighting at the southbound approach would prohibit parking at approximately 7 on-street parking spaces during the weekday AM and PM peak hours, respectively. In addition, the daylighting would also prohibit curbside loading/unloading activities along the east curb of the southbound approach during the weekday PM peak hour.

Bedford Avenue and South 6th Street

The impact at the westbound approach of this intersection during the weekday PM peak hour could be mitigated by shifting 5 seconds of green time from the northbound phase to the westbound phase.

Driggs Avenue and Metropolitan Avenue

The impact at the westbound approach of this intersection during the weekday AM peak

hour could be mitigated by: a) daylighting the westbound Metropolitan Avenue approach; and, b) shifting 3 seconds of green time from the southbound phase to the eastbound/westbound phase. The impact at the westbound approach of this intersection during the weekday PM peak hour could be mitigated by shifting 4 seconds of green time from the southbound phase to the eastbound/westbound phase. The daylighting at the westbound approach would prohibit parking at approximately 5 on-street parking spaces during the weekday AM peak hour.

Driggs Avenue and Broadway

The impact at the westbound approach of this intersection during the weekday midday peak hour could be mitigated by shifting 2 seconds of green time from the southbound phase to the eastbound/westbound phase. During the weekday PM peak hour, the impact at the westbound approach could be mitigated by daylighting the westbound approach. The daylighting at the westbound approach would prohibit parking at approximately 5 on-street parking spaces during the weekday PM peak hour.

Roebling Street and South 4th Street

The impact at the southbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 6 and 1 seconds of green time, respectively, from the eastbound/westbound phase to the southbound phase.

Marcy Avenue and Metropolitan Avenue

The impacts at the westbound left-turn movement of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 5 and 9 seconds of green time, respectively, from the eastbound/westbound phase to the exclusive westbound phase.

Metropolitan Avenue and Rodney Street

The impacts at the eastbound left-turn movement of this intersection during the weekday AM, midday, and PM peak hours could be mitigated by shifting 3, 3, and 6 seconds of green time, respectively, from the northbound phase to the exclusive eastbound phase.

Broadway and Havemeyer Street

The impact at the westbound approach of this intersection during the weekday AM peak hour and at the eastbound approach during the weekday PM peak hour could be mitigated by shifting 1 and 3 seconds of green time, respectively, from the northbound phase to the

eastbound/westbound phase.

Marcy Avenue and Broadway

The impacts at the westbound approach of this intersection during the weekday AM and midday peak hours could be mitigated by shifting 3 and 2 seconds of green time, respectively, from the southbound phase to the eastbound/westbound phase. The impacts at the eastbound and westbound approaches of this intersection during the weekday PM peak hour could be mitigated by daylighting the eastbound and westbound approaches. The daylighting at the eastbound approach would prohibit parking at approximately 3 on-street parking spaces during the weekday PM peak hour. Also, the daylighting at the westbound approach would prohibit parking at approximately 4 on-street parking spaces during the weekday PM peak hour.

Kent Avenue and South 2nd Street

The impact on the westbound approach of this intersection during the weekday AM, midday, PM, and Saturday midday peak hours could be mitigated by: a) installing a new traffic signal; b) reducing the northbound approach buffer separating the exclusive left-turn lane and the through lane by 2 feet; c) shift the northbound approach through lane to the west by 2 feet; and, d) restriping the northbound approach to allow for one 11-foot and 10-foot through lane. In addition, daylighting of the east curb of the northbound approach would also be required for the weekday PM peak hour. The daylighting at the east curb of the northbound approach would prohibit curbside loading/unloading activities during the weekday PM peak hour.

Kent Avenue and South 4th Street

The impact on the westbound approach of this intersection during the weekday AM, midday, PM, and Saturday midday peak hours could be mitigated by: a) Installing a new traffic signal; b) reducing the northbound approach buffer separating the exclusive left-turn lane and the through lane by 2 feet; c) shifting the northbound approach through lane to the west by 2 feet; and, d) restriping the northbound approach to allow for one 11-foot and one 10-foot through lane. In addition, daylighting at the east curb of the northbound approach would also be required during the weekday PM peak hour. The daylighting at the east curb of the northbound approach would prohibit curbside loading/unloading

activities during the weekday PM peak hour.

Kent Avenue and South 6th Street

The impact at the westbound approach of this intersection during the weekday AM, midday, and PM peak hours could be mitigated by: a) installing a new traffic signal; b) reduce the northbound approach buffer separating the exclusive left-turn lane and the through lane by 3 feet; and, c) restriping the northbound approach through lane from 11-foot to 14-foot wide.

Wythe Avenue and Grand Street

The impact at the southbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by converting the Class II bicycle lane on the southbound approach to a Class III signed bicycle route and by daylighting the east curb of the southbound approach to allow for two 11.5-foot moving lanes. The daylighting at the east curb of the southbound approach would prohibit parking at approximately 8 on-street parking spaces during the weekday AM and PM peak hours.

Wythe Avenue and South 1st Street

The impact at the eastbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by: a) converting the southbound approach Class II bicycle lane to a Class III signed route; b) daylighting the east curb of the southbound approach to allow for two 11-foot moving lanes; and, c) replacing the existing Two-Way-Stop-Control with an All-Way-Stop-Control. The daylighting at the east curb of the southbound approach would prohibit parking at approximately 10 parking spaces during the weekday AM and PM peak hours.

Wythe Avenue and South 2nd Street

The impact at the westbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by converting the southbound approach and receiving lane Class II bicycle lane to a Class III signed route and by daylighting the east curb of the southbound approach and receiving to allow for two 10.5-foot moving lanes. The daylighting at the east curb of the southbound approach would prohibit parking at approximately 4 on-street parking spaces during the weekday AM and PM peak hours. In addition, daylighting of the southbound receiving lane would result in the loss of

approximately 5 parking spaces.

Wythe Avenue and South 3rd Street

The impact at the eastbound approach of this intersection during the weekday AM, midday, and PM, and Saturday midday peak hours could be mitigated by: a) converting the southbound approach Class II bicycle lane to a Class III signed route; b) daylighting the east curb of the southbound approach to allow for two 12-foot moving lanes; and, c) replacing the existing Two-Way-Stop-Control with an All-Way-Stop-Control. The daylighting at the east curb of the southbound approach would result in the loss of approximately 8 parking spaces.

Wythe Avenue and South 4th Street

The impact at the southbound approach of this intersection during the weekday AM, midday and PM, and Saturday midday peak hours could be mitigated by converting the southbound approach Class II bicycle lane to a Class III signed route and by daylighting the east curb of the southbound approach to allow for two 11-foot moving lanes. The daylighting at the east curb of the southbound approach would result in the loss of approximately 10 parking spaces.

Wythe Avenue and South 5th Street

The impact at the eastbound approach of this intersection during the weekday AM, midday and PM, and Saturday midday peak hours could be mitigated by: a) converting the southbound approach Class II bicycle lane to a Class III signed route; b) daylighting the east curb of the southbound approach to allow for two 11-foot moving lanes; and, c) replacing the existing Two-Way-Stop-Control with an All-Way-Stop-Control. The daylighting at the east curb of the southbound approach would result in the loss of approximately 10 parking spaces.

Wythe Avenue and South 6th Street

The impact at the southbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by converting the southbound approach Class II bicycle lane to a Class III signed route and by daylighting the east curb of the southbound approach to allow for two 11-foot moving lanes. The daylighting at the east curb of the southbound approach would prohibit parking at approximately 5 parking spaces during

the weekday AM and PM peak hours.

Berry Street and South 6th Street

The impact at the westbound approach of this intersection during the weekday PM peak hour could be mitigated by replacing the existing Two-Way-Stop-Control with an All-Way-Stop-Control.

Roebling Street and Broadway

The impact at the southbound right-turn movement of this intersection during the weekday PM and Saturday midday peak hours could be mitigated by installing a new traffic signal.

Kent Avenue and Clymer Street

The impact at the westbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 2 seconds of green time from the northbound phase to the eastbound/westbound phase.

Kent Avenue and Williamsburg Street West

The impact at the westbound approach of this intersection during the weekday AM peak hour could be mitigated by shifting 5 seconds of green time from the southbound phase to the eastbound/westbound phase.

Flushing Avenue and Williamsburg Street West – Southbound BQE Service Road

The impacts at the southbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 2 and 3 seconds of green time, respectively, from the westbound phase to the southbound phase.

Flushing Avenue and Classon Avenue/BQE Off-Ramp – Northbound BQE Service Road

The impact at the northbound Classon Avenue approach of this intersection during the weekday AM, midday, and PM peak hours could be mitigated by shifting 1 second of green time from the westbound phase to the Classon Avenue northbound phase. In addition, the impact at the northbound BQE Off-Ramp during the weekday AM and PM peak hours could be mitigated by shifting 4 and 1 seconds of green time, respectively, from the westbound phase to the BQE Off-Ramp northbound phase.

Wythe Avenue and Williamsburg Street West

The impact at the eastbound approach of this intersection during the weekday AM and PM peak hours could be mitigated by shifting 3 and 4 seconds of green time, respectively, from the southbound phase to the eastbound phase.

Wythe Avenue and South 8th Street

The impact at the westbound approach of this intersection during the weekday PM peak hour could be mitigated by converting the southbound approach and receiving lane Class II bicycle lane to a Class III signed route and daylighting the east curb of the southbound approach and receiving lane to allow for two 11-foot moving lanes. The daylighting at the east curb of the southbound approach and receiving lane would prohibit parking at approximately 11 on-street parking spaces during the weekday PM peak hour.

Wythe Avenue and South 9th Street

The impact at the eastbound approach of this intersection during the weekday PM peak hour could be mitigated by daylighting the east curb of the southbound approach and receiving lane to allow for two moving lanes (11-foot and 10-foot wide, respectively). The daylighting at the east curb of the southbound approach and receiving lane would prohibit parking at approximately 11 on-street parking spaces during the weekday PM peak hour.

With the above mitigation measures in place, all of the impacted primary and secondary study area intersections would operate at the same or better service levels than the No Action conditions. All the proposed mitigation measures discussed above will be subject to review and approval from the New York City Department of Transportation (DOT). In addition, installation of new traffic signals at the unsignalized locations would require detailed Signal Warrant Studies, which are also subject to review and approval from DOT.

Because the proposed project parcels would be developed sequentially, the potential significant adverse impacts on traffic conditions in the study area would first occur with the completion of Site E on the upland parcel. Specifically, with the completion of Site E

by the year 2013, the following study area intersections could experience significant adverse traffic impacts during one or more of the analysis peak hours: a) Marcy Avenue and Broadway; b) Kent Avenue and South 4th Street; c) Roebling Street and South 4th Street; d) Havemeyer Street and Broadway; e) Wythe Avenue and South 3rd Street; and, f) Wythe Avenue and South 4th Street. To improve traffic operating conditions at the above intersections, mitigation measures identified for the 2020 Build conditions would have to be advanced to 2013.

As part of the traffic mitigation, the applicant has committed to conduct a traffic monitoring program (TMP). Such monitoring will be conducted at the time of the completion and occupancy of Site E on the upland parcel (analyzed as 2013) and the completion of Site A, which corresponds to the project's full build out (analyzed as 2020). The applicant will submit for NYCDOT's review and approval a TMP for a proposed scope for the monitoring of the interim and full buildout conditions.

Transit and Pedestrians

Due to the proposed project, the Marcy Avenue station's Manhattan-bound secondary control areas (in the vicinity of Havemeyer Street) for the J/M/Z subway line would exceed optimum capacity under the future with the proposed project condition during the AM peak period, while the Queens-bound secondary control area would exceed optimum capacity during the PM peak period, resulting in significant adverse impacts.

To mitigate the impacts to the Marcy Avenue station's Manhattan-bound and Queens-bound secondary control areas for the J/M/Z subway lines, the existing High Entrance and Exit Turnstile (HEET) at both of the control areas would be replaced with two low-turnstiles at each location. This would increase the control area capacity and would mitigate the significant adverse impacts to the aforementioned control areas. It should be noted that the Metropolitan Transportation Authority (MTA)-New York City Transit (NYCT) has reviewed the feasibility of installing two regular turnstiles in place of each of the HEETs at the secondary control areas, and has agreed to the installation of regular

turnstiles at the aforementioned locations.

The proposed project would result in significant adverse bus line haul impacts as the projected passenger volumes in the future with the proposed project condition would exceed the NYCT guideline capacity of 54 passengers per bus. Specifically, the proposed project would result in the following significant adverse impacts to the study area's bus routes: a) the guideline capacity would be exceeded on the northbound and southbound B62 bus route during both the AM and PM peak periods for all local load point locations; while the guideline capacity would be exceeded for all the area-wide peak load point locations during the AM peak period; and, b) the guideline capacity would be exceeded on the eastbound and westbound Q59 bus route during both the AM and PM peak periods for all local and area-wide load point locations.

It is expected that NYCT would monitor the changes in the bus ridership levels and would make necessary service adjustments to accommodate the increased demand generated by the future development projects as well as by the projected developments identified as part of *Greenpoint-Williamsburg Rezoning.* NYCT has agreed that in the event of ridership increases on the Q59 and B62 bus routes (such that it exceeds the MTA/NYCT guidelines), the service frequency will be adjusted accordingly to accommodate the demand. Therefore, with the increased service frequency on the Q59 and B62 bus routes or other equivalent measures, all of the bus line haul impacts would be mitigated and the bus service would operate at acceptable levels.

A significant adverse pedestrian impact was identified for the south crosswalk at the Bedford Avenue and North 7th Street intersection during the weekday AM peak period. Restriping the crosswalk from 12.0 feet wide to 12.3 feet wide would mitigate the significant adverse impact to the south crosswalk at the Bedford Avenue and North 7th Street intersection.

Because the proposed project parcels would be developed sequentially, the potential significant adverse impacts on transit and pedestrians would occur upon completion of Site E on the upland parcel. In order to mitigate these transit and pedestrian impacts, mitigation measures proposed for the 2020 Build conditions would have to be advanced to 2013.

Construction Traffic

Since the projected construction activities would yield less total traffic than that projected for the proposed project, traffic operating conditions resulting from construction activities in the traffic study area are expected to be better than the 2020 future with the proposed project condition. Nonetheless, because existing and No Action traffic conditions at some of the study area intersections through which construction-related traffic would also travel were determined to operate at unacceptable levels during commuter peak hours, it is possible that significant adverse traffic impacts could occur at some or many of these locations during construction. In order to alleviate construction traffic impacts, measures recommended to mitigate impacts associated with the proposed project could be implemented during construction before completion of the proposed project.

A quantified construction traffic analysis for peak 2016 construction was conducted for 21 intersections. The analyses show that no significant adverse traffic impacts would be expected in the 6 to 7 AM peak hour for any of the 21 analyzed intersections. During the 3 to 4 PM peak hour, 5 signalized intersections and 7 unsignalized intersections were identified to have resulted in significant adverse traffic impacts. Making adjustments to signal timings and applying other proposed build mitigation measures would fully mitigate the significant adverse impacts identified for the 3 to 4 PM peak hour (and similarly for the 5 to 6 PM peak hour) and not adversely affect operations during the 6 to 7 AM peak hour.

Construction Noise

Construction of the proposed project would implement measures to reduce noise levels

during construction. Even with these measures, an analysis based on a detailed construction activity and equipment schedule prepared by the applicant determined that the noise levels due to construction activities would result in significant adverse noise impacts at some sensitive receptors (i.e., residential buildings) immediately adjacent to the project site. The impacted locations include: a) residential buildings with façades on South 2nd, South 3rd, and South 4th Streets between Kent and Wythe Avenues; and, b) residential buildings with a façade along Grand Street closest to Kent Avenue.

Almost all of the impacted residential locations have double glazed windows and some form of air conditioning, which would provide substantial attenuation of the incident construction noise and result in acceptable interior noise levels according to CEQR criteria during most times of day. The applicant would make attenuation measures (i.e., upgraded windows and/or an alternate means of ventilation) available to any of the residences where significant adverse impacts have been identified but do not already have these measures.

As noted in the above discussion, the identified mitigation measures for shadows and historic resources would only partially mitigate their respective significant adverse impacts. Therefore, some portion of the significant adverse shadows impact to Grand Ferry Park may be unavoidable. And, as the existing buildings on the project site have been determined eligible for listing on the State and National Registers of Historic Places (S/NRs), the demolition of all but the Refinery (the Filter, Pan, and Finishing Houses) under the proposed project would constitute a significant adverse impact on architectural resources that could not be avoided.

In accordance with CEQR, alternatives to the proposed project were analyzed as part of the FEIS. Seven alternatives to the proposed project were analyzed: a) a No Action Alternative that assumes the continuation of the existing M3-1 zoning on the site and the demolition and redevelopment of the site under that zoning; b) a Reduced Density Alternative, which considers a smaller project that would reduce the development program and building heights; c) a Hotel Alternative, in which a hotel would be developed in a portion of the Refinery under the proposed

C6-2 zoning designation, replacing a portion of the community facility and residential space; d) a Reduced Parking Alternative, which considers the same development program as the proposed project but without the special permit [ULURP No. C100189ZSK] for accessory parking spaces in the northern parking facility (located beneath Sites A and B); e) a Reduced Site A Alternative, which assesses the environmental effects of reduced heights on the northernmost waterfront buildings (Site A) and with no special permit for accessory parking spaces in the northern parking facility; f) a Cogeneration Energy Supply Alternative that explores the potential for the proposed project to include a distributed generation and combined heat and power (CHP) system, including cogeneration to improve energy efficiency and reliability while reducing GHG emissions; and, g) a No Unmitigated Significant Adverse Impacts Alternative, which considers a project program that would eliminate the proposed project's unmitigated significant adverse impacts.

The alternatives analysis discloses that three of the seven alternatives – the No Action Alternative, the Reduced Density Alternative, and the No Unmitigated Significant Adverse Impacts Alternative – would not substantively meet the goals and objectives of the proposed project. Three of the four remaining alternatives would include approximately the same overall square footage as the proposed project: one would include a hotel component should market conditions indicate that a potential hotel use is economically viable (the Hotel Alternative), one would include a reduction in the total amount of on-site parking (the Reduced Parking Alternative), and one would include the same reduction in on-site parking in combination with reduced building heights on Site A (the Reduced Site A Alternative), and would satisfy the goals and objectives of the proposed project. The remaining alternative, the Cogeneration Energy Supply Alternative, would only differ from the proposed project by including on-site facilities to generate electricity, heat, and cooling (cogeneration); however, this alternative was identified as economically infeasible.

The Hotel Alternative would result in significant adverse impacts similar to the proposed project. Like the proposed project, this alternative would result in significant adverse impacts to: public schools; shadows on Grand Ferry Park (even though this alternative

has shorter buildings); historic resources; traffic; pedestrians; noise; and construction. Of these – and similar to the proposed project – the impacts from shadows and on historic resources are unavoidable. Compared to the proposed project, the Hotel Alternative would introduce a greater number of vehicle trips during the weekday midday and Saturday midday peak hours. Therefore, it is possible that this alternative could result in greater traffic impacts during the weekday midday and Saturday midday peak hours. Where the proposed project has identified mitigation measures to fully or partially mitigate its significant adverse impacts, the same mitigation measures would apply with the Hotel Alternative as well. In all other analysis areas, as with the proposed project, the Hotel Alternative would not result in significant adverse impacts.

The Reduced Parking Alternative would result in significant adverse impacts similar to the proposed project. While the reduction in the number of on-site parking spaces could result in changes in the circulation pattern on the adjacent street network and less auto trips to the project site, this alternative could result in the same significant adverse traffic impacts as the proposed project (although the magnitude of such impacts could be less due to the redistribution of trips in the study area). Like the proposed project, this alternative would result in significant adverse impacts to: public schools; shadows on Grand Ferry Park; historic resources; traffic; pedestrians; noise; and construction. Of these – and similar to the proposed project – the impacts from shadows and on historic resources are unavoidable. Where the proposed project has identified mitigation measures to fully or partially mitigate its significant adverse impacts, the same mitigation measures would apply with the Reduced Parking Alternative as well. In all other analysis areas, as with the proposed project, the Reduced Parking Alternative would not result in significant adverse impacts.

The Reduced Site A Alternative would result in significant adverse impacts similar to the proposed project. While the reduction in the number of on-site parking spaces could result in changes in the circulation pattern on the adjacent street network and less auto trips to the project site, this alternative could result in the same significant adverse traffic

impacts as the proposed project. Although the heights of the buildings on Site A would be shorter under this alternative when compared to the proposed project, the Reduced Site A Alternative would be consistent with the design principles of stepping up building heights from Kent Avenue to the waterfront and staggering the heights of the buildings and would positively affect the urban design of the project site because it would break up the massing of each block. Like the proposed project, this alternative would result in significant adverse impacts to: public schools; shadows on Grand Ferry Park; historic resources; traffic; pedestrians; noise; and construction. Of these – and similar to the proposed project – the impacts from shadows and on historic resources are unavoidable. Where the proposed project has identified mitigation measures to fully or partially mitigate its significant adverse impacts, the same mitigation measures would apply with the Reduced Site A Alternative as well. In all other analysis areas, as with the proposed project, the Reduced Site A Alternative would not result in significant adverse impacts.

On June 4, 2010, a Technical Memorandum was submitted by the applicant that describes and analyzes the modifications to the Proposed Actions, adopted herein. DCP, acting on behalf of the lead agency, reviewed the Technical Memorandum and 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 100187 ZSK), in conjunction with the applications for the related ULURP actions, was certified as complete by the Department of City Planning on January 4, 2010, and was duly referred to Community Board 1 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP actions, which were referred for information and review on January 4, 2010 in accordance with the procedures for non-ULURP matters.

Community Board Review

Community Board 1 held a public hearing on this application (C 100187 ZSK) and on applications for the related actions on February 9, 2010, and on March 9, 2010, by a vote of 23 in favor, 12 in opposition and 1 abstention, adopted a resolution recommending disapproval of the application with the following conditions.

The proposed modifications seek to retain the positive aspects of the project – substantial affordable housing, 4 acres of open space, mixed-use development and compelling architectural and landscape design – while providing meaningful mitigation of the many adverse impacts imposed by the project. I should be emphasized that the proposed modifications will still result in a very large project with a significant number of new residents and many still-unmitigated impacts. It was the sense of the committee that these density levels were the maximum sustainable.

The proposed modifications are as follows.

1. *Reduce the overall density of the project to be in line with the 2005 Greenpoint-Williamsburg Waterfront Rezoning and to be neutral (or closer to neutral) in terms of the overall impact on the community open space ratio. This translates to an FAR of 4.7 on the waterfront parcels and a 3.6 FAR on the upland site, with an across the board (residential, retail, commercial) reduction in density. The affordable housing should be 33% of the residential floor area. With the exception of the parking waiver, all of the special permits and waivers requested are acceptable.*
2. *The upland site should be limited to the height restrictions of an R6A envelope (six-story streetwall, one additional story set back), with the exception of the "tower" element. However, the tower should be at the Kent Avenue streetwall and should not exceed the height of the streetwall across Kent Avenue (generally 9-10 stories).*
3. *The tower portion of the upland site should be located at the Kent Avenue streetwall and should not exceed the height of the streetwall across Kent Avenue (generally 9 to 10 stories).*
4. *The shadow impacts on Grand Ferry Park should be mitigated by reducing the height of the towers at the north end of the site and lowering the streetwall height on Grand Street to no more than six stories. Commercial office space and community facility space could be reallocated to some groundfloor retail spaces on the upland connectors.*
5. *The applicant should commit to fund a transportation study covering the entire Community Board 1 area. Such a study would be conducted by a private transportation planning consultant in conjunction with a dedicated community liaison/advisor. The consultant and the community liaison are to be selected by the applicant, subject to the approval of CB1.*
6. *Parking should be reduced to a level significantly less than the maximum allowed under zoning (the applicant is free to apply for waivers later in the development process, if necessary). The parking should include provisions for ride sharing and for alternative-energy vehicles. The project should exceed the minimum zoning standards for tenant bike parking, in particular for the retail and commercial components.*

7. *With the exception of the supermarket on the upland site, the retail portion should be limited to a "neighborhood scale", generally 3,000 to 5,000 square feet*
8. *It is imperative that there be solid guarantees for all components of the final project (either in zoning/special permit language or in deed restrictions). These guarantees should cover the following:*
    a. *Percentage of residential square footage as affordable*
    b. *Permanent affordability*
    c. *Unit distribution (within broad ranges)*
    d. *A cap on the total number of residential units*
    e. *Total square footage of open space*
    f. *Additional upland connector*
    g. *Consultation with CB1 on any design modifications*
    h. *Consultation with CB1 on ongoing transportation analysis (for FEIS)*
    i. *District-wide transportation study*
    j. *Developer contribution to the Greenpoint-Williamsburg tenant anti-harassment fund*
    k. *Job training initiative*
    l. *Local sourcing for materials, labor*
    m. *LEED certification*
    n. *Limit on size of retail units*

In addition to these modifications and commitments on the part of the applicant, the Committee believes that no rezoning on this site can be viable without a meaningful commitment of resources on the part of the City and the MTA. The City/MTA commitments should include:

1. *Meaningful participation in a privately-funded transportation study, with a commitment to act on the study's recommendations within an n agreed-upon time frame.*
2. *The expansion of the tenant anti-harassment zone to cover the entire Southside north of Broadway and east to the BQE.*

Borough President Recommendation

This application (C 100187 ZMK), in conjunction with the related actions, was considered by the Borough President. On April 9th, 2010, the Borough President recommended approval of the zoning text amendment (N 100186 ZRK), disapproval of the special permit for a parking garage (C 100189 ZSK), and approval with conditions of the zoning map amendment (C 100185 ZMK) and the special permits for bulk and use modifications as part of a general large scale development (C 100187 ZSK and C 100188 ZSK). The Borough President's conditions are as follows.

AFFORDABLE HOUSING

1. That the following conditions are codified regarding affordable housing:

a. A legal instrument bind development to the filing of an Inclusionary Housing Plan (IHP), and provide the remaining percentage of floor area devoted to achieving a development that consists of not less than 30 percent of the units being permanently affordable.
b. Approximately 100 units of affordable housing for the elderly be guaranteed, preferably as part of the initial phase of development.
c. Affordability tiers be expanded to include up to 40 percent and 50 percent Area Median Income (AMI) in addition to the 30 percent and 60 percent.
d. The affordable homeownership units have the following tiers/bands of household incomes: 100 – 110 percent AMI; 110 – 120 percent AMI; and 120 – 130 percent AMI.
e. Re-sale price restrictions of the homeownership units be indexed to standards as defined by the City's IHP or the Center for Housing Policy.
f. The community preference for at least 50 percent of the affordable housing units includes those displaced from Community District One subsequent to the adoption date of the 2005 Williamsburg Greenpoint rezoning.

SUPERMARKET
2. That a legal instrument binds the development or leasing of a supermarket on the upland parcel to no less than 20,000 square feet (sf).

RETAIL
3. Size of an establishment be limited to 5,000 sf, except for waterfront-facing eating and drinking establishments.
4. That the Restrictive Declaration is modified as follows:
a. Limit the floor area ratio (FAR) to 5.0 FAR on waterfront parcel (per R7-3 regulations), with the exception of: the community facility use within the Refinery Building as long as it is not occupied by ambulatory diagnostic or treatment healthcare facilities operated by private or for-profit facilities; and, Kent Avenue store front retail space being used for artisan production and sales – such as jewelry and/art metal craft manufacturing; custom clothing/accessories manufacturing; ceramic/glass products, art needlework, hand weaving or tapestries, studios for art – including gallery/framing, music, dancing or theatrical space; and,
b. Limit FAR to 3.6 on upland parcel (per R6A regulations), with the exception that floor area be exempt from FAR limitation as follows: building occupied exclusively by a nonprofit residence for the elderly (permit 3.9 FAR); and, retail use limited to supermarkets consistent with the City's FRESH food initiative up to 30,000 square feet.
5. That not less than 90,000 square feet of the community facility space proposed within the Refinery Building be designated for use as a school and that no less than 20,000 square feet of the retail space be designated as a supermarket within the development.

SPECIAL PERMIT BULK
6. That the General Large Scale Plan waivers pertaining to the upland parcel shall be modified as follows:
a. Tower floor plate shall not be exempt from the zoning limit of 7,000 square feet.
b. Base height and setback requirements shall be consistent with R7A zoning requirements, provided a supermarket is provided or else consistent with R6A standards.
c. Rear yard requirement shall continuously provide no less than 60 feet between the residential occupied portions of building(s).

d. Redistributed floor area from waterfront parcel to upland parcel shall not result in more than 3.6 FAR with the exception being as follows: if a building is occupied exclusively by a non-profit residence for the elderly, then permit 3.9 FAR for that structure; and, retail use limited to e. supermarkets consistent with the City's FRESH food initiative shall be exempt up to 30,000 square feet of floor area.

SPECIAL PERMIT USE
7. That the tower with office space on the upper floors be pursued only as a last resort (in lieu of market-rate housing development elsewhere on the waterfront parcel), thus providing an opportunity to limit height to 130 feet (would reduce shadow in Grand Ferry Park in the Spring and Summer) or to 70 feet (substantially reducing shadow) as part of a preferred strategy to comply with the overall reduction of bulk.
8. That the Special Permit (for the last two-phases' "north" garage: 782 spaces) to exceed maximum permitted parking spaces by 266 spaces be voluntarily withdrawn or else denied now.

AFFORDABLE HOUSING COMMITMENT
1. The developer should apply annually for the borough president's Brooklyn Housing Development Fund.
2. The city council members from the 33rd and 34th districts and the assembly members and state senators and the city administration should encourage the developer to call on them for funding allocations.

SCHOOLS
3. The Department of Education (DOE)/School Construction Authority initiate the lease during 2010 for the 738-seat PS/IS as indicated as funded in DOE's 2010-2014 Five-Year Capital Plan at a site in Community School District 14 as a leased facility expected to be completed by 2013.
4. The Department of Education/School Construction Authority would commit to acquisition of a sufficient area of designated community facility space within the Refinery Building and proceed with design for a pre-K/elementary school not later than one year prior to the estimated December 2013 Refinery Building construction start date, with the understanding that the one-story, ground-level addition along East River would serve as a roof-top, 27-foot wide terrace for school open space.

DAY CARE
5. That the developer coordinates in writing with the Agency for Children Services before commencing each phase of development to solicit the agency's interest in securing space for publicly funded day care.

ARTISAN WORK/SALES
6. That the developer seeks to provide a percentage of Kent Avenue store fronts to be used for artisan spaces for both sales and production of items on premises and/or teaching/performing.
7. That should such space be provided, leases should be through a designated not for- profit or some equivalent entity, as a means to facilitate stabilized rents.

VEHICULAR TRAFFIC
8. That Community Board One (CB1) review the other than signalized traffic mitigation measures (includes standard traffic engineering measures, such as signal timing adjustments, lane re-striping and parking prohibition) disclosed in the Final EIS (FEIS) and advise the Department of Transportation (DOT)

and the developer in writing which ones it would like to be implemented where feasible in advance of construction.

9. That the developer fund and analyze (in accordance with prior consultation of DOT) a targeted traffic study (including "signal warrant" studies) prior to each phase of construction based on the recommendations provided by CB1 for implementing mitigation measures as disclosed in the FEIS in ongoing consultation with CB1.

MASS TRANSIT

10. That the developer should provide in writing a commitment to:

a. Provide operating initial subsidies for Q59 shuttle service (or its equivalent) if necessary to demonstrate to MTA the need for such service.

b. Apply for a ferry dock and install such dock in the event the ferry service is in continuous operation, with such commitment being reviewed at the start of each phase of development.

MTA

11. The MTA should:

a. Institute a frequent bus (shuttle) service segment of the Q59 to serve the New Domino development (or extended further south to Division Avenue to include Kedem, Schaefer Landing, Domsey and Rose Plaza) to both Marcy Avenue (J/M/Z) and Lorimer Street/Metropolitan Avenue (L/G) stations.

b. Extend the last stop of Q59 (at Williamsburg Plaza) to southwest corner of Broadway at Marcy Street.

c. Erect bus shelters on Kent and Wythe avenues in proximity to the New Domino.

d. Introduce express bus (could be a waterfront extension of the B39 route) and/or ferry service (with the developer providing a ferry dock).

e. Obtain additional buses for maintaining adequate frequency and capacity as follows: to implement the described shuttle for the Q59 route; B39 waterfront express bus route; and, B62 to or from Downtown Brooklyn and Long Island City.

f. Continue to obtain additional cars to increase the number of trains along the L line from 28 to its designed operating capacity of 33 trains per peak hour service.

g. Monitor service after implementing the rerouting of the Williamsburg M route over the Manhattan V route to determine whether additional modifications are warranted.

UNEMPLOYMENT

12. That the developer provide in writing to the City Council its funding commitment to fully train for skilled jobs for 500 persons.

13. That the developer provides written contact with EVIDCO as a means to provide outreach to area business which could serve as material suppliers and subcontractors.

DOMINO SIGN

14. That Tate & Lyle PLC, owner of Domino Sugar, should participate in the financing and subsequent maintenance of the repositioned sign.

City Planning Commission Public Hearing

On April 14, 2010 (Calendar No.7), the City Planning Commission scheduled April 28, 2010, for a public hearing on this application (C 100187 ZSK). The hearing was duly held on April 28, 2010 (Calendar No. 32) in conjunction with the public hearing on the applications for related actions. There were 37 speakers in favor of the application and 24 speakers opposed.

Speakers in favor included nine representatives of the applicant. They summarized the proposed project, describing the architecture, design, open space, and programming, including the proposed community facility space and affordable housing program. They stated that the project meets the needs of the Williamsburg community for additional affordable housing and open space, while preserving a key neighborhood landmark of the refinery building. They also described the special permit controls that would be used to ensure that key aspects of the proposed design, including massing and building articulation and variation in building materials are adhered to in the actual development.

The applicant's representatives responded to several issues raised during the public review process. Regarding the overall density of the project, the applicant believes the proposed density on the site is not only appropriate within the proposed design, but is also necessary to accomplish the project's goals given unique costs associated with the proposal such as reconstruction of the waterfront platform, preservation of the refinery building, the inclusion of approximately 145,000 square feet of community facility space, and the dedication of 30% of the residential units as affordable housing.

Regarding transit access, the representatives of the applicant stated that the project is accessible via transit as it is within a 10-15 minute walk of several bus lines and two subway stations on different lines, the L and the JMZ. The M is to run on the V line in the future, which will improve accessibility to many locations in Manhattan and is expected to draw ridership from the L. The site is also accessible to the Williamsburg Bridge, which offers pedestrian and bicycle access to Manhattan. In addition, the applicant stated that the Metropolitan Transportation Authority would add buses and other transit resources to the area, including additional capacity

on the L line, as population and ridership increase.

Regarding the upland parcel, the applicant's architect stated that the taller portion of the proposed building on the upland parcel was sited on the eastern portion of that site so as to not crowd Kent Avenue and the nearby landmarked refinery building. In addition, the proposed configuration allows the tallest portions to be farther from the street. Lastly, the taller portions will have better views of the water from the eastern side of the parcel.

Applicant's representatives stated that a school is one potential use within the refinery building. The applicant has been in discussions with the School Construction Authority to evaluate the need for a school and to include a primary school/intermediate school (PS/IS) within the refinery if such a need is demonstrated. If no need is demonstrated, the space to be occupied by the school would go to another community facility use.

Regarding shadows on Grand Ferry Park, the applicant's representatives stated that, the northernmost building would have to be reduced from 300 feet tall to approximately 65-70 ft tall in order to eliminate incremental shadows on Grand Ferry Park. Projected incremental shadows (shadows greater than those experienced if the project were not to be built) would fall on Grand Ferry Park primarily in the winter. While incremental shadows would take 4-6 hours to pass through the park, no single part of the park would experience incremental shadow for more than approximately 2 hours and 15 minutes per day. The applicant would enter into a monitoring program with the Department of Parks and Recreation to observe the health of these trees and replace them if necessary.

Regarding parking, the applicant's representatives stated that the amount of parking proposed in the project is based on parking demand projections which are, in turn, based on car-ownership patterns in the area as measured by the 2000 US Census. The applicant stated that it would consider reducing the amount of parking in the project in response to public input.

Other speakers in favor of the application included the Councilmember for the 34th District,

representatives of the New York Chapter of the American Institute of Architects, the Metropolitan Waterfront Alliance, the Partnership for New York City, Service Employees International Union Local 32BJ, St. Nicks Alliance, Catholic Charities, El Puente, Los Sures, People's Firehouse, and several church groups, as well as numerous Williamsburg residents.

The Councilmember for the 34th District praised the applicant's "transparent and inclusive process" and its efforts to meet "all of the community demands". She noted that the surrounding community is experiencing residential displacement and stated that the amount and income targets of the proposed affordable housing would help offset those pressures. She also expressed support for the four acres of public open space and the jobs and job training opportunities that would be created as part of the project. In addition, she also indicated a desire to see a large hotel included in the project.

Other speakers in favor of the project also noted the benefits of the project's proposed affordable housing program, which they said is badly needed in the Williamsburg community. Speakers praised the project's open space program, which would add well-designed open space to an area that has little today. It was also stated that the project was consistent with sound waterfront policy by activating this stretch of the waterfront and reconnecting it, through the project site, to the adjacent neighborhoods. The architectural design was praised for respecting the scale and industrial strength of the existing refinery building, maintaining low heights near the lower-scale upland neighborhood, and including provisions to ensure the proposed use of façade material and glazing to appropriately accommodate the proposed bulk on the site.

Speakers stated that the proposed density was appropriately urban and that it would be introduced to the area over a long build-out period. It was stated that the site is large enough to set its own local context and should be judged independent of other recent approvals in the area. It was also noted that the proposed number of market-rate dwelling units was necessary to achieving the project's affordable housing goals because the market-rate units would cross-subsidize not only construction of the affordable units, but also maintenance of buildings and open space into the future.

Several speakers also cited the accomplishments of the applicant's parent company, The Community Preservation Corporation, as an indication of the applicant's ability to successfully implement the project. It was also stated by that the applicant ran an inclusive planning process to move this project forward.

Speakers in opposition included the Councilmember for the 33rd District, representatives of the State Assemblymember for the 53rd District, Neighbors Allied for Good Growth (NAG), the Society for Industrial Archeology, Community Board 1, People's Firehouse, and several private individuals.

The Councilmember for the 33rd District, criticized the density of the project, which he said was higher than that permitted on other waterfront sites. He stated that there would be a cumulative effect from this and other development expected in the area over the coming years and that the surrounding area did not have adequate transportation or public service infrastructure to accommodate all the new residents that would be expected at the New Domino development. He also noted that the project would result in a net decrease in open space per capita in the immediate vicinity of the project, and expressed concern over the proposed special permit that would allow more parking spaces in the development than would otherwise be permitted under zoning. He stated that the project should be reduced to 1600 dwelling units, of which 40% should be affordable, that the applicant should provide a transportation plan outlining mitigations to transportation impacts of the project, and that the project should guarantee that space currently proposed for community facility space would actually be programmed for such uses.

The representative for the Assemblymember for the 53rd District echoed the concerns of the Councilmember for the 33rd District, adding that project was receiving significant height, FAR and parking waivers and that the height of the buildings should not exceed 30 stories.

Other speakers in opposition to the project, including the Chair of Community Board 1's ULURP Committee, echoed many of the points raised by the Councilmember and the

representative of the Assemblymember and expressed concern over other issues as well. Several speakers stated that the project should be reduced to 4.7 or 5.0 FAR, which are the FARs permitted for other waterfront sites in Community District 1. It was stated that allowing the New Domino to exceed FARs permitted for previously approved projects would set a precedent that would allow other projects in the 2005 Greenpoint-Williamsburg Rezoning area to seek densities higher than the 4.7 FAR approved in 2005. Concern was also expressed about the potential for the market-rate component of the project to cause residential and business displacement in the nearby neighborhood.

Several speakers called for a reduction in the proposed heights of the upland parcel because it is closer to the adjacent neighborhood, and of the office tower on the northernmost block, which is adjacent to Grand Ferry Park. The open space design was criticized for including too much hardscape and not enough active recreation facilities. The retail component of the project was criticized as not being able to accommodate local businesses and it was stated that the project should create more opportunities for local artist, such as providing subsidized live/work spaces.

Concern was also expressed by a member of Community Board 1 that the availability of some of the sources of funding the applicant has identified for the proposed affordable housing may change in the future. It was also stated by other individuals that the applicant has never completed a development as large as the proposed project.

One speaker also stated that the applicant should do more to preserve the site's industrial history, including a comprehensive recording of the site prior to demolition, and a display of artifacts and interpretive materials in an indoor space on the site.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY

This application (C 100187 ZSK), in conjunction with the related actions, was reviewed by the

Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 07-058.

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

CONSIDERATION

The Commission believes that this application for a special permit (C100187 ZSK), as modified, in conjunction with the related applications (C 100185 ZMK, N 100186 ZRK and N100190ZAK) and the related special permit C 100188 ZSK)), as modified, are appropriate.

The Commission recognizes the importance of this project to the Williamsburg community and to the city. The 11-acre subject site is currently a vacant and underutilized site on property formerly used as a sugar refinery. The Commission notes that the site has remained vacant since 2004, when refinery operations ceased. Subsequently, the refinery building was designated as a New York City Landmark in 2007.

The Commission notes that, as proposed, the New Domino project, would revitalize the site, with a mixed-use development including residential (of which the applicant intends to make 30% affordable), retail, office, and community facility uses as well as public open space. Retail uses are distributed throughout the site to activate key public spaces such as Kent Avenue and the proposed waterfront esplanade. This development program would provide housing, employment, shopping, and recreational opportunities to serve the needs of future residents on the site and in the surrounding neighborhoods.

The Commission believes that the proposed buildings are massed and designed to create a varied

and interesting skyline and a sensitive transition to the lower-scale context of the adjacent upland neighborhood while respecting the size, scale, and character of the landmarked refinery building in the center of the site. The proposal would include the adaptive reuse of that building pursuant to a Certificate of Appropriateness approved by the Landmarks Preservation Commission.

On the waterfront parcel, towers with varying heights would create a compelling skyline while lower heights near the eastern portion of the parcel transition down to the lower scale of the upland neighborhood and frame the existing refinery building. Massing on the upland site successfully accommodates the proposed bulk at a scale consistent with other buildings in the area. Additional height above that otherwise permitted allows the density to be accommodated while maintaining smaller building footprints that maximize both public and private open space and connections to the waterfront.

The building articulation and the proposed use of façade materials, which combines glazing with varying types or colors of masonry to break up the mass of the buildings, produces a variation and rhythm within the development that is readable both at the street and at the scale of the entire development. The massing would be tightly controlled by the proposed approvals, as would the façade treatments throughout the buildings, to ensure that key elements of the proposed design are implemented to break up the massing and improve the appearance of the proposed site plan.

In addition, the project site, which spans five blocks or a ¼ mile of the East River waterfront, would be opened to the public at six different locations, reconnecting the Southside neighborhood to its waterfront. That waterfront would be enlivened by the creation of 4 acres of well-designed public open space featuring various amenities such as open play equipment, seating open lawn area, shade structures, and water features.

The requested applications would rezone the site to permit the proposed building program, modify certain zoning text to apply the Inclusionary Housing Program to the site and facilitate the adaptive reuse of a landmark building, and would modify bulk, use and waterfront public access regulations to facilitate the proposed development. The Commission believes the

proposed rezoning and zoning text amendments would facilitate an appropriate development that would be consistent with the site's surroundings and land use trends in the area. The Commission also believes the bulk and use waivers that are part of the proposed special permits, as modified by the Commission would produce a site plan that is superior to that which would be permitted as-of-right producing a more varied and compelling architectural experience and public open space. The Commission further believes the proposed approvals would facilitate a development that would reuse a vacant site in a manner consistent with the mixed-use context of the area, that has a superior site plan and preserves a landmark building, and that will contribute to the revitalization of the area.

The commission notes that the related application for a special permit to expand the capacity of the northern parking facility (C 100189 ZSK) was withdrawn by the applicant in response to the Commission's comments, and the recommendations of Community Board 1 and the Brooklyn Borough President.

Zoning Map Amendment – C 100185 ZMK

The Commission believes that the related action for an amendment to the zoning map (C 100185 ZMK) is appropriate. Since the cessation of refinery operations in 2004, the project site has remained vacant for 6 years and its waterfront has been unused and inaccessible to the public. The proposed action would rezone the project site from M3-1 to a mixture of R8/C2-4 and C6-2 on the waterfront parcel, and R6/C2-4 on the upland parcel.

Land use trends in Greenpoint and Williamsburg have featured a steady drop in industrial and manufacturing activity and employment over the last several decades. In order to encourage the productive reuse of formerly industrial sites, the Commission approved a City-sponsored area-wide rezoning of the waterfront to the north in 2005, and several private rezonings to the south from 2003 to 2010. These rezonings have permitted mixed use development including residential use with ground floor retail on underutilized or vacant industrial sites. The surrounding area hosts a broad mix of uses including commercial and light manufacturing uses and recent residential developments permitted by BSA variance in manufacturing districts and

as-of-right in residential and Special Mixed Use districts. The Commission therefore believes that mixed-use redevelopment of the project site is appropriate.

The proposed zoning would permit uses that are consistent with the mixed-use character of the neighborhood and other waterfront developments, and would also require public access along the site's ¼ mile of East River frontage. The proposed R6 and R8 districts permit residential development on the site. The proposed C2-4 overlays permit ground floor local retail uses throughout the site to activate Kent Avenue and the public space that is proposed as part of the project. The C6-2 districts proposed at the locations of the refinery building and office tower permit a slightly broader range of commercial uses on multiple floors of the buildings. This zoning designation would permit the proposed programming of these buildings, which include considerable amounts of both community facility and commercial uses on upper floors.

The proposed office tower in the northernmost building would broaden the mix of uses proposed for the site in a way that the Commission believes would improve the mix of uses proposed for this development. This development could create a significant number of high-quality jobs in proximity to both transit and a residential community that could walk to these jobs. The Commission also believes that the proposed commercial uses for the office tower are consistent with the broad mix of uses found in the surrounding area, which includes office, retail, and light industrial.

The Commission notes that the proposed R6 and R8 districts are the same districts mapped in the 2005 Greenpoint-Williamsburg Rezoning, with R8 and C6-2 districts permitting denser taller development closer to the waterfront, and the R6 district, permitting lower-scale development closer to the upland neighborhood on the upland parcel. C6-2 is an R8-equivalent commercial district with bulk rules that are very similar to an R8 district. Most waterfront parcels rezoned in the 2005 Greenpoint-Williamsburg rezoning were split between R6 and R8 districts in order to establish a transition from the lower scale of the upland neighborhood to the location of taller towers on waterfront blocks. However, the refinery building, at 150 feet, sets an existing context of greater height and bulk on the first upland street than is permitted in R6 districts or than is

present anywhere else on the Greenpoint or Williamsburg waterfront. Due to this and to the shallowness of the site (approximately 330 feet deep) compared with that of many of the sites to the north (400-650 feet deep), splitting the waterfront parcel between R6 and R8 districts would not be appropriate. In addition, the related special permit controls massing on the waterfront parcel to produce a design consistent with the key urban design principles of the Greenpoint-Williamsburg Rezoning, including the limits on tower heights, variation among building heights and lower heights nearer to the upland area.

The densities proposed by the applicant, 5.6 FAR on the waterfront parcel and 6.0 FAR on the upland parcel, produce an overall FAR for the project of 5.64. This FAR is permitted by the proposed zoning. The Commission recognizes the testimony received from Community Board 1, the Brooklyn Borough President, and others that the project should not exceed the densities of 4.7 or 5.0, which are permitted for previously approved projects elsewhere on the waterfront, so as to avoid precedent for exceeding these FARs on parcels that have already been rezoned. The Commission also notes the testimony of the City Councilmember for the 33rd district, who suggested the project be reduced by approximately 25 percent.

In that regard, the Commission notes that the Greenpoint and Williamsburg waterfronts have a variety of contexts from the mouth of Newtown Creek in the north to the South Williamsburg waterfront near the Brooklyn Navy Yard. This site is 11 acres, covering 5 blocks of the waterfront over a ¼-mile of shoreline. It constitutes almost the entire waterfront of the Southside section of Williamsburg and is bracketed to the south by the Williamsburg Bridge and to the north by 3 blocks of industrial property. The Commission concurs with the testimony of several individuals in favor of the project that this site is large enough to establish its own context, and that appropriate density for the site can be determined independently of previously approved projects without setting a precedent for other sites.

In addition, the Commission notes unique features on the project site that create a pre-existing context supportive of greater bulk than other waterfront sites. The 150-foot tall landmarked refinery building, located in the center of the site along Kent Avenue is taller and more massive

than any other pre-existing industrial building on the waterfront. This building sets a context of mass and height on the upland frontage of the site, through to its interior. In addition, the approximately 300-foot tall Williamsburg Bridge is located directly south of the site, which adds to the existing context of height on the site. The Commission therefore believes that the proposed zoning is appropriate for the site.

Regarding the testimony received at the Commission's public hearing regarding the potential impacts of the project's density on community facilities and transportation in the area, the Commission notes that the project's Final Environmental Impact Statement shows that any impacts related to community facilities, including schools, and transportation, would be fully mitigated through actions the applicant would commit to taking pursuant to the restrictive declaration required as a condition of this special permit.

The Commission also notes that the project site is within a 10- to 15-minue walk of several bus lines and two subway stations on two separate lines, the L and the JMZ. Planned changes to the M line, which will cause it to run on the V line, will further expand accessibility from the site to Manhattan. The Commission also notes that the Metropolitan Transportation Authority has committed to expanding service in the area as ridership and population increase, and that the full build-out of the project would occur over a period of at least ten years, providing time to adjust transit service to respond to increases in demand.

Zoning Text Amendments – N 100186 ZRK

The Commission believes that the proposed zoning text amendments are appropriate. It would apply the Inclusionary Housing Program, as it works on the waterfront in the 2005 Greenpoint-Williamsburg Rezoning area, to the project site. They would also permit the relocation of the Domino Sugar sign.

Inclusionary Housing Program

The Commission is committed to promoting the development of affordable housing in order to foster economically diverse communities throughout the city. In order to establish powerful

incentives for the creation and preservation of affordable housing in conjunction with market-rate housing development, the Commission has approved the expansion of the Inclusionary Housing Program in area-wide rezonings that introduce substantial new residential use where none had existed or that significantly increase residential densities. This program has been a critical tool for addressing the issues of affordable housing and economic integration in rezoned areas Citywide. The Commission is pleased that the applicant has included this provision in their proposal and feels it is appropriate as a further extension of the Inclusionary Housing program established under the 2005 Greenpoint-Williamsburg Rezoning and extended to subsequent waterfront rezonings in Community District 1.

The proposed text amendment would permit full utilization of bonus floor area, from a base FAR of 4.88 to 6.5 bonus FAR in the R8 and C6-2 districts, if the developer provides 20% of the floor area exclusive of ground floor non-residential space as housing affordable low-income households or 25% of the floor area available to low- and moderate-income households. Similarly, the full bonus floor area, from a base FAR of 2.43 to 2.75 bonus FAR in the R6 district, would be available if the developer provides 7.5% of the floor area as affordable housing to low-income households, or 12.5% of the floor area available to low- and moderate-income households.

The Commission notes that the applicant is proposing to provide 30% of the proposed residential units as affordable to families making between 30% to 130% of AMI, which is in excess of the requirements of the Inclusionary Housing Program. The Commission also notes testimony received at its public hearing, including that of the Councilmember for the 33rd District, which called for requiring even higher proportions of 33% and 40% affordable housing as a condition of these approvals.

In that regard , the Commission notes that the inclusionary housing program is a citywide program created by the Department of City Planning and the Department of Housing Preservation and Development, and that its provisions, including the amount of affordable housing required and the amount of bonus floor area provided, are applied consistently across the

city. These features of the program have been calibrated to maximize the overall production of affordable housing by combining a substantial affordable requirement with a powerful enough incentive to generate widespread participation in the program on a voluntary basis. The Commission believes that the requirements of the proposed actions should remain consistent with this established citywide program. It should also be noted, that requiring 20% of the floor area to be affordable housing per the Inclusionary program would not hinder the applicant from exceeding that requirement to reach its 30% project goal.

Relocation of the Domino Sugar Sign

This text amendment would facilitate the relocation of the Domino Sign, which is a required element of the design approved by the New York City Landmarks Preservation Commission (LPC) for adaptive reuse of the refinery building. The City Planning Commission recognizes the special condition that exists on the site, which features an iconic sign that the LPC has included in its approved design for adaptive reuse of a landmark building, and believes that the text amendment facilitates the execution of that design without impairment of appropriate regulation in other locations of non-conforming advertising signs.

Special Permit for Bulk Modifications as part of a General Large Scale Development (74-74) – C 100187 ZSK

The Commission believes the special permit that is the subject of this report (C 100187 ZMK), as modified herein, is appropriate. The applicant proposes to designate the entirety of the project site, comprising the 9.8 acre waterfront parcel and the 1.3 acre upland parcel, as a general large scale development as defined in the Zoning Resolution. As part of this special permit the applicant requests the distribution of floor area without regard for zoning lot lines or district boundaries, and the location of buildings without regard for the applicable yard, court, distance between buildings, or height and setback regulations.

The Commission believes these actions, as modified below, create a superior site plan that relates well to its surroundings and, that does not overburden any portion of the development, or surrounding streets.

Transfer of Floor Area and Floor Area Ratio Limitation

The applicant has requested the transfer of 187,187 square feet of floor area from the waterfront parcel to the upland parcel. This transfer, in conjunction with FAR limits placed on both parcels as part of this special permit, would produce an FAR of 5.6 on the waterfront parcel, and 6.0 on the upland parcel. The Commission believes that the proposed transfer of floor area from the waterfront parcel to the upland parcel would not overly burden the upland parcel in terms of bulk, or availability of light and air. The Commission further believes that the proposed envelope accommodates this bulk while minimizing streetwall heights and remaining consistent overall with other buildings in the area, as described in the following section on Height and Setback Waivers.

The densities proposed by the applicant of 5.6 FAR on the waterfront parcel and 6.0 FAR on the upland parcel produce an overall FAR for the project of 5.64. The Commission believes that the proposed densities allow the project to achieve its goals, while the tight building envelope and urban design controls that are a part of this special permit (C 100187 ZSK) and that are described below successfully accommodate this bulk. The Commission further believes that the building envelope leaves ample room for public and private open space on the site, and arranges the bulk so as to relate well to structures and open space both on and around the site.

The Commission believes the local streets are adequate to serve the proposed development. As stated above, the project is accessible to two subway lines and various bus routes. While traffic is expected to increase in the area due both to the New Domino, and to other development on sites nearby, changes to traffic patterns and traffic control systems can be made to avoid a condition where street access to and around the site would be inadequate and the applicant has committed to making those changes in consultation with the New York City Department of Transportation.

Height and Setback Waivers

The Commission believes that the proposed modular architecture composed of repeating

elements of varying heights creates a compelling design both at the scale of the street, and across the entire development, and that the building envelope specified in the special permit would ensure this building form is produced.

Waterfront Parcel

The Commission believes that the basic massing scheme proposed by the applicant is appropriate for the subject site. As proposed, the towers are set back from the upland area and rise to heights of 300 and 400 feet, while lower heights between 55 and 110 feet, consistent with the existing refinery, would occupy the eastern portion of the site. The Commission recognizes that this design scheme requires modifications to the height and setback regulations of the proposed zoning districts, including the maximum building and base height, the maximum floor plate and length of walls facing the shoreline above the base height, and various court and distance between buildings regulations, and deems most of these modifications appropriate, because they facilitate a superior site plan.

The Commission acknowledges the testimony received at its public hearing from several members of the community calling for a reduction in building height, including the representative of the State Assemblymember from the 53rd district, which stated that the proposed heights should be reduced to no more than 30 stories.

In that regard, the Commission notes the base heights along the proposed waterfront open space, upland connections, and Kent Avenue, which range from 55 to 110 feet, respond to the existing refinery building, which is between 110 and 150 feet tall. These heights are lowest at locations farther from the refinery on the northern and southern ends and the seaward edge of the waterfront parcel, and rise to meet the refinery in the center of the site. The Commission recognizes that these base heights are in excess of the maximum 70 feet permitted, and that they create larger floorplates and walls facing the shoreline above 70 feet than are permitted. However, the Commission considers this aspect of the proposal to be an appropriate massing in relation to the landmarked refinery and the context it sets for the surrounding area.

With regard to the northernmost tower, the Commission recognizes the concerns of Community Board 1 and the Brooklyn Borough President, who called for a reduction in the height of that building. This is the only tower that fronts directly on a public street and the existing Grand Ferry Park, which is one of the only public parks in the Southside. The applicant proposes that the tower be composed of three 55-foot by 55-foot segments with heights of 300 feet, 240 feet, and 200 feet. The Commission notes that the 200-foot and 240-foot segments would rise sheer along the street and park frontage, without setback, in a way that has a potentially overbearing effect on the 1.8-acre Grand Ferry Park. The building also creates an 11-foot wide pinch point at the northern entrance to the proposed waterfront access area and this pinch point is exacerbated by the proposed height of this streetwall.

For these reasons, the Commission hereby modifies the application to reduce the height of the segments in the northernmost tower from 300 feet, 240 feet, and 200 feet, respectively, to 250 feet, 160 feet, and 130 feet, respectively. All other aspects of the building, including the tower dimensions, placement, setbacks, arrangement of relative height and floor area are unchanged. The Commission believes that this modification will produce a better articulation of the buildings adjacent to the small Grand Ferry Park and will create a smoother transition over the entire site, from the 400-foot towers near the refinery building to the lower-scale context to the north.

The Commission notes that the proposed towers, as modified by this Commission, are set back from the site boundaries or are set at a more appropriate height, and are well placed to create a compelling skyline. The Commission notes that the heights of these towers, between 220 and 400 feet tall, are consistent with the nearby Williamsburg Bridge to the south, and with the heights permitted by the 2005 Greenpoint-Williamsburg Rezoning. The Commission believes that the site is large enough to accept this height with ample space between the towers and a smooth transition to the lower contexts surrounding the site. The Commission also notes that the required setbacks would create unique profiles for each tower. The Commission considers the modifications of maximum base and building heights necessary to accommodate the proposed towers, with the changes made by the Commission to the northernmost tower are appropriate.

The Commission is pleased that the site plan dedicates so much of the site area to public space that improves the waterfront and connects it to the neighboring communities. The plan includes 4 acres of open space while zoning requires only approximately 2.4 acres. Each street that meets the site at Kent Avenue is continued through the site, extending the street grid to the water. Given the length of the site, the minimum required 40-foot wide shore public walkway that covers the entire shoreline of the site covers a significant portion of the sites area. The Commission notes that the proposal exceeds that requirement by providing additional connections to the upland area, and additional spaces adjacent to the shore public walkway to accommodate various amenities that enliven the space. The additional public space is made possible by the height of the proposed buildings, which allows for smaller building footprints.

The Commission also notes that the proposal reduces the width of public access at South 5th Street only minimally in response to the shallower depth of the site at that location. The Commission also commends the applicant's effort to connect the proposed open space to the existing Grand Ferry Park, and its commitment to carry out work within the park to accomplish this as a condition of this approval and as set forth in the related restrictive declaration.

The applicant's proposal also requests modifications to court, and distance between buildings regulations. The Commission believes the proposed site plan provides adequate light and air to all parts of the buildings, and therefore considers the requested modifications to be appropriate

Upland Parcel

The Commission believes the proposed buildings on the upland parcel have been designed to successfully accommodate the density proposed for that parcel. Streetwall heights are between 60 and 80 feet (with one segment in the eastern portion of the parcel reaching 90 feet), and incorporate variation to create an interesting experience from the street. The Commission notes that these heights are similar to those found in existing loft buildings located to the southeast of the site. The Commission further notes that the midrise portion in the eastern part of the parcel, which rises to 148 feet tall, has precedent in other tall loft buildings found in the area, including

the 147-foot tall Esquire Shoe Polish building, located one block north of the upland parcel, and which was converted to residential use near the turn of this century. Therefore, the Commission finds the requested modifications of maximum base and building height and maximum floor plate above the base height for the upland parcel to be appropriate.

The Commission notes that the inclusion of building segments in the required rear yard, including a cross element through the center of the site, and the siting of the mid-rise portion of the building at a location set back from the street by at least 20 feet, assists in keeping streetwall heights low. The Commission believes this configuration allows adequate light and air to the interior of the site in two 60-foot by 60-foot courtyards. Therefore, the Commission finds that the proposed modifications to the required rear yard are appropriate.

Design Controls

The Commission believes that the precise and comprehensive urban design controls, which are part of this special permit, will help ensure that the project, as constructed, will include the key elements of the proposed design. The Commission notes that the proposed envelope very closely tracks the proposed articulation and massing of the buildings while still allowing flexibility to accommodate changes that may be necessary during construction. The Commission believes that the glazing requirements at the tops of the towers, the required variation in façade material, and the tower-top equipment and balcony restrictions, in conjunction with the required setbacks and floorplate controls, allow the design to successfully accommodate the proposed density, breaking up larger building elements to reduce the sense of mass and scale perceived from within the development and from afar. They also help ensure that the vision for varied, unique, slim, and elegant towers is preserved. Furthermore, the Commission believes that the requirements for the presence of retail uses, the transparency of retail frontages, and the restrictions on canopies, awnings, and other building projections, will ensure that the pedestrian spaces on the site are lively but uncluttered.

As a whole, the Commission believes that this requested special permit, as further modified, is appropriate as it will create a superior site plan, in which buildings relate well to each other, and

to other buildings and open areas on and around the site, and will not unduly burden any portion of the site or the nearby street network.

Special Permit to Modify Use Regulations as part of a General Large Scale Development – (74-74) C 100188 ZSK

The Commission believes this special permit, as modified below, is appropriate. The special permit requests modification of regulations prohibiting the location of commercial uses on the same level as residential uses in adjacent building segments within the northernmost building.

The Commission notes that all access, egress and circulation for the residential and non-residential uses on the upper floors of the building will be separate, that commercial uses are not proposed to be located directly above residential uses, and that there are no openings proposed to allow access between these two sets of uses. Given the scale of the building, the Commission believes that the arrangement of residential and non-residential uses is not dissimilar from the arrangement of uses found in abutting residential and non-residential buildings located on adjacent lots. Such a condition is found in many places throughout the city and will not create any adverse effects on the uses within the proposed building.

The Commission hereby modifies this special permit by reducing the height of the subject building consistent with its modifications to the related special permit (C 100187 ZSK). The heights of the three segments of the tower are reduced from 300 feet, 240 feet, and 200 feet, to 250 feet, 160 feet, and 130 feet, respectively. These modifications do not change the proposed arrangement or relationship of uses that are the subject of this special permit beyond lowering the height of the non-residential portion of the building.

Waterfront Authorization (62-822) – N 100190 ZAK

The Commission believes the requested authorization is appropriate. As part of the authorization, the applicant requests modification of waterfront public access requirements pertaining to dimensions, configuration, planting and furnishing of the required waterfront public access areas, and approval of the phased implementation of these public access improvements.

The Commission believes that the modifications to the dimensional requirements of ZR Section 62-50 near the southern and northern entrances are acceptable. At the southern end, the width of the shore public walkway is reduced from 40 feet, to 36 feet over a distance of only 5 feet. At the northern entrance to the public access area, the width is reduced to 11 feet, but only over a distance of 3 feet at the northern terminus of the shore public walkway. The Commission considers these reductions to be the minimum necessary to accommodate a viable building program at locations where site conditions are unique.

The Commission believes that the proposed waterfront design is of high quality and provides users with an exciting and varied experience on the waterfront. The requested modifications to the design requirements of 62-60 create a waterfront public access area that is equivalent or superior to one that could be designed through strict adherence to zoning.

The Commission notes that subgrade parking garages are requested to be permitted as obstructions in the visual corridors at South 1st, and South 4th streets, requiring the visual corridors to negotiate the grade change between Kent Avenue and the waterfront esplanade through a ramp and stair. The Commission does not consider this to materially diminish visual access to the water from the upland neighborhood, especially in light of the significant increase in elevation from west to east on and near the project site, which improves the angle for viewing the water. In addition, the ramp and stair, along with proposed seating steps, create a unique locale within the waterfront public access area.

With respect to modifications to the requirements for screening buffers, the Commission believes that the requested reductions are appropriate within the context of the design, and that with the proposed vertical plantings, they do not diminish the effectiveness of the required separation between public and private areas of the site. Regarding the requested reductions in required planting and seating, the Commission believes that, taken on the whole, the planting and seating provided is ample, and well distributed so as not to produce a shortage of either amenity within the public access areas. The Commission also believes that the requested reduction in the

required clear path on the South 2nd Street upland connection will not materially reduce accessibility through this space because the clear path is located next to a shared vehicular/pedestrian space that, while not part of the clear path for zoning purposes, will be available to pedestrians passing through the space.

The Commission notes that the authorization and restrictive declaration call for two phasing plans, one which requires the waterfront buildings to be built sequentially from south to north, and an alternate plan to be used should the School Construction Authority request a postponement of reconstruction of the refinery building. In that case, reconstruction of the refinery would be postponed and construction of the building north of the refinery would proceed. Both plans provide an amount of open space in each phase that is proportional to the amount of development proposed for that phase. The Commission also believes that they both provide for functional and accessible open space at each interim phase.

As a whole, the Commission believes that all the requested approvals, as modified, are appropriate. This project provides significant improvements to the area, within a design that will be an asset to the neighborhood of Williamsburg, the Borough of Brooklyn and the City of New York. It will revitalize a large vacant and inaccessible waterfront site and adaptively reuse a New York City Landmark building with 2,200 units of housing (of which the applicant intends to make 660 affordable) 4 acres of high quality public open space, 143,000 square feet of community facility space, and office and retail uses to serve and employ the local community. The Commission believes that the requested approvals, as modified herein, will lead to redevelopment of the former Domino Sugar refinery with a mix of uses and an amount and arrangement of bulk that is appropriate and beneficial to this unique site and its surroundings.

FINDINGS

The Commission hereby makes the following findings pursuant to Section 74-743:

(1) the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the general large-scale development, the neighborhood, and the City as a whole;

(2) the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;

(3) Not applicable;

(4) considering the size of the proposed general large-scale development, the streets providing access to such general large-scale development will be adequate to handle traffic resulting therefrom;

(5) when the Commission has determined that the general large-scale development requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;

(6) Not applicable;

(7) Not applicable;

(8) a declaration with regard to ownership requirements in paragraph (b) of the general large-scale development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on May 28th, 2010, with respect to this application (CEQR No. 07DCP094K), together with the Technical Memorandum, dated June 4, 2010, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that, consistent with social, economic, and other essential considerations:

1. From among the reasonable alternatives thereto, the action to be approved, with the modifications set forth and analyzed in the Technical Memorandum, dated June 4, 2010, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration attached as Exhibit A hereto, those mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FEIS and the Technical Memorandum, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and 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 Sections 197-c and 201 of the New York City Charter that based on the environmental determination, and the consideration and

findings described in this report, the application submitted by The Refinery, LLC, pursuant to Sections 197-c and 201 of the New York City Charter and, for the grant of a special permit pursuant to the following Sections of the Zoning Resolution, as modified herein:

1. Section 74-743(a)(1) - to allow the distribution of floor area within the general large scale development without regard for zoning lot lines; and

2. Section 74-743(a)(2) - to modify the requirements of Section 23-532 (Required rear yard equivalents), 23-711 (Standard minimum distance between buildings), 23-852 (Inner court recesses), 23-863 (Minimum distance between legally required windows and any wall in an inner court), 62-332 (Rear yards and waterfront yards) and 62-341 (Developments on land and platforms),

in connection with a proposed mixed use development on property located at 264-350 & 317-329 Kent Avenue (Block 2414, Lot 1 and Block 2428, Lot 1), in a general large-scale development, Borough of Brooklyn, Community District 1, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 100187 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Rafael Vinoly Architects PC, and Quennell Rothschild Partners PC filed with this application and incorporated in this resolution:

Number	Title	Last Date Revised
T-1	Title Sheet	06-07-10
Z00-2	Zoning Lot Calculations, Actions, and Design Guidelines	06-07-10
Z00-3	Upland/Seaward Lot Calculations	12-24-09
Z01-1	Site Plan	06-07-10
Z05-A	Zoning Lot A Site A – Adjusted Base Plane Calculations	12-24-09
Z05-B	Zoning Lot A Site A – Site Plan	06-07-10
Z05-C	Zoning Lot A Site A – Height and Setback Diagrams	06-07-10

Z06-A	Zoning Lot A Site B – Adjusted Base Plane Calculations	12-24-09
Z06-B	Zoning Lot A Site B – Site Plan	12-24-09
Z06-C	Zoning Lot A Site B – Height and Setback Diagrams	12-24-09
Z07-A	Zoning Lot A Site C – Adjusted Base Plane Calculations	12-24-09
Z07-B	Zoning Lot A Site C – Site Plan	12-24-09
Z07-C	Zoning Lot A Site C – Height and Setback Diagrams	12-24-09
Z08-A	Zoning Lot A Site D – Adjusted Base Plane Calculations	12-24-09
Z08-B	Zoning Lot A Site D – Site Plan	12-24-09
Z08-C	Zoning Lot A Site D – Height and Setback Diagrams	12-24-09
Z09-A	Zoning Lot C Site A – Adjusted Base Plane Calculations	12-24-09
Z09-B	Zoning Lot C Site A – Site Plan	12-24-09
Z09-C	Zoning Lot C Site A – Height and Setback Diagrams	12-24-09
Z10-A	Zoning Lot B Site A – Adjusted Base Plane Calculations	12-24-09
Z10-B	Zoning Lot B Site A – Site Plan	12-24-09
Z10-C	Zoning Lot B Site A – Height and Setback Diagrams	12-24-09
Z11-1	Special Permit Drawing – Site A	06-07-10

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance

4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded in the Office of the Register, King County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

5. The development shall include those mitigative measures listed in the Final Environmental Impact Statement (CEQR No. 07DCP094K) issued on May 28th, 2010, and identified as practicable.

6. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

7. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

8. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the restrictive declaration.

9. Neither the City of New York nor its employees or agents shall have any liability for

money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 100187 ZSK), duly adopted by the City Planning Commission on June 7th, 2010 (Calendar No. 3), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

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

EXHIBIT A
The New Domino

Restrictive Declaration for The New Domino

RESTRICTIVE DECLARATION

THIS DECLARATION (this "**Declaration**"), made as of the ____ day of _____, _____ by The Refinery LLC, a New York limited liability company having an address c/o CPC Resources, Inc., 28 East 28th Street, New York, New York 10016 (the "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City of New York and State of New York, designated for real property tax purposes as Lot 1 of Block 2414 (the "**Waterfront Parcel**") and Lot 1 of Block 2428 (the "**Upland Parcel**"; and together with the Waterfront Parcel, collectively, the "**Subject Property**") on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** annexed hereto;

WHEREAS, the Subject Property is comprised of three (3) Zoning Lots (hereinafter defined): (a) Zoning Lot A, which comprises the entire Waterfront Parcel, excluding the lot on which the Refinery Complex (hereinafter defined) is located ("**Zoning Lot A**"), (b) Zoning Lot B, which comprises the lot on which the Refinery Complex is located ("**Zoning Lot B**") and (c) Zoning Lot C, which comprises the entire Upland Parcel ("**Zoning Lot C**"), each as more particularly described on the Development Plans (hereinafter defined), all of which are, for illustrative purposes, shown on **Exhibit B** annexed hereto;

WHEREAS, Declarant has proposed to improve the Subject Property as a "general large-scale development" pursuant to the requirements of a "general large scale development" provided in Section 12-10 of the Zoning Resolution (as hereinafter defined) in effect on the Effective Date, in accordance with the Development Plans;

WHEREAS, Declarant intends to develop the Subject Property by (a) constructing three (3) new predominantly residential buildings and one (1) new mixed-use building on the Waterfront Parcel, (b) redeveloping the Refinery Complex by converting it to residential, retail and community facility use and (c) constructing one (1) new predominantly residential building on the Upland Parcel (collectively, the "**Proposed Development**");

WHEREAS, Declarant also intends to develop the Subject Property by constructing (a) the Shore Public Walkway (hereinafter defined), (b) the Supplemental Public Access Areas (hereinafter defined), (c) the Refinery Complex Open Space (hereinafter defined), (d) the Buffer Areas (hereinafter defined), (e) the Upland Connections (hereinafter defined), (f) the Access Streets (hereinafter defined), (g) the South 3rd Street Public Access Area (hereinafter defined) and (h) the Sidewalk Setback Public Access Areas (hereinafter defined), all of which are, for illustrative purposes, shown on **Exhibit C** annexed hereto;

WHEREAS, from and after execution and recordation of this Declaration, Declarant may convey portions of the Subject Property to one or more Persons;

WHEREAS, the Waterfront Parcel is located within a waterfront block, as such term is defined in Section 62-11 of the Zoning Resolution (hereinafter defined), and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, pursuant to Section 62-811 of the Zoning Resolution, no excavation or building permit may be issued for development of the Waterfront Parcel until the Chair (hereinafter defined) has certified to DOB (hereinafter defined) that a site plan has been submitted showing compliance with the requirements of Article VI, Chapter 2 of the Zoning Resolution and that an acceptable restrictive declaration has been executed and filed pursuant to Section 62-14;

WHEREAS, in connection with the Proposed Development and construction of the Public Access Areas (hereinafter defined), Declarant has proposed: (a) the rezoning of the Subject Property as follows: (i) the rezoning of a portion of Zoning Lot A from M3-1 to R8 with a C2-4 commercial overlay and the rezoning of the balance of Zoning Lot A from M3-1 to C6-2, (ii) the rezoning of Zoning Lot B from M3-1 to C6-2 and (iii) the rezoning of Zoning Lot C from M3-1 to R6 with a C2-4 commercial overlay (the aforesaid rezonings, collectively, the "**Rezoning**"); (b) the redevelopment of the Subject Property (i) in accordance with special permits issued pursuant to Sections 74-743 and 74-74453 of the Zoning Resolution (the aforesaid special permits, collectively, the "**Special Permits**"), (ii) in accordance with certifications of the Chair issued pursuant to Sections 62-811 and 62-812 of the Zoning Resolution (the aforesaid certifications, collectively, the "**Certifications**") and (iii) in accordance with authorizations of the Commission (hereinafter defined) made in accordance with Sections 62-822(a), 62-822(b) and 62-822(c) of the Zoning Resolution (the aforesaid authorizations, collectively, the "**Authorizations**"); and (c) amendments to the text of Sections 23-953, 52-83, 62-35, 62-352, and Appendix F, of the Zoning Resolution (the aforesaid amendments, the "**Zoning Text Amendments**");

WHEREAS, Declarant has filed applications with the Commission: (a) for the Rezoning of Zoning Lot A Zoning Lot B and Zoning Lot C under application # 100185 ZMK; (b) for the Special Permits under application ## 100187 ZSK and 100188 ZSK; (c) for the Certifications under application ## 100191 ZCK and 100192 ZCK; (d) for the Authorizations under application ## 100190 ZAK; and (e) for the Zoning Text Amendments under application # 100186 ZRK (all of the foregoing, as the same may be amended, supplemented or otherwise modified, collectively, the "**Applications**");

WHEREAS, pursuant to Section 62-73 of the Zoning Resolution, Declarant has requested that the Mayor of The City of New York (the "**Mayor**") accept Declarant's transfer to the City of New York (the "**City**") of fee simple, absolute title to the Waterfront Access Areas (hereinafter defined), and the Mayor has agreed to accept such transfer, subject to the satisfaction of the conditions of this Declaration;

WHEREAS, this Declaration is entered into: (a) pursuant to Section 74-743(b)(8) of the Zoning Resolution, which requires that a declaration, with regard to the ownership requirements, as set forth in paragraph (b) of the definition of "large-scale development, general" in Section

12-10 of the Zoning Resolution, be filed with the Commission; and (b) to set forth the agreement of Declarant (i) to construct the Public Access Areas in accordance with the terms of this Declaration, (ii) to transfer to the City the Waterfront Access Areas in accordance with the terms of this Declaration, (iii) to transfer to the City and the general public permanent access easements over the Retained Public Access Areas (hereinafter defined) and the Access Streets upon substantial completion thereof, (iv) to grant to DPR (hereinafter defined) an easement to perform maintenance in and to the Buffer Areas and (v) to establish an account to fund the maintenance and repair of the Waterfront Maintenance Areas (hereinafter defined);

WHEREAS, the conditions of this Declaration include, *inter alia*, (a) Declarant's assumption of responsibility for the maintenance and repair of the Retained PAA Maintenance Areas (hereinafter defined), the Access Streets and the Comfort Station (hereinafter defined) and (b) adequate guarantees of access to the Waterfront Access Areas through the Retained Public Access Areas and the Access Streets;

WHEREAS, pursuant to the Waterfront Maintenance Area Maintenance Agreement (hereinafter defined), DPR shall be responsible for the maintenance and repair of the Waterfront Maintenance Areas following the transfer of title thereto to the City;

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

WHEREAS, pursuant to the certificates annexed hereto as **Exhibit D**; Chicago Title Insurance Company has certified that, as of November 25, 2009, Declarant and Domino Mezz Holdings LLC are the sole parties-in-interest in the Subject Property;

WHEREAS, all Parties-in-Interest (hereinafter defined) have either executed this Declaration or waived their respective rights to execute this Declaration by written instruments annexed hereto as **Exhibit E**, which instruments are intended to be recorded in the Office of the City Register, Kings County, New York, simultaneously with the recordation of this Declaration; and

WHEREAS, 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 respective rights to object hereto, no (i) restrictions of record on the development or use of the Subject Property, (ii) presently existing estate or interest in the Subject Property or (iii) Title Exceptions (hereinafter defined) of any kind, preclude, 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 with this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following

restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns.

ARTICLE I

CERTAIN DEFINITIONS

For purposes of this Declaration, the following terms shall have the following meanings.

"**30% Submission**", "**60% Submission**" and "**90% Submission**" shall have the meanings set forth in Section 5.04 of this Declaration.

"**Access Streets**" shall mean the areas labeled "Private Drive" on the Public Access Area Plans.

"**Accredited MGS Professional**" shall have the meaning set forth in Section 3.03(b)(iii)(B) of this Declaration.

"**ACS**" shall have the meaning set forth in Section 3.04(b)(i) of this Declaration.

"**Additional Exceedances**" shall have the meaning set forth in Section 3.02(c)(i) of this Declaration.

"**Affordable Housing**" shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

"**Affordable Housing Unit**" shall mean (i) a residential unit consisting solely of Affordable Housing or (ii) a Superintendent Unit, provided, however, that there shall not be more than one (1) Superintendent's Unit in each building located in the Proposed Development.

"**Alternate Phasing Plan**" shall mean those certain drawings annexed hereto as **Exhibit F**.

"**Alternative Noise Reduction Plan**" shall have the meaning set forth in Section 3.01(c)(ii) of this Declaration.

"**Annual Waterfront Maintenance Area Maintenance Payment**" shall mean, as of any date of calculation, the product obtained by multiplying the Waterfront Maintenance Area Maintenance Amount by the sum of (i) the number of square feet of the Waterfront Access Areas which has theretofore been conveyed to the City in accordance with the terms of this Declaration and (ii) the number of square feet of the Buffer Areas appurtenant to the Waterfront Access Areas described in clause (i) of this Section.

"**Applicable Exhaust Stack Plane**" shall mean (i) with respect to Site A, a horizontal plane located 275 feet above the Brooklyn Datum, (ii) with respect to Site B, a horizontal plane located 407 above the Brooklyn Datum, (iii) with respect to Site C, a horizontal plane located 400 feet above the Brooklyn Datum, (iv) with respect to Site D, a horizontal plane located 331

feet above the Brooklyn Datum, and (v) with respect to Site E, a horizontal plane located 157 feet above the Brooklyn Datum.

"**Applications**" shall have the meaning set forth in the Recitals to this Declaration.

"**Approvals**" shall mean all approvals or consents required of any Governmental Authority with respect to the Proposed Development or otherwise with respect to the Subject Property.

"**Assessment Property**" shall have the meaning set forth in Section 15.07 of this Declaration.

"**Association**" shall have the meaning set forth in Section 13.09 of this Declaration.

"**Association Members**" shall have the meaning set forth on Section 15.04 of this Declaration.

"**Association Obligation Date**" shall mean the date on which Declarant establishes an Association in accordance with the terms of this Declaration.

"**Attorney General**" shall mean the Attorney General of the State of New York.

"**Authorizations**" shall have the meaning set forth in the Recitals to this Declaration.

"**Brooklyn Datum**" means the datum level used by the Topographical Bureau, Borough of Brooklyn, which is 2.56 feet above the United States Coast and Geodetic Survey Datum, mean sea level, Sandy Hook, New Jersey.

"**Buffer Area(s)**" shall mean, individually and collectively, the areas labeled "5ft Typ Maintenance Strip" on the Public Access Area Plans (L2-1).

"**Buffer Area Maintenance Easement**" shall mean an easement, in substantially the form annexed hereto as **Exhibit Q**, pursuant to which Declarant grants to DPR an easement over the applicable Buffer Area for the purposes, and subject to the terms and conditions, set forth therein.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

"**Certifications**" shall have the meaning set forth in the Recitals to this Declaration.

"**Chair**" shall mean the Chair of the Commission from time to time or any successor to the jurisdiction thereof.

"**City**" shall have the meaning set forth in the Recitals to this Declaration.

"**City Council**" shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

"**City Noise Control Code**" shall have the meaning set forth in Section 3.01(c)(i)(A) of this Declaration.

"**City Public Access Area Recommendations**" shall have the meaning given in Section 5.05 of this Declaration.

"**Claim**" or "**Claims**" shall have the meaning given in Section 7.07 of this Declaration.

"**Comfort Station**" shall mean that certain "Comfort Station" to be constructed in the Refinery Complex, as referenced on the Public Access Area Plans (L5-1).

"**Comfort Station Easement**" shall mean an easement in substantially the form of **Exhibit S** annexed hereto, whereby Declarant grants to the City of New York and the general public a non-exclusive easement to use the Comfort Station for the purposes, and subject to the terms and conditions, set forth therein.

"**Commission**" shall mean the City Planning Commission of the City of New York, or any successor to its jurisdiction.

"**Completion Letter of Credit**" shall have the meaning set forth in Section 7.06 of this Declaration.

"**Construction Commencement**" shall mean the issuance of the first building permit by DOB to Declarant for work on a Development Phase, whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property, (ii) a foundation permit, authorizing foundation work at the Subject Property, (iii) a demolition permit, 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 ; or (iv) a new building permit, a work permit issued by DOB under a New Building application authorizing construction of the New Building.

"**Construction Drawings**" shall mean construction drawings prepared in accordance with the standards of the American Institute of Architects, or such equivalent professional membership association for architects.

"**Construction Pest Management Plan**" shall have the meaning set forth in Section 3.01(f)(i) of this Declaration.

"**Construction Protection Plan**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**Corporation Counsel**" shall mean the Corporation Counsel of the City of New York, or any successor to his or her jurisdiction.

"**CPI**" mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York – Northern New Jersey – Long Island, All Items (1982-1984 = 100), published by the United States Department of Labor, provided that if the aforesaid index ceases to be published, "CPI" shall be such index as is generally adopted by the real estate industry in the City of New York as a substitute for such index.

"**CPP**" shall mean Construction Protection Plan.

"**DCP**" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

"**Declarant**" shall have the meaning given in the Preamble to this Declaration, and shall include heirs, successors and assigns of the named Declarant.

"**Declaration**" shall have the meaning given in the Preamble to this Declaration.

"**Delay Notice**" shall have the meaning set forth in Section 9.01 of this Declaration.

"**Denial Determination**" shall have the meaning set forth in Section 3.03(b)(v)(C)(1) of this Declaration.

"**DEP**" shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.

"**Development**" shall mean the construction or redevelopment, as applicable, of the Proposed Development pursuant to the Development Plans.

"**Development Phases**" shall mean, collectively, the Phase 1 Development, the Phase 2 Development, the Phase 3 Development, the Phase 4 Development, the Phase 5 Development and the Phase 6 Development.

"**Development Plans**" shall mean the following plans and drawings, each dated December 24, 2009, prepared by Rafael Viñoly Architects, each of which is annexed hereto as **Exhibit B**:

Number	Title	Date
T-1	Title Sheet	06-07-10
Z00-2	Zoning Lot Calculations, Actions, and Design Guidelines	06-07-10
Z00-3	Upland/Seaward Lot Calculations	12-24-09
Z01-1	Site Plan	06-07-10
Z05-A	Zoning Lot A Site A – Adjusted Base	12-24-09

Number	Title	Date
	Plane Calculations	
Z05-B	Zoning Lot A Site A – Site Plan	06-07-10
Z05-C	Zoning Lot A Site A – Height and Setback Diagrams	06-07-10
Z06-A	Zoning Lot A Site B – Adjusted Base Plane Calculations	12-24-09
Z06-B	Zoning Lot A Site B – Site Plan	12-24-09
Z06-C	Zoning Lot A Site B – Height and Setback Diagrams	06-07-10
Z07-A	Zoning Lot A Site C – Adjusted Base Plane Calculations	12-24-09
Z07-B	Zoning Lot A Site C – Site Plan	12-24-09
Z07-C	Zoning Lot A Site C – Height and Setback Diagrams	12-24-09
Z08-A	Zoning Lot A Site D – Adjusted Base Plane Calculations	12-24-09
Z08-B	Zoning Lot A Site D – Site Plan	12-24-09
Z08-C	Zoning Lot A Site D – Height and Setback Diagrams	12-24-09
Z09-A	Zoning Lot C Site A – Adjusted Base Plane Calculations	12-24-09
Z09-B	Zoning Lot C Site A – Site Plan	12-24-09
Z09-C	Zoning Lot C Site A – Height and Setback Diagrams	12-24-09
Z10-A	Zoning Lot B Site A – Adjusted Base Plane Calculations	12-24-09
Z10-B	Zoning Lot B Site A – Site Plan	12-24-09
Z10-C	Zoning Lot B Site A – Height and	12-24-09

Number	Title	Date
	Setback Diagrams	
Z11-1	Special Permit Drawing – Site A	06-07-10

"**Development Property**" shall mean the Subject Property, other than the portion thereof consisting of the Public Access Areas.

"**Dewatering Plan**" shall have the meaning set forth in Section 3.01(e)(i) of this Declaration.

"**DOB**" shall mean the Department of Buildings of the City of New York, or any successor to its jurisdiction.

"**DOT**" shall mean the New York City Department of Transportation, or any successor to its jurisdiction.

"**DPR**" shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

"**DPR Rules and Regulations**" shall mean the Rules and Regulations of the DPR, as the same may be amended from time to time.

"**Easement Documents**" shall have the meaning set forth in Section 7.03(b) of this Declaration.

"**EEMs**" shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

"**Effective Date**" shall mean the date on which Declarant receives Final Approval of the Applications.

"**Entity**" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.

"**EPA**" shall have the meaning set forth in Section 3.01(a)(i)(A) of this Declaration.

"**Federal/State Public Access Area Approvals**" shall have the meaning set forth in Section 5.07 of this Declaration.

"**FEIS**" shall mean the Final Environmental Impact Statement for the Proposed Development, dated May 28, 2010.

"**Final Approval**" shall mean approval of the Applications by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council's period of review has expired, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Applications

and takes final action pursuant to New York City Charter Section 197-d approving the Applications, in which event "Final Approval" shall mean such approval of the Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council's action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor's disapproval, in which event "Final Approval" shall mean the Office of the Mayor's written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, "Final Approval" shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Applications.

"**Final Completion**" or "**Finally Complete**" shall mean the completion of all relevant items of work, including any so-called "punch-list" items that remain to be completed upon Substantial Completion.

"**Final Public Access Area Plans**" shall have the meaning set forth in Section 5.11 hereof.

"**Floor Area**" shall have the meaning given in the Zoning Resolution.

"**Force Majeure**" shall mean that a Force Majeure Event has occurred and Declarant has provided the Delay Notice.

"**Force Majeure Event**" shall mean occurrences beyond the reasonable control of Declarant which delay the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the Association, as applicable, the holder of a Mortgage that has succeeded to Declarant's interest in the Subject Property or any other applicable party complies with the procedures set forth in Article 9.

"**Fugitive Dust Control Plan**" shall have the meaning set forth in Section 3.01(b)(i) of this Declaration.

"**Funding Obligation**" shall have the meaning set forth in Section 7.04 of this Declaration.

"**GHG Water Credit Requirements**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

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

"**Guaranty**" shall have the meaning set forth in Section 6.05 of this Declaration.

"**Historic Resources**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**HVAC**" shall have the meaning set forth in Section 3.02(a)(i) of this Declaration.

"**Indemnified Party**" shall have the meaning set forth in Section 7.07 of this Declaration.

"**Individual Assessment Interest**" shall have the meaning set forth in Section 13.03(a) of this Declaration.

"**LEED Certification**" shall mean 'Certified' or a higher level of certification (if chosen by Declarant) under the USGBC LEED rating system, and (i) for a building developed primarily for residential 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'.

"**Legal Requirements**" shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property.

"**LPC**" shall mean the Landmarks Preservation Commission of the City of New York or any successor to its jurisdiction.

"**Maintenance and Protection of Traffic Plan**" shall have the meaning set forth in Section 3.01(j)(i) of this Declaration.

"**Maintenance Obligation**" shall have the meaning set forth in Section 11.04 of this Declaration.

"**Mayor**" shall have the meaning set forth in the Recitals to this Declaration.

"**MGS Certification**" shall mean Minimum Green Standard Certification.

"**MGS Checklist**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**MGS Construction Review**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**MGS Design Review**" shall have the meaning set forth in Section 3.03(b)(iv)(A) of this Declaration.

"**MGS Governing Body**" shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

"**MGS Points**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**Minimum Green Standard Certification**" shall have the meaning set forth in Section 3.03(b)(i) of this Declaration.

"**Minimum Energy Savings**" shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

"**Mitigation Measure**" shall have the meaning set forth in Section 3.04 of this Declaration.

"**Modified Stack Plan**" shall have the meaning set forth in Section 2.01(d)(iii) of this Declaration.

"**Mortgage**" shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property, other than a mortgage secured by any condominium unit or other individual residential unit located within the Subject Property.

"**Mortgagee**" shall mean the holder of a Mortgage.

"**MPT**" shall mean Maintenance and Protection of Traffic Plan.

"**MTA**" shall mean the Metropolitan Transit Authority, New York City Transit, or any successor to its jurisdiction.

"**New Building**" shall mean any building constructed or redeveloped on any Site pursuant to the Proposed Development (each New Building being deemed to include all "Towers" and "Modules" constructed thereon, as such terms are defined in Section 2.01(d)(i)(A)).

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

"**Noise Reduction Plan**" shall have the meaning set forth in Section 3.01(c)(i)(B) of this Declaration.

"**Notice of Final Completion**" shall have the meaning set forth in Section 8.03 of this Declaration.

"**Notice of Substantial Completion**" shall have the meaning set forth in Section 7.02 of this Declaration.

"**NYPA Facility**" shall mean the New York Power Authority North 1st Street gas turbine power generating facility.

"**OER**" shall mean the New York City Office of Environmental Remediation, or any successor to its jurisdiction.

"**OPRHP**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**Parcels**" shall mean each of the development parcels within the Subject Property, as further described in the Recitals.

"**Party-in-Interest**" shall have the meaning set forth in subdivision (d) of the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution.

"**PCO**" shall mean a Permanent Certificate of Occupancy issued by DOB.

"**PCRE**" shall mean 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 portion of the Proposed Development, set forth in Section 3.02 hereof; and project components related to the environment relating to sustainability, set forth in Section 3.03 hereof.

"**Permitted Encumbrances**" shall mean those certain matters set forth on **Exhibit I** annexed hereto, and such other encumbrances as the City shall approve.

"**Person**" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

"**Phase 1 Development**" shall mean the construction or redevelopment of Phase 1 of the Proposed Development (Site E), as more particularly set forth on the Development Plans.

"**Phase 2 Development**" shall mean the construction or redevelopment of Phase 2 of the Proposed Development (Site D), as more particularly set forth on the Development Plans and drawing L3-1 of the Public Access Area Plans.

"**Phase 3 Development**" shall mean the construction or redevelopment of Phase 3 of the Proposed Development (Site C), as more particularly set forth on the Development Plans and drawing L3-2 of the Public Access Area Plans.

"**Phase 4 Development**" shall mean the construction or redevelopment of Phase 4 of the Proposed Development (Refinery Site), as more particularly set forth on the Development Plans and drawing L3-3 of the Public Access Area Plans, except that in the event of a Refinery Phase Switch it shall mean the construction or redevelopment of Phase 4 of the Proposed Development (Site B), as contemplated by the Alternate Phasing Plan.

"**Phase 5 Development**" shall mean the construction or redevelopment of Phase 5 of the Proposed Development (Site B), as more particularly set forth on the Development Plans and drawing L3-4 of the Public Access Area Plans, except that in the event of a Refinery Phase Switch it shall mean the construction or redevelopment of Phase 5 of the Proposed Development (Refinery Site), as contemplated by the Alternate Phasing Plan.

"**Phase 6 Development**" shall mean the construction or redevelopment of Phase 6 of the Proposed Development (Site A), as more particularly set forth on the Development Plans and drawing L3-5 of the Public Access Area Plans.

"**Possessory Interest**" shall have the meaning set forth in Section 15.07(d) of this Declaration.

"**Preliminary Sensitivity Analysis**" shall have the meaning set forth in Section 3.02(c)(i) of this Declaration.

"**Proposed Development**" shall have the meaning set forth in the Recitals to this Declaration.

"**Proposed Modified Planting Plan**" shall have the meaning set forth in Section 3.02(c)(i) of this Declaration.

"**Proposed School Site**" shall have the meaning set forth in Section 3.04(a)(ii)(B) of this Declaration.

"**Public Access Areas**" shall mean, collectively, the Waterfront Access Areas, the Buffer Areas, the Upland Connections, the Access Streets, the South 3rd Street Public Access Area and the Sidewalk Setback Public Access Areas.

"**Public Access Area Concept Drawings**" shall mean the concept drawings annexed hereto as **Exhibit G**.

"**Public Access Area Design Schedule**" shall have the meaning given in Section 5.08(e) hereof.

"**Public Access Area Design Submission(s)**" shall have the meaning set forth in Section 5.04 of this Declaration.

"**Public Access Area Phases**" shall mean, individually or collectively, Public Access Area Phase 2, Public Access Area Phase 3, Public Access Area Phase 4, Public Access Area Phase 5 or Public Access Area Phase 6. "**Public Access Area Phase 2**" shall mean the Public

Access Areas delineated on the Public Access Area Plans as Phase 2, including, without limitation, the street end of South 5th Street. "**Public Access Area Phase 3**" shall mean the Public Access Areas delineated on the Public Access Area Plans as Phase 3. "**Public Access Area Phase 4**" shall mean the Public Access Areas delineated on the Public Access Area Plans as Phase 4. "**Public Access Area Phase 5**" shall mean the Public Access Areas delineated on the Public Access Area Plans as Phase 5. "**Public Access Area Phase 6**" shall mean the Public Access Areas delineated on the Public Access Area Plans as Phase 6, including, without limitation the connection in Grand Ferry Park.

"**Public Access Area Plans**" shall have the meaning set forth in Section 4.01(b) of this Declaration.

"**Public Access Area Work**" shall mean the work necessary to construct the Public Access Areas in accordance with this Declaration.

"**Public Access Easement**" shall have the meaning set forth in Section 10.01(a) of this Declaration.

"**Public Access Easement Phase**" shall mean, individually or collectively, the Phase 2 Public Access Easement, the Phase 3 Public Access Easement, the Phase 4 Public Access Easement, the Phase 5 Public Access Easement or the Phase 6 Public Access Easement. "**Phase 2 Public Access Easement**" shall have the meaning set forth in Section 10.01(a)(i) of this Declaration. "**Phase 3 Public Access Easement**" shall have the meaning set forth in Section 10.01(a)(ii) of this Declaration. "**Phase 4 Public Access Easement**" shall have the meaning set forth in Section 10.01(a)(iii) of this Declaration. "**Phase 5 Public Access Easement**" shall have the meaning set forth in Section 10.01(a)(iv) of this Declaration. "**Phase 6 Public Access Easement**" shall have the meaning set forth in Section 10.01(a)(v) of this Declaration.

"**Public School**" shall mean a PS/IS school of approximately 100,000 gross square feet, to be operated by the New York City Department of Education, and having approximately 600 seats, which may be located within the Refinery Building in accordance with Section 3.04(a) hereof.

"**Public School Obligations**" shall have the meaning set forth in Section 3.02(a)(i) of this Declaration.

"**Punch List**" shall have the meaning set forth in Section 7.02 of this Declaration.

"**Refinery Interim Report**" shall mean a report (i) describing the conditions of the Refinery Complex, (ii) describing any necessary Refinery Interim Work, and (iii) certifying that the condition of the Refinery Building currently complies, or that it will comply upon completion of the Refinery Interim Work, with all Legal Requirements applicable to landmarked buildings.

"**Refinery Interim Work**" shall mean any work identified in a Refinery Interim Report that is necessary to bring the Refinery Complex into compliance with all Legal Requirements applicable to landmarked buildings.

"**Register's Office**" shall mean the Register's Office of the City of New York, King's County.

"**Refinery Complex**" shall mean those certain buildings shown on the Development Plans as the "Refinery".

"**Refinery Complex Open Space**" shall mean that certain open space abutting the western side of the Refinery Complex, labeled as "Supplemental Public Access Area A3" on the Public Access Area Plans (L2-1).

"**Refinery Phase Switch**" shall have the meaning set forth in Section 3.04(a)(ii)(B)(2) of this Declaration.

"**Refinery Site**" shall mean the area delineated as "Refinery" on the Development Plans.

"**Resident Engineer**" shall have the meaning set forth in Section 6.03 of this Declaration.

"**Retained PAA Maintenance Agreement**" shall mean the maintenance agreement for the Retained PAA Maintenance Areas, a copy of which is attached hereto as **Exhibit H**.

"**Retained PAA Maintenance Areas**" shall mean the Upland Connections and the South 3rd Street Public Access Areas.

Retained PAA Maintenance Security" shall have the meaning set forth in Section 7.05 of this Declaration.

"**Retained Public Access Areas**" or "**Retained PAA**" shall mean, collectively, the Upland Connections, the South 3rd Street Public Access Area, the Buffer Areas and the Sidewalk Setback Public Access Areas.

"**Rezoning**" shall have the meaning set forth in the Recitals to this Declaration.

"**SCA**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**SCA Agreement**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**SCA Letter of Intent**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**Shore Public Walkway**" shall mean the areas labeled "Shore Public Walkway" or "SPW" on the Public Access Area Plans.

"**Sidewalk Setback Public Access Areas**" shall mean, collectively, the areas labeled Public Access Areas on the Public Access Area Plans which (a) abut the sidewalk of South 5th Street on the south end of the Waterfront Parcel, (b) abut the sidewalk of Kent Avenue on the east side of the Waterfront Parcel, not including the South 3rd Street Public Access Areas and (c)

abut the sidewalk of Grand Street on the north end of the Waterfront Parcel, extending to the Clear Circulation Path (as more particularly described on the Public Access Area Plans).

"**Site A**" shall mean the area delineated as "Site A" on the Development Plans.

"**Site B**" shall mean the area delineated as "Site B" on the Development Plans.

"**Site C**" shall mean the area delineated as "Site C" on the Development Plans.

"**Site D**" shall mean the area delineated as "Site D" on the Development Plans.

"**Site E**" shall mean the area delineated as "Site E" on the Development Plans.

"**Site A Window Plane**" shall mean that certain horizontal plane located above, and coincident with, the boundaries of Site A beginning at 110 feet above the Brooklyn Datum.

"**Soil Erosion and Sediment Control Plan**" shall have the meaning set forth in Section 3.01(d)(i) of this Declaration.

"**South 3rd Street Public Access Area**" shall mean the area labeled Public Access Areas on the Public Access Area Plans which surrounds the private drive at South 3rd Street west of Kent Avenue and extends to the Shore Public Walkway.

"**Special Permits**" shall have the meaning set forth in the Recitals to this Declaration.

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

"**Stormwater Pollution Prevention Plan**" or "**SWPPP**" shall have the meaning set forth in Section 3.03(c)(i) of this Declaration.

"**Subject Property**" shall have the meaning set forth in the Recitals to this Declaration.

"**Substantial Completion**" or "**Substantially Complete**", with respect to any Public Access Area Phase or Development Phase, shall mean that such Public Access Area Phase or Development Phase has been constructed substantially in accordance with the Public Access Area Plans or the Development Plans, as applicable, and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

"**Superintendent Unit**" means a residential unit which is reserved for the use of a building superintendent.

"**Supplemental Public Access Areas**" shall mean the areas labeled "Supplemental Public Access Area" or "SPAA" in the Public Access Area Plans.

"**SWPPP**" shall mean Stormwater Pollution Prevention Plan.

"**TCO**" shall mean a Temporary Certificate of Occupancy issued by DOB.

"**Title Exception**" shall mean any lien, declaration, easement, restrictive covenant or other instrument, charge, encumbrance or agreement affecting title to the Subject Property or any portion thereof.

"**Title Policy**" shall have the meaning set forth in Section 7.03(a) of this Declaration.

"**Transfer Date**" shall have the meaning set forth in Section 7.03(a) of this Declaration.

"**Transfer Documents**" shall have the meaning set forth in Section 7.03(a) of this Declaration.

"**Unit Interested Party**" shall mean any and all of the following: all owners, lessees, and occupants of any individual residential or commercial condominium unit, and all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit.

"**Unit Owner(s)**" shall have the meaning set forth in Section 15.07(a) of this Declaration.

"**Upland Connection(s)**" shall mean, individually and collectively, the areas labeled "Upland Connection" on the Public Access Area Plans.

"**USGBC**" shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

"**Waterfront Access Areas**" means, collectively, the Shore Public Walkway, the Supplemental Public Access Areas and the Refinery Complex Open Space.

"**Waterfront Access Area Access Permit**" shall have the meaning set forth in Section 8.04 of this Declaration.

"**Waterfront Maintenance Areas**" shall mean, collectively, the Waterfront Access Areas and the Buffer Areas.

"**Waterfront Maintenance Area Access Easement**" shall mean an easement, in substantially the form annexed hereto as **Exhibit R**, whereby Declarant shall grant DPR an easement over the applicable portion of the Retained Public Access Areas and the Access Streets for purposes of gaining access to the applicable portion of the Waterfront Maintenance Areas for purposes of maintaining and repairing the same.

"**Waterfront Maintenance Area Maintenance Account**" shall have the meaning set forth in Section 7.04 of this Declaration.

"**Waterfront Maintenance Area Maintenance Amount**" shall be equal to $2.31, provided that, on April 15th, 2010, and on each April 15th occurring thereafter during the term of

this Declaration, the Waterfront Maintenance Area Maintenance Amount shall be adjusted based on changes in the CPI.

"**Waterfront Maintenance Area Maintenance Agreement**" shall mean the maintenance and operating agreement for the Waterfront Maintenance Areas by and between Declarant and DPR, a copy of which is annexed hereto as **Exhibit J**.

"**Waterfront Maintenance Area Maintenance Security**" shall have the meaning set forth in Section 7.01(a)(vii) of this Declaration.

"**Wind Conditions Consultant**" shall have the meaning set forth in Section 3.02(c)(i) of this Declaration.

"**Wind Conditions Report**" shall have the meaning set forth in Section 3.02(c)(iii)(A) of this Declaration.

"**Wind-Reduction Design Modifications**" shall have the meaning set forth in Section 3.02(c)(iii)(B) of this Declaration.

"**Zoning Lot**" shall have the meaning given in the Zoning Resolution.

"**Zoning Lot A**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Lot B**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Lot C**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Resolution**" shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

"**Zoning Text Amendments**" shall have the meaning set forth in the Recitals to this Declaration.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 Development of the Subject Property

(a) **Designation of General Large Scale Development**. Declarant hereby declares and agrees that, following the Effective Date, the Subject Property shall be treated as a "general large-scale development", as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a single project. Declarant agrees that the aggregate "floor area ratio", as such term is defined in Section 12-10 of the Zoning Resolution on the Effective Date, of the Subject Property, considering the total Floor Area of the Development permitted in accordance with the Development Plans and the lot area of all of the

Parcels, shall not exceed (i) 6.0 on the Upland Parcel (Zoning Lot C) and (i) 5.6 on the Waterfront Parcel (Zoning Lot A and Zoning Lot B).

(b) If Declarant develops the Subject Property, any development of the Subject Property shall occur only if it is in substantial conformity with the Development Plans and in compliance with this Declaration. No other development of the Subject Property, including any development otherwise permitted on an "as of right" basis under the provisions of the Zoning Resolution, shall be permitted unless the Development Plans have been modified in accordance with this Declaration.

(c) **Phasing of Development**. Subject to the provisions of this Declaration, Declarant may construct buildings and improvements on the Development Property in the following sequence, as set forth in the Public Access Area Plans: Phase 1 Development, Phase 2 Development, Phase 3 Development, Phase 4 Development, Phase 5 Development, and Phase 6 Development. Declarant may not apply for or accept a TCO or PCO for any portion of a New Building until a TCO has been issued for any portion of a New Building in each preceding Development Phase and the requirements of Section 7.01 have been met with respect to such preceding Development Phase.

(d) **Inclusionary Housing**.

(i) ***FAR Limitation.*** Notwithstanding the maximum aggregate "floor area ratio" (as such term is defined in the Zoning Resolution) otherwise permitted under Section 2.01(a) and (b) of this Declaration, in the event that development of the Subject Property does not incorporate "Inclusionary Housing" pursuant to Sections 23-90 and 62-352 of the Zoning Resolution, in an amount equal to at least 20% of the zoning floor area generated by the Waterfront Parcel and 7.5% of the zoning floor area generated by the Upland Parcel, each exclusive of ground floor non-residential zoning floor area, then the maximum aggregate "floor area ratios" shall not exceed 2.43 on Zoning Lot C (Site E; the Upland Parcel) or 4.53 on Zoning Lot A (Site A, Site B, Site C and Site D on the Waterfront Parcel).

(ii) ***Height Limitation.*** Notwithstanding the maximum building heights otherwise permitted pursuant to the Development Plans, in the event that the development of the Subject Property does not incorporate "Inclusionary Housing" pursuant to Sections 23-90 and 62-352 of the Zoning Resolution, in an amount equal to at least 20% of the zoning floor area generated by the Waterfront Parcel and 7.5% of the zoning floor area generated by the Upland Parcel, each exclusive of ground floor non-residential zoning floor area, then the maximum heights shall be as follows:

Parcel (Zoning Lot/Site)	Maximum height if no inclusionary housing is provided
Waterfront Parcel (Zoning Lot A)	
Site A, Tower	205'
Site B, Northern Tower	150'
Site B, Southern Tower	300'
Site B, Corner Module at South 2nd St. and Kent Ave.	80'
Site C, Tower	300'
Site C, Corner Module at South 3rd St. and Kent Ave.	80'
Site C, Midblock Module at Kent Ave.	90'
Site D, Tower	200'
Site D, Corner Module at South 4th St. and Kent Ave.	67'
Upland Parcel (Zoning Lot C, Site E), all Towers and Modules	50' (with 30' minimum street wall)

(A) For the purposes of this Section 2.01, a "Tower" refers to any portion of the Proposed Development, other than the Refinery Complex, which is permitted to exceed a height of 110 feet, and a "Module" refers to any portion of the Proposed Development which is permitted to rise to a single height, and does not include adjacent portions of the Proposed Development which may rise to a different height in accordance with the Development Plans.

(B) The maximum heights provided for Towers set forth the height of the tallest Module permitted in each Tower. The heights of adjacent Modules within such Tower (with exception of those Modules on Site A) must be reduced so as to maintain the height differentials among adjacent Modules, as is shown in Site Plan Z1-01 of the Development Plans. On Site A, only the tallest Module permitted in each tower must be reduced; the heights of adjacent Modules within such Tower can still be built to the heights shown on Site Plan Z1-01.

(iii) ***No Amendment to Plans or Declaration Required.*** If development of the Subject Property does not incorporate "Inclusionary Housing" pursuant to Sections 23-90 and 62-352 of the Zoning Resolution, in an amount equal to at least 20% of the zoning floor area generated by the Waterfront Parcel and 7.5% of the zoning floor area generated by the Upland Parcel, each exclusive of ground floor non-residential zoning floor area, no amendment to the Development Plans or this Declaration shall be required, provided that (A) the development of the Subject Property complies with all conditions to the Approvals and the requirements of this Declaration; (B) the building densities and heights do not exceed the maximums set forth in Section 2.01(d)(i) and (ii) of this Declaration; (C) the difference in

heights among adjacent Modules within each Tower are the same as those set forth in Site Plan Z1-01 of the Development Plans; (D) all other design requirements are met, including, but not limited to, transparency requirements and street wall heights; and (E) a supplemental air quality analysis is performed by Declarant and approved by DCP, identifying locations and heights of boiler exhaust stacks ("**Modified Stack Plan**"), which are necessary to avoid causing any significant adverse environmental impacts.

(e) **Representation**. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction to develop the Subject Property as a general large-scale development as set forth herein.

ARTICLE III

PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES

3.01 **Project Components Related to the Environment Relating to 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) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Subject Property:

(A) To minimize hourly emissions of NO_2 to the maximum extent practicable, non-road diesel-powered vehicles and construction equipment meeting or achieving the equivalent of the United States Environmental Protection Agency ("**EPA**") Tier 3 Non-road Diesel Engine Emission Standard would be used in construction, and construction equipment meeting the Tier 4 standard, will be used once Tier 4-compliant equipment is widely available for use in New York City and the use of such equipment is practicable.

(B) Gasoline-powered non-road engines used in construction activities shall meet the latest EPA emissions standards for existing or newly manufactured engines, as the case may be, in effect at the time they are first rented, purchased or otherwise put into use for construction at the Subject Property.

(C) All non-road, diesel-powered construction equipment with an engine power output rating of 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) and controlled truck fleets shall utilize the best available tailpipe technology for reducing diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater and all controlled-fleet trucks shall utilize active or passive diesel particle filters (either original

equipment manufacturer or retrofit technology) verified under the EPA verification programs to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust o fan equivalent engine).

(D) All on-site diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

(E) Idling of all vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property, except for vehicles being used to operate a loading, unloading or processing device (e.g., concrete mixing trucks).

(F) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid 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, cut-off saws, masonry bench saws, material hoists, table saws, welders, and water pumps.

(G) 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.

(H) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in Section 3.01(a)(i)(C) above, or come equipped with an original equipment manufacturer ("**OEM**"), verified to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust or fan equivalent engine).

(ii) To facilitate the use of electrically powered equipment and minimize the use of diesel and gasoline engines, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Development Phase (whichever first occurs), Declarant shall apply to Con Edison to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to DCP at the time the application is first sent to Con Edison. Upon connection to grid power, electrically powered equipment will be used to the extent practicable.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(a), with respect to applicable work at the Subject Property.

(b) **Fugitive Dust Control Plan**.

(i) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the prevention of the emission of dust from construction-related activities during development of the Subject Property (the "**Fugitive Dust Control Plan**"), which Fugitive Dust Control Plan shall contain the following measures:

(A) Fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils shall be controlled through water spraying.

(B) Large piles of soil, rock or sediment either shall be kept wet, coated with a non-hazardous, biodegradable dust suppressant and/or covered to prevent wind erosion and fugitive dust. Longer term stockpiles shall be covered with a tarp weighted down with sand bags.

(C) 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.

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

(E) 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.

(F) 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.

(G) In addition to regular cleaning by the City, roads adjacent to construction areas shall also be cleaned by Declarant on a regular basis, using appropriate legal methods, to minimize fugitive dust emissions.

(H) Materials and waste during demolition shall be brought to grade by hoists, cranes or chutes. If chutes are used, the bottom end of drop chutes shall be inserted into covered trucks or bins in a sealed manner so as to ensure that dust is not released from the truck or bin.

(I) A vehicular speed limit of 5 miles per hour shall be observed within construction areas.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(b) with respect to applicable work at the Subject Property.

(c) **Construction Noise Reduction Measures**.

(i) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property:

(A) All construction activities shall comply with Chapter 2 of Title 24 of the New York City Administrative Code (the "**City Noise Control Code**"), and with

the rules on Citywide Construction Noise Mitigation, as set forth in Chapter 28 of Title 15 of the Rules of the City of New York.

(B) Declarant shall develop and implement a plan for minimization of construction noise (the "**Noise Reduction Plan**"). The Noise Reduction 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. Prior to Construction Commencement of any New Building, a solid fence will be erected around the perimeter of the areas where construction activities are taking place, and shall be at least sixteen (16) feet high, which can be accomplished with an twelve (12) foot high noise barrier with an additional four (4) foot cant tilting inwards toward the Subject Property.

(2) The noise emission levels of all construction equipment shall not exceed the levels set forth in column C of Table 21-13 of the FEIS when using the appropriate path control measure. For construction equipment that no noise level has been provided in column C, the noise emission levels shall not exceed those found in column B of Table 21-13 of the FEIS, as determined by manufacturer's specifications adjusted to a reference distance of 50 feet.

(3) Declarant shall maintain a website or implement another program to inform the affected public about the construction work schedule.

(4) To the extent practicable, the noise of backup alarms on construction equipment shall be minimized.

(5) For construction activities involving the use of pile drivers, hoe-rams, jackhammers, or blasting, additional noise reduction measures chosen by Declarant from a list of options to be set forth in the Noise Reduction Plan shall be implemented where feasible.

(ii) If construction work will occur on weekends, Declarant shall prepare an additional noise reduction plan (the "**Alternative Noise Reduction Plan**") in accordance with the City Noise Control Code prior to commencing such nighttime work.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) with respect to applicable work at the Subject Property.

(d) **Construction Soil Erosion and Sediment Reduction Measures**.

(i) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for soil erosion and sediment control for all construction activities (including demolition and excavation) related to the development of the Subject Property, in conformance with the requirements of the DEC Standards and Specifications for Erosion and Sediment Control (the "**Soil Erosion and Sediment Control Plan**"), which Soil Erosion and Sediment Control Plan shall contain the following measures:

(A) The wheels or treads of vehicles and equipment that could track soil from areas under construction shall be washed before leaving such areas. To reduce the use of potable water for this purpose, to the extent practicable, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations.

(B) Rinse water from the wheel wash (described in this Section 3.01(d) shall be reabsorbed into the ground or pumped into tanks holding storm water or dewatering water. The wheel wash shall not be used for concrete trucks.

(C) 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.

(D) 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.

(E) Disturbed areas shall be stabilized for the duration of construction activity or until construction work resumes on the inactive disturbed areas. All disturbed areas of construction, including exposed ground and subgrade surfaces, storage piles of fill, dirt and other bulk materials, which are not being actively utilized for construction purposes for a period of seven (7) calendar days or more, shall be stabilized using: water as a dust suppressant; biodegradable dust stabilizer or suppressant; physical barriers or covers; or vegetative ground cover.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(d) with respect to applicable work at the Subject Property.

(e) **Construction Dewatering Plan**.

(i) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan setting forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property (the "**Dewatering Plan**"), which Dewatering Plan shall:

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

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

(C) (1) Require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to reuse on the Subject Property or discharge into the City's sewer system or surface waters, (2) require the water in such sedimentation tanks to be tested periodically for pH, turbidity and contaminants, and (3) if unacceptable levels of turbidity or contaminants are identified, as determined by applicable DEP or DEC regulations, require treatment prior to discharge off site.

(D) Suitable drainage means shall be provided for the removal

of (1) surface runoff from the Subject Property, and (2) sludge which drains from construction activities on the Subject Property.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(e) with respect to applicable work at the Subject Property.

(f) **Construction Pest Management Plan**.

(i) Prior to Construction Commencement on Site E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with DOB requirements, throughout the development of the Subject Property (the "**Construction Pest Management Plan**"), which Construction Pest Management Plan shall contain the following requirements:

(A) Vegetation fostering vermin shall be kept trimmed.

(B) Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.

(C) 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 Section 3.01(f) with respect to applicable work at the Subject Property.

(g) **Hazardous Materials Remediation and Protection Measures**. The FEIS, prepared pursuant to the State Environmental Quality Review Act ("**SEQRA**") and the City Environmental Quality Review ("**CEQR**"), has identified potential hazardous materials at the Subject Property. Declarant has agreed to comply with a Remedial Action Plan (a "**RAP**") and a Construction Health and Safety Plan (a "**CHASP**"), which the City acknowledges were approved by DEP following consultation with OER, on September 24, 2009, for the remediation of said hazardous materials during construction of the Proposed Development. The RAP and CHASP provide that the remediation for each building in the Proposed Development may proceed independently of the other buildings and therefore Notices of No Objection, Notices of Satisfaction, Final Notices of Satisfaction, TCOs and PCOs may be issued on a building-by-building basis, irrespective of their sequence.

(i) **Permits**. Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Proposed Development or any Future Project (hereinafter defined), shall be submitted to or accepted from the DOB by Declarant until OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Section 3.01(g)(iii) below, a Notice to Proceed as set forth in Section 3.01(g)(iv) below, a Notice of Satisfaction as set forth in Section 3.01(g)(v) below or a Final Notice of Satisfaction as set forth in Section 3.01(g)(vi) below. Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Section 3.01(g)(i).

(ii) **TCO and PCO**. Declarant covenants and agrees that no application for a TCO or PCO that reflects a change in use group respecting the Subject Property for the Proposed Development or any Future Project shall be submitted to or accepted from DOB by Declarant until OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Section 3.01(g)(iii) below, a Notice of Satisfaction as set forth in Section 3.01(g)(v) below or a Final Notice of Satisfaction as set forth in Section 3.01(g)(vi) below. Declarant shall submit a copy of the Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Section 3.01(g)(ii).

(iii) **Notice of No Objection**. OER shall issue a Notice of No Objection for the Proposed Development (and any Future Project) after Declarant has completed the work set forth in the project-specific Sampling Protocol (hereinafter defined) submitted to OER, and OER has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project.

(iv) **Notice to Proceed**. OER shall issue a Notice to Proceed for the Proposed Development (and any Future Project) after it determines that: (A) the project-specific RAP and CHASP have been approved by OER, and (B) the permit(s) respecting the Subject Property that allow grading, excavation, foundation, alteration, building, soil disturbance or construction of the superstructure for the Proposed Development (or any Future Project) are necessary to further the implementation of the approved RAP.

(v) **Notice of Satisfaction**. OER shall issue a Notice of Satisfaction for the Proposed Development (and any Future Project) after (A) the project-specific RAP has been prepared for and accepted by OER and (B) OER has determined in writing that such RAP has been completed to the satisfaction of OER.

(vi) **Final Notice of Satisfaction**. OER shall issue a Final Notice of Satisfaction for the Proposed Development (or any Future Project) after (A) the project-specific RAP has been prepared and accepted by OER, (B) OER has set forth in writing that such RAP has been completed to the satisfaction of OER, and (C) all potential hazardous materials have been removed or remediated and no further hazardous remediation is required on the Subject Property as determined by OER.

(vii) **Future Projects**. Following Final Completion of all Development Phases and Public Access Area Phases, if any further development of the Subject Property which involves a change in use or soil disturbance is conducted (a "**Future Project**"), Declarant shall submit to OER for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan (a "**Sampling Protocol**") specific to the Future Project, and test and identify any such potential hazardous materials pursuant to said Sampling Protocol. If any such hazardous materials are found, Declarant shall submit to OER for approval a RAP and CHASP specific to the Future Project based on the results of the Sampling Protocol, and upon the approval of the RAP and CHASP by OER, Declarant shall provide for the remediation of such hazardous materials in accordance with such RAP and CHASP.

(h) **Historic Resource Protection Measures**.

(i) Prior to Construction Commencement of any New Building that is located within ninety (90) feet of the Refinery Complex, the Williamsburg Bridge or 390 Wythe Avenue (f/k/a the Matchett Candy Factory) (collectively, the "**Historic Resources**", and each a "**Historic Resource**") or operating a vibratory pile driver within one hundred twenty (120) feet of any such Historic Resources, Declarant shall develop a plan, in coordination with the New York State Office of Parks, Recreation and Historic Preservation ("**OPRHP**") and the Landmarks Preservation Commission of the City of New York ("**LPC**"), to avoid any adverse physical, construction-related impacts to the Historic Resources, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery (the "**Construction Protection Plan**" or "**CPP**") 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 or operation of a vibratory pile driver within one hundred twenty (120) feet of any Historic Resource until LPC 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 ninety (90) feet and any operation of a vibratory pile driver within one hundred twenty (120) feet of a Historic Resource shall be undertaken in accordance with the CPP.

(iv) Unless other guidelines are approved by LPC, 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. The CPP shall also follow the requirements established in DOB's Technical Policy and Procedure Notice #10/88, in effect as of the Effective Date, in addition to the guidelines set forth in Section 523 of the CEQR Technical Manual, in effect as of the Effective Date.

(v) The construction procedures included in the CPP to protect the foundations and structures of the Historic Resources shall be developed and monitored by structural and foundation engineers.

(vi) The CPP shall:

(A) Describe in detail the demolition, excavation and construction procedures anticipated to occur.

(B) Provide for the inspection and reporting of existing conditions.

(C) Establish protection procedures, including, without limitation, the types and locations of barriers that will be used to protect the Historic Resources during construction activities.

(D) With respect to the Refinery Complex and 390 Wythe Avenue, establish a monitoring program to measure vertical and lateral movement and vibration.

(E) Establish methods and materials to be used for any repairs.

(F) Establish and monitor construction methods to limit vibrations. Specifically, the CPP shall establish vibration protection measures to be implemented should applicable construction activities involve the use of certain equipment within the

following specified distances from the Historic Resources:

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

(G) Authorize the structural and foundation engineers to issue "stop work orders" to prevent damage to the Historic Resources and establish procedures for the recommencement of work following same.

(i) **Construction Materials**. Declarant shall use reasonable efforts to use locally-purchased materials and recycled materials, including concrete made with slag or fly ash, to the extent practicable for construction on the Subject Property. For purposes of this Section 3.01(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 Construction Commencement on Site E, Declarant shall provide DCP with an annual report, due January 31st of each year during which Declarant is performing construction on such New Building, listing the amounts of locally-purchased and recycled materials utilized in construction during the prior year and proposed measures to increase such amounts in future construction, if any. Notwithstanding the foregoing, submission of a MGS Checklist and the affirmation of an Accredited MGS Professional in accordance with Sections 3.03(b)(iii)(A) and (B), demonstrating that Declarant is seeking MGS Points for Regional Materials in an application for LEED Certification, or the applicable MGS Certification, shall be deemed compliance with the annual reporting requirements of this section with respect to such Development Phase.

(j) **Maintenance and Protection of Traffic Plan**.

(i) Prior to Construction Commencement of any New Building, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of such New Building (the "**Maintenance and Protection of Traffic Plan**" or "**MPT**"). Declarant shall submit the MPT to DOT for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

(k) **Open Space**. Upon construction of the third floor of the superstructure of a New Building on Site A, Declarant shall install netting on the northerly façade of the Site A building superstructure to prevent construction materials from falling into Grand Ferry Park.

Hoists, cranes and other such equipment shall not be located on the northern side of a New Building on Site A, which is adjacent to Grand Ferry Park.

3.02 **Project Components Related to the Environment Relating to Design and Operation of New Buildings**. Declarant shall implement and incorporate the following PCREs relating to design and operation of New Buildings:

(a) **Air Quality**. Declarant shall: (x) prior to acceptance of a New Building Permit, submit plans for DCP/OER review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (y) thereafter implement the following controls ("**Air Quality Controls**"):

(i) **HVAC**. Heating, ventilation and air conditioning ("**HVAC**") systems installed in New Buildings shall utilize natural gas.

(ii) **Site A**. To minimize impacts on the New Building constructed on Site A from emissions from the NYPA Facility, (A) there shall be no air intake valves or ducts above the Site A Window Plane and (B) any window or other apertures located above the Site A Window Plane shall be sealed or otherwise inoperable.

(iii) **Sites A, B, C, D, E and the Refinery Complex**.

(A) The height of any boiler exhaust stacks located on Site A shall exceed that of the Applicable Exhaust Stack Plane, and shall be located no greater than 66 feet from the northern border of Zoning Lot A.

(B) The height of any boiler exhaust stacks located on Site B shall exceed that of the Applicable Exhaust Stack Plane, and shall be located no greater than 417 feet from the northern border of Zoning Lot A.

(C) The height of any boiler exhaust stacks located on Site C shall exceed that of the Applicable Exhaust Stack Plane, and shall be located no greater than 383 feet from the southern border of Zoning Lot A.

(D) The height of any boiler exhaust stacks located on Site D shall exceed that of the Applicable Exhaust Stack Plane, and shall be located no greater than 130 feet from the southern border of Zoning Lot A.

(E) In the event that redevelopment of the Refinery Complex occurs prior to Final Completion of the Phase 3 Development (Site C), then the boiler exhaust stacks on the Refinery Complex must have a minimum exhaust height of 220 feet above Brooklyn Datum, and shall be located at least 743 feet from the southern border of Site D. Declarant shall not apply for or accept a PCO for any New Building on Phase 5 Development (Site B), until all boiler exhausts stacks have been disassembled and removed from the Refinery Complex.

(F) The height of any boiler exhaust stacks located on Site E shall exceed that of the Applicable Exhaust Stack Plane, and shall be located at least 228 feet from the western border of Zoning Lot C.

(G) Notwithstanding the requirements of Sections 3.02(a)(3)(A)-(G), the boiler exhaust stack heights and locations may be modified as permitted

by a Modified Stack Plan, developed in accordance with Section 2.01(d)(iii).

(iv) 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 the requirements set forth in this Section 3.02(a).

(v) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify the requirements set forth in this Section 3.02(a) 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 Air Quality Controls. In no event shall this clause (v) be construed to as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Air Quality Controls (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 Development Noise Attenuation**. Declarant shall: (x) prior to acceptance of a New Building Permit, submit plans for DCP/OER review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (y) thereafter implement the following noise attenuation requirements for all New Buildings constructed on the Subject Property:

(i) The façades of each New Building shall be designed to provide a composite Outdoor-Indoor Transmission Class (OITC) rating greater than or equal to the attenuation requirements listed in the table set forth below.

Minimum Building Attenuation to Comply With CEQR Requirements at the Project Site

Site	Proposed Land Use	Governing Noise Sites***	Required Building Attenuation* (dBA)
A	Residential/Retail/Office/Community Facility	2,6	35 on East Façade, 30 on all other facades
B	Residential/Retail	2,6	35 on East Façade, 30 on all other facades
C	Residential/Retail	6,10,11	35 on East Façade, 30 on all other facades
D	Residential/Retail	6,10,11	35 on East Façade, 30 on the North Façade, 31** on all other facades
E	Residential/Retail	4,5,6	35 on West and South Façades, 30 on all others
Refinery	Residential/Retail/Community Facility	6,10,11	35 on East Façade, 30 on all other facades

Notes: *The required attenuation values are for residential uses. Required attenuation for retail, office, and community facility uses shall be 5 dBA less. **With the resultant noise level from the Williamsburg Bridge of 74.6 being very close to the 75 dBA threshold, the south and west facades would require 31 dBA of attenuation rather than 30 dBA. *** As defined in Chapter 20 of the FEIS (see Table 20-11).

(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 this Section 3.02(b). 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 Section 3.02(b) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Noise attenuation system, provided same is consistent with the terms of this Section 3.02(b).

(c) **Wind Conditions**.

(i) If, during design development of any Public Access Area Phase, as set forth in Article V hereof, there are any changes to the locations and/or types of tree and shrub species set forth in the Public Access Area Plans ("**Proposed Modified Planting Plan**"), then prior to submission of Construction Drawings for the next Public Access Area Design Submission pursuant to Section 5.04 hereof, Declarant shall cause a qualified consultant expert and experienced in the field of wind conditions analysis ("**Wind Conditions Consultant**") to conduct a preliminary sensitivity analysis, using a method and protocol acceptable to DCP, to assess the effect of such changes in the Proposed Modified Planting Plan on pedestrian-level wind conditions ("**Preliminary Sensitivity Analysis**"), in order to determine whether the Proposed Modified Planting Plan has the potential to result in a material increase in the number of exceedances of the wind safety performance criterion ("**Additional Exceedances**"), beyond the levels predicted in Appendix H to the FEIS.

(ii) In the event Declarant demonstrates to the satisfaction of the Chair, based on the Preliminary Sensitivity Analysis, that the Proposed Modified Planting Plan does not have the potential to result in Additional Exceedances, then no further wind testing shall be required.

(iii) In the event that the Preliminary Sensitivity Analysis indicates that the Modified Planting Plan has the potential to result in Additional Exceedances, then:

(A) Declarant shall have the Wind Conditions Consultant undertake wind tunnel testing to assess the effect of the Proposed Modified Planting Plan on pedestrian-level wind conditions, in accordance with a methodology and protocol acceptable to DCP, in order to measure whether and to what extent any Additional Exceedances may exist under such plan (the "**Wind Conditions Report**"). In the event that computer modeling software or other technology becomes available, which is demonstrated to the satisfaction of DCP to be at least as accurate and reliable as wind tunnel testing, then such modeling or technology may be utilized in lieu of wind tunnel testing;

(B) In the event the Wind Conditions Report indicates that implementation of the Proposed Modified Planting Plan has the potential to result in Additional Exceedances, Declarant shall, acting in consultation with DCP and DPR, incorporate revised tree and shrub planting features into the Design Submissions and Final Public Access Area Plans proposed pursuant to Sections 5.04 and 5.11, which: (1) are determined through such wind tunnel testing to be effective in reducing or eliminating such exceedances; (2) are compatible with the urban design considerations of the PAA, including the goals of maintaining view corridors, maximizing views to the East River and East River waterfront, maintaining pedestrian circulation and access, and not impeding or blocking circulation and access for emergency service vehicles; and (3) are consistent with design requirements for waterfront public access areas, contained in the Zoning Resolution (the "**Wind-Reduction Design Modifications**").

(C) In the event that the Wind Conditions Report indicates that implementation of the Proposed Modified Planting Plan has the potential to result in Additional Exceedances but does not identify Wind-Reduction Design Modifications for incorporation into the Final Public Access Area Plans, then such report shall be submitted no later than the date on which the 90% Submission is submitted for review and shall be accompanied by an explanation of the reasons that: (1) no Wind-Reduction Design Modifications are available that would be effective in materially reducing or eliminating the potential for the Additional Exceedances; or (2) within the same time period as specified in the preceding text, Declarant shall submit a written explanation (the "**Declarant Explanation**") as to why the potential Wind-Reduction Design Modifications are not compatible with the urban design considerations of the PAA or do not comply with the design controls for waterfront public access areas contained in the Zoning Resolution. In that event, DCP and DPR shall, from the date of receipt, have thirty (30) days to review the Wind Conditions Report or the Declarant Explanation and provide Declarant with comments regarding conclusions (1) or (2) above, as applicable. Declarant shall thereafter submit responses to such comments, including further consideration of whether Wind-Reduction Design Modifications are available which would be effective in materially reducing or eliminating the potential for Additional Exceedances, are compatible with the urban design considerations of the PAA, and comply with the design controls for waterfront public access areas contained in the Zoning Resolution. DCP and DPR shall review any Wind-Reduction Design Modifications identified in such responses for incorporation into the Design Submissions and Final Public Access Area Plans proposed pursuant to Sections 5.04 and 5.11.

(iv) Following substantial completion of a Public Access Area Phase, Declarant shall not change the location and/or types of tree or shrubs set forth in a Final PAA Plan, except pursuant to the procedures set forth in Section 6.02. In no event shall this clause (iv) be construed as prohibiting or preventing Declarant from undertaking routine maintenance of any tree or shrub, nor from replacing any tree or shrub which is destroyed or materially damaged though natural causes, provided that such replacement is of the same type, at least the same caliper, and planted in the same location as was set forth in the Final PAA Plan.

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 certain energy efficiency measures, with respect to fuel consumption and energy use ("**EEMs**") in each New Building, that are designed to result in at least 10% less energy consumption in building systems and by building tenants (the "**Minimum Energy Savings**") than standard set forth in the Energy Conservation Construction Code of New York State, in effect as of the Effective Date. EEMs may include, but shall not be limited to, building design, high-performance glazing, increased insulation, high-efficiency lighting (occupancy sensors), higher efficiency HVAC equipment, variable frequency drives for pumps and fans, premium efficiency motors, improved temperature controls, the use of EnergyStar appliances, and except as set forth herein, operable windows to all residential living spaces and allowance to all residents of full control over their fresh air, heating and cooling.

(ii) Declarant shall cause to be prepared by a qualified building energy consultant (the "**BEC**"), a report identifying the EEMs for a New Building that are designed to result in the Minimum Energy Savings (the "**Energy Report**"). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve 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 building permit for a New Building 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 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 Section 3.03(a)(iii).

(b) **Minimum Green Standard Certification or Equivalent**.

(i) Declarant shall design and construct each New Building in accordance with the standards and criteria required to achieve a minimum of LEED Certification, or if LEED Certification is no longer available at the time of construction then such other equivalent standard then being used in New York City (such applicable minimum certification, the "**Minimum Green Standard Certification**" or the "**MGS Certification**"). However, in the case of a New Building which includes an affordable housing component subsidized or assisted by HDP, the Minimum Green Standard Certification may be the Enterprise Green Communities Certification for such New Building.

(ii) Declarant shall use reasonable and good faith efforts to at least obtain the MGS Certification, from the U.S. Green Building Council (the "**USGBC**") or such other equivalent body that governs the applicable MGS Certification (collectively, the "**MGS Governing Body**").

(iii) DOB shall not issue, and Declarant shall not accept, any building permit for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) A LEED checklist, or its applicable equivalent (in either case, a "**MGS Checklist**"), for the New Building demonstrating that the number of 'points', or their applicable equivalent (in either case, "**MGS Points**"), Declarant intends to pursue during LEED 'Construction Review', or its applicable equivalent (in either case, "**MGS Construction Review**"), will make the New Building eligible to obtain the MGS Certification. In the case of LEED Certification, such MGS Checklist shall demonstrate that Declarant is providing a minimum of (1) 15% of possible MGS Points in the GHG Credit Categories, as set forth in **Exhibit K** to this Declaration, and (2) 15% of possible MGS Points in the Water Credit

Categories as set forth in **Exhibit K** to this Declaration (collectively, the "**GHG and Water Credit Requirements**"); in the case of the Minimum Green Standard Certification, then the MGS Checklist must demonstrate performance equivalent thereto. New Buildings for which Declarant seeks the MGS Certification, 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.

(B) A signed affirmation from a LEED-accredited or equivalent-certified professional (in either case, an "**Accredited MGS Professional**"), as selected by Declarant, stating that he or she has reviewed the plans and drawings submitted or to be submitted to the DOB for purposes of a building permit for a New Building and that such plans and drawings are consistent with the MGS Checklist, and meet the intent of the criteria for the MGS Certification with respect to the applicable New Building.

(iv) 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:

(A) Documentation demonstrating that Declarant has completed LEED 'Design Review', or such applicable equivalent review (collectively, "**MGS Design Review**"), and showing the number of MGS Points achieved or denied as a result of the MGS Design Review.

(B) A MGS Checklist for the New Building, demonstrating that the number of MGS Points 'anticipated' during the MGS Design Review, in combination with the number of MGS Points that Declarant intends to pursue during MGS Construction Review will make the New Building eligible to obtain the MGS Certification Such MGS Checklist, shall demonstrate that the GHG and Water Credit Requirements will be met.

(v) 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:

(A) If the New Building has received the MGS Certification:

(1) Documentation demonstrating that the New Building has received the MGS Certification.

(2) MGS Checklist for the New Building demonstrating the number of MGS Points that the New Building was awarded. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements have been met.

(B) If the application for MGS Construction Review is still pending:

(1) Documentation demonstrating that the complete application for MGS Construction Review was submitted within nine (9) months of receiving the TCO for the applicable New Building and Declarant has thereafter diligently pursued its application for the MGS Certification.

(2) A MGS Checklist for the New Building demonstrating that the number of MGS Points 'anticipated' during MGS Design Review, in

combination with the number of MGS Points that Declarant has applied for in MGS Construction Review, will make the New Building eligible to obtain the MGS Certification. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements are anticipated to be met.

(3) A signed affirmation from an Accredited MGS Professional stating that he or she has reviewed the application submitted to the MGS Governing Body, and that the application is consistent with the MGS Checklist and meets the intent of the criteria for the MGS Certification of the New Building.

(C) In the event that the New Building has failed to receive MGS Certification after Declarant has accepted the final results of the MGS Construction Review, Declarant shall submit to DCP a report including the following:

(1) Documentation describing: (I) the determinations (collectively, the "**Denial Determination**") which resulted in an inability to receive the MGS Certification, including a list of standards or criteria for which MGS Points were 'denied' during MGS Design Review or MGS Construction Review, the basis for such Denial Determination, and any related technical advice provided to the review team; (II) the steps taken by Declarant in response to the Denial Determination, including appeals thereof; and (III) alternative elements proposed by Declarant in order to receive the MGS Certification.

(2) Documentation demonstrating that Declarant has (I) designed and constructed the New Building according to the MGS Certification standards or criteria then in effect, but without the standards or criteria which were subject to the Denial Determination; and (II) applied for and used good faith and reasonable efforts to obtain the highest level of MGS Certification available in the absence of such standards or criteria. The provisions of Section 3.03(b)(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 MGS Governing Body Denial Determination is applicable to such standard or criteria.

(c) **Stormwater Management Measures**.

(i) Prior to commencement of construction of a New Building on Site E, Declarant shall prepare and submit to New York State Department of Environmental Conservation (NYSDEC) a Stormwater Pollution Prevention Plan (the "**SWPPP**") as required per the SPDES General Permit for Construction Activities (GP-0-10-001) with respect to construction activities and post-construction stormwater management, which shall comply with all erosion and sediment control measures and post-construction BMP requirements that shall (A) incorporate feasible measures to reduce runoff rates, (B) implement stormwater management techniques to address water quality concerns associated with the uncontrolled discharge of stormwater runoff into the East River. DEP should be forwarded a copy of the SWPPP for review. In addition to meeting NYSDEC's post-construction water quality best management practices ("**BMP**") requirements, Declarant will submit a BMP concept plan, consistent with the FEIS, to DEP that shall overlay on the project site plan proposals that may include the following: (1) incorporation of softscapes and other vegetated features into the design of the Subject Property that shall serve to retain stormwater runoff, (2) construction of green roofs and rooftop detention on certain New Buildings selected by Declarant, and (3) the use of pervious paving material for public access walkways, sidewalks, and other paved surfaces within the

development; provided, however, that the use of pervious paving materials required under this Section 3.03(c)(B)(3) may be limited to the extent that Legal Requirements (e.g., the New York City Fire Code) require the use of impervious paving materials for emergency response vehicles, including without limitation fire trucks, ambulances and police vehicles.

(ii) DOB shall not issue, and Declarant shall not accept, a building permit for a New Building until Declarant shall have certified to the Commissioner of DOB that a SWPPP has been submitted to NYSDEC and a BMP concept plan has been submitted to DEP.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a Building Permit shall reflect and be consistent with both the SWPPP and BMP concept plan submitted to DEP.

(iv) Declarant shall have the right to modify and add to the SWPPP and BMP concept plan as development of the Subject Property proceeds, provided that such revised SWPPP and BMP concept plan are consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to DOB that provisions of the SWPPP and BMP concept plan required for such New Building have been implemented.

(d) **Water Conservation Measures**.

(i) In all residential units, Declarant shall install appliances, including, without limitation, dishwashers and clothes washers, which at a minimum meet EnergyStar standards for water conservation.

(ii) Declarant shall install water-conserving toilets and faucets in all New Buildings.

(iii) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that it has implemented the provisions of clauses (i) and (ii) of this Section 3.03(d), and if same have not been implemented, the reasons for such failure.

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 Section 3.04(a)(ii) and Section 3.04(a)(iii) hereof, perform the following with respect to the Public School: (A) engage in a collaborative design development process with the New York City School Construction Authority (the "**SCA**"), which shall include collaboration on schematic design, design development and contract documentation; (B) undertake construction of 'School Base Building Work', as defined under the SCA Agreement; (C) enter into a condominium regime with respect to the use and ownership of the Public School and the remainder of the building, or such other regime acceptable to the SCA and Declarant, as a means of transferring fee title, or such other interest as may be acceptable to the SCA and Declarant, to the Public School to the SCA; and (D) transfer the Public School to the SCA ((A) to (D) 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 the SCA (the "**SCA Agreement**") intended to be entered into pursuant

to that certain Letter of Intent executed by the SCA and accepted and agreed to by Declarant on June 4, 2010, attached to this Declaration as **Exhibit L** (the "**SCA Letter of Intent**").

(ii) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(A) Within three (3) months of the date of this Declaration, Declarant shall send written notice to the SCA asking whether the SCA is prepared to commence negotiations on the SCA Agreement in anticipation of the development of the Public School. If the SCA responds in writing that it is prepared to commence negotiations, Declarant shall promptly commence negotiations with the SCA on the SCA Agreement and shall diligently and in good faith pursue such negotiations with the SCA in order to finalize and execute the SCA Agreement. If the 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 the SCA advises Declarant that the 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.

(B) Not less than twenty (20) months prior to the date Declarant anticipates filing for a building permit for the Refinery Complex, except building permits issued in connection with safety and soundness work, Declarant shall provide written notice to the SCA (the "**School Election Notice**") advising the SCA of the plan to file for such building permit and offering the SCA a location within the lower floors of the Refinery Complex for the Public School (the "**Proposed School Site**"), in accordance with the SCA Agreement. Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 1 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

(1) If the SCA advises Declarant in writing within sixty (60) days of receipt of the School Election Notice that the SCA (i) accepts the Proposed School Site as the location for the Public School, (ii) intends to proceed with the Public School on the Proposed School Site, and (iii) has or anticipates receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement, then: (A) Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the Public School into the Refinery Complex in accordance with the SCA Agreement; (B) DOB shall not issue, and Declarant shall not file for or accept, a building permit for the Refinery Complex unless and until the SCA has approved the construction documents to be filed with the application for the 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; and thereafter (C) DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for any portion of the Refinery Complex, Phase 5 Development or Phase 6 Development, 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.

(2) In the event that the SCA fails to respond to Declarant's notice within sixty (60) days of receipt of the School Election Notice, or advises Declarant in writing within such sixty (60) day period that the SCA (A) does not at that time intend to proceed with the Public School on the Proposed School Site, or (B) does not at that time anticipate receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement; and (C) wishes the Public School Obligations to remain in effect; then, notwithstanding Section 2.01(c) construction shall proceed such that the New Building on Site B shall be constructed prior to development of the Refinery Complex ("**Refinery Phase Switch**") as contemplated in the Alternate Phasing Plan. In the event of a Refinery Phase Switch, Declarant shall not apply for or accept a building permit for any portion of the New Building on Site B until Declarant has certified to the Commissioner of DOB that a Refinery Interim Report has been submitted to LPC and DCP. Thereafter, (i) a Refinery Interim Report shall be submitted annually to LPC and DCP until Declarant is issued a TCO or PCO for any portion of the Refinery Complex, and (ii) Declarant shall not apply for or accept, TCOs or PCOs for any portion of a New Building on Site B until DCP, in consultation with LCP, certifies to the Commissioner of DOB that the Refinery Interim Work has been completed and that the condition of the Refinery Building complies with all Legal Requirements applicable to landmarked buildings.

(C) In the event of the Refinery Phase Switch, no more than twenty-four (24) months and no less than twenty (20) months prior to the date Declarant files for a building permit for the Refinery Complex, Declarant shall provide the School Election Notice to the SCA, advising it of the plan to file for such building permit and offering the SCA a location within the base of the Refinery Complex for the Public School, in accordance with the SCA Agreement. Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 1 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

(1) If the SCA advises Declarant in writing within sixty (60) days of receipt of the School Election Notice that the SCA (i) accepts the Proposed School Site as the location for the Public School, (ii) intends to proceed with the Public School on the Proposed School Site, and (iii) has or anticipates capital funding to complete the Public School in the manner set forth in the SCA Agreement, then: (A) Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the Public School into the Refinery Complex in accordance with the SCA Agreement; (B) DOB shall not issue, and Declarant shall not file for or accept, a building permit for the Refinery Complex including the Public School unless and until the SCA has approved the construction documents to be filed with the application for the 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; and thereafter Declarant may proceed to obtain a building permit for the Phase 6 Development provided, however, that (C) DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for any portion of the Refinery Complex or Phase 6 Development, 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.

(2) In the event that the SCA fails to respond to Declarant's notice within sixty (60) days of receipt of the School Election Notice, or advises Declarant in writing within such sixty (60) day period that the SCA (A) does not intend to proceed with the Public School on the Proposed School Site, or (B) does not anticipate receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement; then Declarant shall be permitted to construct the Refinery Complex without including a Public School therein, and Declarant shall have no further obligation under this Section 3.04(a). In the event that Declarant's obligations under this Section 3.04(a) have terminated pursuant to this subclause (ii)(cc)(2), Declarant may apply for and DOB may issue TCOs and PCOs for any and all portions of the Development without regard to this Section 3.04(a) and the Public School Obligations herein.

(D) In no event shall subclause (B) or (C) of this Section 3.04(a)(ii) be construed to preclude DOB from issuing or Declarant from accepting TCOs or PCOs for any portion of the Phase 1 Development, Phase 2 Development, or Phase 3 Development, constructed pursuant to a building permit, issued prior to the building permit for the Refinery Complex.

(iii) For purposes of this Section 3.04(a), a Force Majeure Event may include, in addition to the elements set forth in the definition thereof under Article I of this Declaration, a failure or delay by the SCA resulting from the following: (A) a failure or delay in approval of a site selection for the Public School pursuant to the New York State Public Authorities Law; (B) a failure or delay in approval of the SCA Agreement; (C) a failure or delay in securing funds for Public School pre-development and construction costs; (D) a failure or delay in review of design submissions in accordance with time frames established under the SCA Agreement; (E) a failure or delay in reimbursement of Declarant through progress payments in accordance with the SCA Agreement; and (F) a failure or delay in change orders initiated or otherwise caused by the SCA.

(b) **Day Care**.

(i) Within 180 days following the issuance of a TCO or PCO for a New Building on Development Phase 3, Declarant shall notify the New York City Administration for Children's Services ("**ACS**") at its Division of Child Care and Head Start and request a day-care needs assessment (the "**Assessment Request**") to determine if development of the Subject Property, both existing and anticipated, would have the potential to create a need for additional day care capacity within the study area boundary identified in Chapter 5, Figure 5-3 of the FEIS (the "**Study Area**"). In the event that ACS determines within ninety (90) days of the Assessment Request that such development would result in a need for additional day care capacity within such study area boundary and that ACS is prepared to expand day care capacity within the study area, Declarant shall offer to expand existing ACS capacity within the Study Area so as to accommodate twenty-seven (27) additional child care slots. If such existing ACS facilities (the "**Off-Site ACS Facilities**") cannot accommodate twenty-seven (27) additional child care slots, then Declarant shall offer ACS up to 10,000 sf, or such other lesser amount acceptable to ACS, of ground floor space suitable for use as a child care center (including either a facility to be operated under contract with ACS or by a day care provider identified by ACS that accepts ACS vouchers), in a New Building or at another existing location within the Study Area, at a rate affordable to ACS providers (currently $10 psf) (the "**Day Care Space Offer**").

ACS shall notify Declarant in writing, within ninety (90) days of receipt of Declarant's offer, whether the Day Care Space Offer is accepted or declined, either for some or all of the ground floor space acceptable to ACS, subject to all City requirements governing the leasing of property.

(ii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for any New Building in Development Phase 4 until: (A) Declarant has made an Assessment Request under Section 3.04(b)(i), (B) DCP has notified DOB that the provisions of this Section 3.04(b) have been complied with, and (C) ACS has either: (1) determined that the Off-Site ACS Facilities can accommodate twenty-seven (27) additional child care slots, (2) accepted a Day Care Space Offer; (3) determined that no additional day care capacity is currently needed or that it is not prepared to expand day care capacity within the Study Area; or (4) failed to respond an Assessment Request or Day Care Space Offer made pursuant to Section 3.04(b)(i) within the time periods set forth therein. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO with respect to such New Building.

(iii) In the event that following notification by Declarant pursuant to Section 3.04(b)(i) above, ACS: (A) determines that no additional day care capacity is needed in the Study Area at that time; (B) is not prepared to expand day care capacity within the Study Area; or (C) fails to respond to the Assessment Request or the Day Care Space Offer in the time periods set forth in Section 3.04(b)(i); then Declarant shall make an additional Assessment Request in the manner provided in Section 3.04(b)(i) within 180 days following the issuance of a TCO or PCO for each New Building in Development Phase 4 (and, thereafter, as applicable, Development Phase 5) and, in the event ACS determines that development on the Subject Property would result in a need for additional day care capacity within the Study Area boundary and that ACS is prepared to expand day care capacity within the Study Area, Declarant shall (x) offer to locate Off-Site ACS Facilities to accommodate twenty-seven (27) child care slots or (y) make a Day Care Space Offer, each in the manner provided in Section 3.04(b)(i). In such event, DOB shall not issue, and Declarant shall not accept a TCO or PCO for a New Building for the subsequent Development Phase until the conditions of subclauses (A), (B) and (C) of Section 3.04(b)(ii) above have been met.

(iv) Declarant shall have no further obligation or further responsibilities under this Section 3.04(b) in the event that (A) the Off-Site ACS Facilities can accommodate twenty-seven (27) additional child care slots, or (B) ACS (1) accepts a Day Care Space Offer; (2) determines in response to each of the Assessment Requests that there is no need for additional day care capacity within the Study Area boundary or that it is not prepared to expand day care capacity within the Study Area; (3) following issuance of a TCO or PCO for Development Phase 5, fails to respond to the final Assessment Request or Day Care Space Offer required under Section 3.04(b)(iii) within the time periods set forth in Section 3.04(b)(i); or (4) following the date hereof, after consultation with the Chair, notifies the Chair and Declarant that it does not intend to expand day care capacity within the Study Area boundary in conjunction with development on the Subject Property.

(v) As an alternative to the provision of space for a day care facility pursuant to a Day Care Offer, ACS may request Declarant to implement other measures within the Study Area boundary, or other proximate locations within Community District 1, Brooklyn, 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. In the event that Declarant agrees to implement such other measures as may be requested by ACS, Declarant's obligations under this Section 3.04(b) shall be deemed complete upon the performance of such other measures by or on behalf of Declarant.

(c) **Shadows**. As acknowledged in the FEIS, construction on Site A is anticipated to cast shadows on portions of Grand Ferry Park. Upon DOB's issuance of a building permit for the construction of a New Building on Site A, Declarant shall pay to DPR an amount equal to $25,000 each year on an annual basis for ten (10) consecutive years, subject to adjustment annually due to changes in the CPI (collectively, the "**Shadow Impact Payments**"). The Shadow Impact Payments shall be used by DPR for the purpose of the enhanced maintenance and horticulture care of plants that lie within Grand Ferry Park. The Shadow Impact Payments shall not be used for any other purpose, and the City shall not use the Shadow Impact Payments to reduce its level of support, in the form of services and expenditures for the operation and maintenance of Grand Ferry Park, in effect prior to the date on which Declarant begins making the Shadow Impact Payments. The Shadow Impact Payments shall be due no later than thirty (30) days after the start of each City fiscal year. If the Shadow Impact Payment due upon issuance of a building permit for the construction of a New Building on Site A shall be paid on a date that is not July 1st, such Shadow Impact Payment shall be prorated by multiplying the annual Shadow Impact Payment for such year, as determined pursuant to this Section, by a fraction, the numerator of which is the number of days between the date on which the first payment is due the June 30th which follows such date, and the denominator of which is three hundred sixty (360). Such prorated amount shall constitute the Shadow Impact Payment that is due for the first year of the ten (10) year commitment under this Section. The Shadow Impact Payments shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. In the event that, during the ten-year period in which Declarant is making Shadow Impact Payments, the Affected Area is reduced in any way, then the amount of each Shadow Impact Payment shall be reduced to the extent that the Affected Area has thereby been reduced. Declarant shall have no liability to the City, DPR, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys' fees and disbursements, incurred in connection with or arising from the operation or maintenance of Grand Ferry Park or the use of the Shadow Impact Payments.

(d) **Historic Resources**. Mitigation measures with respect to Historic Resources shall be set forth in either a Memorandum of Agreement or Letter of Resolution to be executed by Declarant, the New York State Historic Preservation Office, and other involved agencies.

(e) **Traffic and Parking**. The FEIS identifies significant traffic impacts, and mitigation measures in the form of signal timing adjustments, lane re-striping, parking prohibition, changing bicycle lane classifications, and installation of new traffic signals at unsignalized intersections. As part of the traffic mitigation, Declarant has committed to conduct two traffic monitoring programs (each a "**TMP**") (at the Declarant's expense) to determine the need for and any adjustments to the mitigation measures described in Chapter 23 of the FEIS, provided that any such adjustments shall be the most cost-effective measures available; and

provided further that the TMPs are intended to be supplemental to and not in duplication or replacement of the FEIS.

(i) **Interim Year Monitoring Plan**. Declarant shall not apply for and shall not accept a TCO or PCO for any New Building on Site E, until (A) Declarant has submitted for DOT's approval, a scope of work for the interim year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the interim year TMP, plus the estimated costs of implementing the capital mitigation measures set forth in Chapter 23 of the FEIS. At a time specified by DOT following the completion and occupancy of the building on Site E, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of any New Building on Site E, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(ii) **Interim Year Mitigation**. Unless, following the implementation of the interim year TMP, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures set forth in Chapter 23 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the interim year TMP. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures set forth in Chapter 23 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures set forth in Chapter 23 of the FEIS, Declarant shall have no further obligation with respect to such measures until following the implementation of the completion year monitoring plan as described hereafter.

(iii) **Completion Year Monitoring Plan**. Declarant shall not apply for and shall not accept a TCO or PCO for any New Building on Site A, until (A) Declarant has submitted for DOT's approval, a scope of work for the completion year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the completion year TMP, plus the estimated costs of implementing the capital mitigation measures set forth in Chapter 23 of the FEIS. At a time specified by DOT following the completion and occupancy of the building on Site A, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of any New Building on Site A, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(iv) **Completion Year Mitigation**. Unless, following the implementation of the completion year TMP, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures set forth in Chapter 23 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, that have not already been implemented as part of interim year mitigation. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures set forth in Chapter 23 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the completion year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures set forth in Chapter 23 of the FEIS, Declarant shall have no further obligation with respect to such measures.

(f) **Transit and Pedestrians**.

(i) Declarant shall not apply for or accept a Building Permit for any New Building on Site E, until:

(A) Ninety (90) days after Declarant has sent written notice to MTA requesting that it replace the existing single High Entrance-Exit Turnstile at each of the secondary control areas (the Manhattan and Queens bound control areas in the vicinity of Havemeyer Street) at the Marcy Avenue subway station with two standard turnstiles at each control area, and conduct such other capital improvements as may be necessary to implement this mitigation (i.e., modify the wind screens and upgrade the power supply to the turnstiles); and

(B) The Chair certifies to DOB that it has received a determination by MTA that the measures described in this Section have been implemented or the ordinary and customary capital costs of such measures have been paid for by Declarant as specified or directed by MTA. (ii) Declarant shall comply with MTA requirements necessary to implement the measures described in this section, and shall either implement such measures as directed by MTA, or, if directed by MTA, pay MTA for the ordinary and customary costs, if any, of implementing capital improvements upon request of MTA accompanied by appropriate supporting documentation. To the extent that MTA disapproves or deems unnecessary the mitigation measures described in section, Declarant shall have no further obligation with respect to such improvements.

(ii) If, 90 days following the notice to MTA pursuant to Section 3.04(f)(i), MTA (A) has not requested that Declarant implement such measures and has not sought payment for them from Declarant, or (B) has declined to respond to such notice; then Declarant may obtain a building permit for any New Building on Site E.

(g) **Construction Noise**.

(i) Pursuant to a written protocol approved by DCP, Declarant shall offer to provide, at its expense, window treatment (e.g., storm windows or double-glazed windows) and alternative ventilation (e.g., fan systems or air conditioning) to all residences at the following locations, which do not already have double glazed windows and alternative ventilation:

Block	Lots	Floors	Facades
2403	37, 41	all	South
2415	10, 16, 110	all	North
	38, 110	all	South
2441	8, 15, 24, 107	all	West, North
2390	10, 11, 12, 13, 14, 15	2 and above	West, South

(ii) Declarant shall not apply for or accept a Building Permit for any portion of Development Phase 1 unless and until DCP certifies to DOB, with respect to residences on listed above on Blocks 2415 (South facades only) and 2441, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has certified to the Chair that such window treatment and alternative ventilation measures have been provided to any owner or resident, as appropriate, which has accepted its offer.

(iii) Declarant shall not apply for or accept a Building Permit for any portion of the Refinery Site unless and until DCP certifies to DOB, with respect to residences on listed above on Blocks 2403 and 2415 (North facades only), that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has certified to the Chair that such window treatment and alternative ventilation measures have been provided to any owner or resident, as appropriate, which has accepted its offer.

(iv) Declarant shall not apply for or accept a Building Permit for any portion of Development Phase 6 unless and until DCP certifies to DOB, with respect to residences on listed above on Block 2390, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has certified to the Chair that such window treatment and alternative ventilation measures have been provided to any owner or resident, as appropriate, which has accepted its offer.

3.05 **Force Majeure Involving a PCRE or Mitigation Measure**. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE or Mitigation Measure set forth in this Article 3 by reason of the occurrence of a Force Majeure Event, then Declarant shall not be excused from performing such PCRE or Mitigation Measure that is affected by Force Majeure Event unless and until the Chair, based on consultations with the Monitor designated under Section 3.08 of this Declaration, has made a determination in his or her reasonable discretion that the failure to implement the PCRE or Mitigation Measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

3.06 **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.

3.07 **Innovation; Alternatives; Modifications Based on Further Assessments**.

(a) **Innovation and Alternatives**. In implementing any PCRE or Mitigation Measure contemplated by this Article 3, Declarant may implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Project, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Article 3.

(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 Register's Office.

3.08 **Appointment and Role of Reporter**.

(a) Declarant shall, with the consent of DCP, retain a third party (the "**Reporter**") reasonably acceptable to DCP to oversee and certify to DPC the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under Sections 3.01 and 3.04(g) of this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Reporter shall be a licensed engineer, architect, general contractor, or environmental consultant with significant experience in environmental management and construction management (or multiple such persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. The Reporter may be the same person or firm that prepared for Declarant the various mitigation plans required by 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 fee title to, or a ground or net lease of, one or more tax lots within the Subject Property (other than transfers of condominium units), 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 Reporter with respect to multiple developments proceeding simultaneously on the Subject Property, pursuant to separate Reporter Agreements (hereafter defined).

(b) The 'Scope of Services' described in any agreement between Declarant and the Reporter pursuant to which the Reporter is retained (the "**Reporter 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) provide for appropriate DCP review of the performance of services by the Reporter; (ii) authorize DCP to direct Declarant to terminate the Reporter for dishonesty or unsatisfactory performance of its responsibilities under the Reporter Agreement; (iii) allow for the retention by the Reporter of sub-consultants with expertise appropriate to assisting the Reporter in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Reporter Agreement; and (iv) 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 Reporter Agreement within thirty (30) days after submission of a draft form of Reporter Agreement, the form of Reporter Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Reporter. The Reporter Agreement shall provide for the commencement of services by the Reporter 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 a Development Phase, including, with respect to New Buildings, until issuance of TCOs or PCOs therefor, unless Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Reporter Agreement and substituted therefor another Reporter under a new Reporter Agreement, in accordance with all requirements of this Section 3.08. If the relevant Development Phase identified in the 'Scope of Services' under the Reporter Agreement is completed, Declarant shall not have any obligation to retain the Reporter 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 Reporter in compliance with the provisions of this Section.

(c) The Reporter shall: (i) respond to DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a building permit, TCO or PCO as the case may be; and (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month. The Reporter 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 Reporter shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Reporter Agreement), subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (y) be provided with access to all books and records of Declarant pertaining to the applicable Development Phase, either on or outside the Subject Property, which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Reporter reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to

construction contracts in effect for the Subject Property, and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and (r) conducted in a manner that will minimize any interference with the Development. The Reporter Agreement shall provide that Declarant shall have the right to require Reporter to secure insurance customary for such activity and may hold the Reporter liable for any damage or harm resulting from such testing activities.

(d) Subject to compliance with all generally applicable site safety requirements imposed by Legal Requirements, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on Business Days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and (ii) conducted in a manner that will minimize any interference with the Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any material information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Reporter in accordance with the terms of the Reporter Agreement and any consultants retained by the Reporter as may be necessary to determine Declarant's compliance with the CMMs, in accordance with the terms of the Reporter Agreement.

(f) If DCP determines, based on information provided by the Reporter and others, or through its own inspection of the Subject Property during construction, as applicable, 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 14.01. Notwithstanding any provisions to the contrary contained in Section 12.05 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 Reporter and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing, and Declarant 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 Declarant demonstrates that it has cured the violation.

(g) DCP reserves the right to request the designation of an independent monitor, to be retained at Declarant's expense, to monitor performance by Declarant of the construction period PCREs and Mitigation Measures required under Sections 3.01 and 3.04(g) of this Declaration, if DCP determines, in its reasonable discretion, after consultation with the Declarant, that the reporting process under this Section 3.08 is ineffective.

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 of any New Building, Declarant shall send written notice to DCP advising of Declarant's intention to undertake Construction Commencement (each such notice, a "**Permit Notice**"). Any Permit Notice shall be accompanied by: (x) 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; (y) 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 (z) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the implementation of a PCRE or Mitigation Measure set forth in this Article III, shall be accepted as compliance with the relevant PCRE or Mitigation Measure.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Reporter) 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 Reporter in writing in order to allow DCP to determine, acting in consultation with the Reporter and any City agency personnel 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 this Section 3.09(b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to 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 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 (x) 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 (y) 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. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be.

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

(e) Notwithstanding anything to the contrary set forth in Section 3.01 of this Declaration, following the Effective Date, Declarant shall be entitled to apply for a demolition permit to demolish any existing structure on the Subject Property (except the Refinery Complex), provided, however, that Declarant has certified to DCP that (i) such demolition will precede the date of Construction Commencement on any Site located on the Waterfront Parcel by no less than six (6) months, (ii) the demolition procedures will adhere to all substantive requirements of Section 3.01 of this Declaration, and (iii) any the Construction Protection Plan required under Section 3.01(h) has been developed.

(f) Notwithstanding anything to the contrary set forth in this Article III, following the Effective Date, Declarant shall be entitled to perform any necessary safety and soundness work, as may be required under Legal Requirements, on the Refinery Complex and any other existing structure on the Subject Property prior to demolition.

ARTICLE IV

PUBLIC ACCESS AREAS

4.01 **Construction of Public Access Areas.**

(a) If Declarant develops the Subject Property, the Public Access Areas shall be constructed substantially in accordance with the Public Access Area Plans and the Final Public Access Area Plans. Any development of the Public Access Areas shall occur only if it is in substantial conformity with the Public Access Area Plans and the Final Public Access Area Plans and otherwise in compliance with this Declaration.

(b) The "**Public Access Area Plans**" shall mean the following plans and drawings, by Quennell Rothschild and Partners, annexed hereto in **Exhibit C** and made a part hereof:

Number	Title	Date
Z00-4	Subdivision Plan	12-22-09
L1.1	Open Space Zoning Calculations	12-22-09
L2.1	Waterfront Public Access Plan	12-22-09
L3.1	Open Space Phasing Plans – Phase 2	06-07-10
L3.2	Open Space Phasing Plans – Phase 3	06-07-10
L3.3	Open Space Phasing Plans – Phase 4	06-07-10
L3.3a	Alternate Open Space Phasing Plans – Phase 4	06-07-10
L3.4	Open Space Phasing Plans – Phase 5	06-07-10
L3.4a	Alternate Open Space Phasing Plans – Phase 6	06-07-10
L3.5	Open Space Phasing Plans – Phase 6	06-07-10
L5.1	Layout Plan	12-22-09
L5.2	Layout Plan	12-22-09
L6.1	Materials Plan	12-22-09
L6.2	Materials Plan	12-22-09

Number	Title	Date
L7.1	Grading Plan	12-22-09
L7.2	Grading Plan	12-22-09
L8.1	Planting Plan	12-22-09
L8.1	Planting Plan	12-22-09
L8.3	Planting Schedule and Details	12-22-09
L9.1	Furnishing & Lighting Plan	12-22-09
L9.2	Furnishing & Lighting Plan	12-22-09
L9.3	Site Furnishing Schedule & Lighting Details	12-22-09
L10.1	Lighting Foot Candle Diagram	12-22-09
L10.2	Lighting Foot Candle Diagram	12-22-09
L11.1	Material & Signage Details	12-22-09

4.02 **Permits and Other Approvals**. Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State and Federal permits and approvals necessary for the Public Access Area Work, and for the work, as required by Section 5.12, in Grand Ferry Park and to the street end of South 5th Street.

4.03 **Performance of Public Access Area Work**. Declarant agrees that the Public Access Area Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration.

4.04 **Phasing of Public Access Areas**. The Public Access Areas shall be constructed and conveyed in five (5) Public Access Area Phases, as described on the Public Access Area Plans. Declarant shall not apply for or accept a building permit for any Development Phase, except in compliance with this Declaration. Prior to submitting applications to DOB for a building permit for the Phase 2 Development, the Phase 3 Development, the Phase 4 Development, the Phase 5 Development or the Phase 6 Development, Declarant will meet with DCP and DPR with regard to the implementation of such Development Phase.

ARTICLE V

DESIGN DEVELOPMENT OF THE PUBLIC ACCESS AREAS

5.01 **Public Access Area Plans**. Declarant acknowledges that DCP and DPR have reviewed and approved the Public Access Area Plans and agrees that it may not submit any Public Access Area Design Submission pursuant to this Article 5 which is not in substantial conformity with the Public Access Area Plans without first obtaining the written approval of

such modification of the Public Access Area Plans by DPR and DCP (any such consent, a "**Public Access Area Plans Modification Approval**"). A Public Access Area Plans Modification Approval shall serve as a determination by the Chair that he or she is prepared to certify the revised Public Access Area Plans pursuant to Section 62-811 of the Zoning Resolution to incorporate the revision. If a Public Access Area Plans Modification Approval is obtained, Declarant shall file, concurrently with submission of the Final Public Access Area Plans pursuant to Section 5.11 hereof, an application pursuant to Section 62-811 of the Zoning Resolution, accompanied by revised Public Access Area Plans that incorporate all modifications previously approved pursuant to a Public Access Area Plans Modification Approval, and requesting that the Chair certify that the revised Public Access Area Plans comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution.

5.02 **Public Access Area Concept Drawings**. Declarant agrees that the architectural character and design of the Public Access Areas will substantially conform to the design intent reflected in the Public Access Area Concept Drawings, as further defined, revised and approved during the design development process set forth in this Article 5.

5.03 **Administration of Design Development Process**. DPR shall, on behalf of the City, manage and coordinate the review of the Public Access Area Design Submissions. All documents prepared by Declarant pursuant to this Article 5 shall be sent simultaneously to DPR and DCP.

5.04 **Submission of Construction Drawings**. Declarant shall submit to DPR and DCP Construction Drawings, including, without limitation, drawings in the form to be submitted to Declarant's general contractor in connection with the construction of the Public Access Areas, showing each Public Access Area Phase at its projected 30%, 60% and 90% completion of the applicable Public Access Area Phase (respectively, the "**30% Submission**", the "**60% Submission**" and the "**90% Submission**", and individually and collectively, the "**Public Access Area Design Submission(s)**"). Each Public Access Area Design Submission shall include (a) a schedule of estimated costs to complete the Public Access Areas, certified by Declarant's architect or landscape architect, and (b) designs showing how the Shore Public Walkway and Supplemental Public Access Areas will relate to the adjoining properties. The 30% Submission shall also include a lifecycle maintenance cost estimate. At Declarant's option, the Public Access Area Design Submissions may include specifications for the Public Access Area Work. Nothing in this Section shall prevent Declarant from submitting Construction Drawings to DPR at other times as may be agreed by Declarant and DPR.

5.05 **Agency Review Time Periods**. DPR shall approve or disapprove each Public Access Area Design Submission upon written notice to Declarant within thirty (30) days after its receipt thereof. No separate approval of DCP or the Chair of any Public Access Area Design Submission shall be required. If DPR disapproves any portion of a Public Access Area Design Submission, then DPR shall provide a written report (the "**Public Access Area Disapproval Report**") setting forth in detail the reasons for such disapproval, together with suggestions as to what Declarant must do in order to gain DPR's approval of its Public Access Area Design Submission. Declarant shall thereafter submit a revised Public Access Area Design Submission responsive to the Public Access Area Disapproval Report and, upon receipt thereof, DPR shall approve or disapprove such revised Public Access Area Design Submission within twenty (20) calendar days after receipt. DPR may approve a Public Access Area Design Submission with

recommendations for modifications (the "**City Public Access Area Recommendations**") and Declarant shall incorporate the City Public Access Area Recommendations in revised construction drawings unless Declarant submits to DPR a written explanation of why it believes such modifications would materially increase the cost of the Public Access Area Work or are otherwise not in conformity with the Public Access Area Plans or the Public Access Area Concept Drawings. DPR shall, within ten (10) calendar days after receipt of revised Public Access Area Design Submissions incorporating the City Public Access Area Recommendations, approve such Public Access Area Design Submissions. If DPR fails to respond to any Public Access Area Design Submission within the time periods set forth in this Section, then DPR shall be deemed to have approved such Public Access Area Design Submission, including all of the construction drawings which comprise such Public Access Area Design Submission.

5.06 **Standards for Review**.

(a) Declarant acknowledges that DPR may only disapprove any Public Access Area Design Submission that:

(i) would, in DPR's reasonable judgment, make the Waterfront Access Areas too costly or impractical for DPR to maintain;

(ii) would, in DPR's reasonable judgment, create a risk to public safety;

(iii) does not, in DPR's reasonable judgment, following consultation with DCP, substantially conform to the Public Access Area Plans, as the same may be modified with the approval of DPR and DCP, or are not in substantial conformity with the design intent reflected in the Public Access Area Concept Drawings; or

(iv) does not, in DPR's reasonable judgment, provide adequate soil volumes for canopy trees.

(b) Upon approval by DPR of any Public Access Area Design Submission, such approval shall bind DPR, and neither DPR nor DCP may disapprove any element of a subsequent Public Access Area Design Submission or the Final Public Access Area Plans which have been previously approved, provided that Declarant has not materially revised or modified such elements. In reviewing any Public Access Area Design Submission, DPR shall use reasonable efforts to minimize any requested changes that increase the cost of the Public Access Area Work.

5.07 **State and Federal Permits**. Declarant has advised the City that construction of the Shore Public Walkway will require a permit and approval from the State and Federal governments (together, the "**Federal/State Public Access Area Approvals**"), and that applications for the Federal/State Public Access Area Approvals have been submitted. Declarant covenants to proceed in good faith and exercise due diligence to obtain the Federal/State Public Access Area Approvals. In connection with its efforts to obtain the Federal/State Public Access Area Approvals, Declarant shall not file or otherwise formally submit to any Federal or State agency any plans, drawings or illustrative representations of the Shore Public Walkway that do not conform with the Public Access Area Plans or an approved Public Access Area Design Submission made pursuant to this Declaration.

5.08 **Schedule**.

(a) Prior to commencement of the Phase 2 Development, Declarant will provide to DCP and DPR a schedule for Public Access Area Phase 2 (the "**Public Access Area Phase 2 Schedule**") setting forth (i) the projected dates on which Declarant has or expects to submit the Public Access Area Design Submissions for Public Access Area Phase 2, as well as any Preliminary Sensitivity Analysis or Wind Conditions Report, which may be required pursuant to Section 3.02(c); and (ii) the dates by which Declarant must have received all required permits and approvals in order to complete the portions of the Waterfront Access Areas in Public Access Area Phase 2, in a manner consistent with the schedule for construction of the Phase 2 Development; it being understood that there shall be no requirements of any kind, with respect to the Public Access Areas, that Declarant must meet pursuant to this Declaration prior to commencing construction of the Phase 1 Development.

(b) Prior to commencement of the Phase 3 Development, Declarant will provide to DCP and DPR a schedule for Public Access Area Phase 3 (the "**Public Access Area Phase 3 Schedule**") setting forth (i) the projected dates on which Declarant has or expects to submit the Public Access Area Design Submissions for Public Access Area Phase 3, as well as any Preliminary Sensitivity Analysis or Wind Conditions Report, which may be required pursuant to Section 3.02(c); and (ii) the dates by which Declarant must have received all required permits and approvals in order to complete the portions of the Waterfront Access Areas in Public Access Area Phase 3 in a manner consistent with the schedule for construction of the Phase 3 Development.

(c) Prior to commencement of the Phase 4 Development, Declarant will provide to DCP and DPR a schedule for Public Access Area Phase 4 (the "**Public Access Area Phase 4 Schedule**") setting forth (i) the projected dates on which Declarant has or expects to submit the Public Access Area Design Submissions for Public Access Area Phase 4, as well as any Preliminary Sensitivity Analysis or Wind Conditions Report, which may be required pursuant to Section 3.02(c); (ii) the dates by which Declarant must have received all required permits and approvals in order to complete the portions of the Waterfront Access Areas in Public Access Area Phase 4 in a manner consistent with the schedule for construction of the Phase 4 Development.

(d) Prior to commencement of the Phase 5 Development, Declarant will provide to DCP and DPR a schedule for Public Access Area Phase 5 (the "**Public Access Area Phase 5 Schedule**") setting forth (i) the projected dates on which Declarant has or expects to submit the Public Access Area Design Submissions for Public Access Area Phase 5, as well as any Preliminary Sensitivity Analysis or Wind Conditions Report, which may be required pursuant to Section 3.02(c); and (ii) the dates by which Declarant must have received all required permits and approvals in order to complete the portions of the Waterfront Access Areas in Public Access Area Phase 5 in a manner consistent with the schedule for construction of the Phase 5 Development.

(e) Prior to commencement of the Phase 6 Development, Declarant will provide to DCP and DPR a schedule for Public Access Area Phase 6 (the "**Public Access Area Phase 6 Schedule**"; and together with the Public Access Area Phase 2 Schedule, the Public Access Area Phase 3 Schedule, the Public Access Area Phase 4 Schedule and the Public Access

Area Phase 5 Schedule, collectively, the "**Public Access Area Design Schedule**") setting forth (i) the projected dates on which Declarant has or expects to submit the Public Access Area Design Submissions for Public Access Area Phase 6, as well as any Preliminary Sensitivity Analysis or Wind Conditions Report, which may be required pursuant to Section 3.02; and (ii) the dates by which Declarant must have received all required permits and approvals in order to complete the portions of the Waterfront Access Area in Public Access Area Phase 6, in a manner consistent with the schedule for construction of the Phase 6 Development.

5.09 **Modifications Due to Failure to Obtain Permits**. If Declarant is unable, despite its good faith efforts, to obtain the Federal/State Public Access Area Approvals for the Shore Public Walkway by the date set forth in the applicable Public Access Area Design Schedule, or if the Federal/State Public Access Area Approvals do not include approval for all portions of the Shore Public Walkway for which such approval is needed, or if Declarant otherwise determines that it will not be able to obtain the Federal/State Public Access Area Approvals for all or any portions of the Shore Public Walkway by the date set forth in the applicable Public Access Area Design Schedule, Declarant shall so notify DPR and DCP. Provided that, in the exercise of their reasonable judgment, DPR and DCP concur that (i) Declarant has exercised good faith in seeking to obtain such Federal/State Public Access Area Approvals and (ii) Declarant is unlikely to obtain such Federal/State Public Access Area Approvals by the date which, pursuant to the construction schedule for the applicable Development Phase, such Federal/State Public Access Area Approvals are needed to obtain a TCO at the time issuance of a TCO is anticipated, such inability to obtain the Federal/State Public Access Area Approvals shall be deemed to constitute a Force Majeure Event. In such event, Declarant may obtain a TCO or PCO in respect of buildings or improvements located on the applicable Development Phase, (x) provided that Declarant has satisfied all conditions to the issuance of such TCO or PCO in respect of buildings or improvements located in such Development Phase, other than the delivery to the City of the Transfer Documents or the Easement Documents, and (y) subject to the provisions for Force Majeure set forth in Article IX hereof.

5.10 **Modification of Public Access Area Plans**. If, in connection with the Public Access Area Design Submissions, DCP and DPR agree with Declarant that one or more modifications of the Public Access Area Plans is appropriate, DCP shall issue a Public Access Area Plans Modifications Approval. Together with its application for approval of Final Public Access Area Plans, Declarant shall file an application pursuant to Section 62-711 of the Zoning Resolution requesting that the Chair certify that the revised Public Access Area Plans comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution. The Chair shall issue such certification within thirty (30) calendar days of such application.

5.11 **Final Public Access Area Plans**. No later than forty-five (45) days prior to the date on which Declarant intends to commence construction of each Public Access Area Phase, Declarant shall submit to DPR the final plans and specifications for such Public Access Area Phase (collectively, the "**Final Public Access Area Plans**"). The Final Public Access Area Plans shall be reviewed in accordance with the time periods and standards set forth in Sections 5.05 and 5.06. Upon approval of the Final Public Access Area Plans, nothing contained in this Declaration shall be construed to give the City or any agency thereof (including, without limitation, the Resident Engineer or any other engineers or field inspectors) the right to require any changes to the Final Public Access Area Plans.

5.12 **Grand Ferry Park and South 5th Street**.

(a) The Shore Public Walkway will connect, on the northern border of the Subject Property, with Grand Ferry Park, operated and maintained by DPR, and on the southern border of the Subject Property, with the public sidewalk on South 5th Street. Declarant acknowledges that it is desirable that the Shore Public Walkway reflect a consistent or compatible design with the street end of South 5th Street and with Grand Ferry Park and Declarant agrees that it shall in good faith cooperate with the City to coordinate the design of these portions of the Shore Public Walkway for such purpose, provided that such cooperation does not affect Declarant's construction schedule or materially increase the cost of completing or thereafter maintaining the Waterfront Access Areas. Notwithstanding the foregoing, each of DPR and DCP acknowledges and agrees that the design of the Shore Public Walkway, as more particularly described in the Public Access Area Plans and the Public Access Area Concept Drawings, is consistent and compatible with the design of the street end of South 5th Street and Grand Ferry Park, and provided that the design of the Shore Public Walkway does not materially change prior to construction of the portion thereof which connects to the street end of South 5th Street and Grand Ferry Park, each of DPR and DCP hereby agree that it shall not compel any changes to the design of the Shore Public Walkway as it relates to the connection with the street end of South 5th Street and Grand Ferry Park.

(b) Each Public Access Area Design Submission for Public Access Area Phase 6 shall include, in addition to the items set forth in Section 5.04, designs showing the Grand Ferry Park connection to the Shore Public Walkway, which Declarant will construct during Public Access Area Phase 6 and which is more particularly shown in the Public Access Area Plans (L3-5). Declarant will apply for and the City and DPR will grant to Declarant and its contractors, agents, employees, and sub-contractors a license to enter upon Grand Ferry Park for the purpose of performing the construction work required to construct the connection of Grand Ferry Park to the Shore Public Walkway for Public Access Area Phase 6. Declarant agrees that such license shall be exercised in such manner as to not unduly interfere with the use and enjoyment of Grand Ferry Park by the public. Declarant shall execute a form of permit provided by DPR, in the form of the Waterfront Access Areas Access Permit, together with any necessary administrative and technical changes acceptable to the City. Substantial Completion of the connection to Grand Ferry Park shall be required as a condition to Declarant requesting or DPR issuing a Notice of Substantial Completion for Public Access Area Phase 6, and Final Completion of the connection to Grand Ferry Park shall be required as a condition to Declarant requesting or DPR issuing a Notice of Final Completion for Public Access Area Phase 6.

(c) Each Public Access Area Design Submission for Public Access Area Phase 2 shall include, in addition to the items set forth in Section 5.04, designs showing the connection to the Shore Public Walkway and Supplemental Public Access Areas from the street end of South 5th Street, which will be constructed by Declarant during Public Access Area Phase 2 and which is more particularly described in the Public Access Area Plans (L3-1). The City acknowledges that construction of this connection in the street end of South 5th Street requires additional Approvals from the City, which will include, but may not be limited to, a license from DOT. As necessary, Declarant will apply for, and the City and DOT will grant to Declarant and its contractors, agents, employees and sub-contractors, a license to enter upon South 5th Street, and the public sidewalks abutting the northern and southern portions of South 5th Street, for the

purpose of performing the construction work required to construct the connection in the street end of South 5th Street, in conjunction with Public Access Area Phase 2. Substantial Completion of the connection in the street end of South 5th Street shall be a condition to Declarant requesting or DPR issuing a Notice of Substantial Completion for Public Access Area Phase 2. Final Completion of the connection in the street end of South 5th Street shall be a condition to Declarant requesting or DPR issuing a Notice of Final Completion for Public Access Area Phase 2.

ARTICLE VI

CONSTRUCTION OF THE PUBLIC ACCESS AREAS

6.01 **Manner of Performance of the Construction Work; Permits**. Declarant shall, at its sole cost and expense, undertake and complete the performance of the Public Access Area Work so as to construct the Public Access Areas substantially in accordance with the Final Public Access Area Plans, except as modified in accordance with the provisions of this Article 6. Declarant shall perform the Public Access Area Work in a good and workerlike manner and in accordance with Legal Requirements, including, without limitation, any applicable Legal Requirements pertaining to hazardous materials.

6.02 **Modifications of Final Public Access Area Plans**. Declarant shall have the right to make non-material modifications to the Final Public Access Area Plans to respond to unanticipated field conditions. All material modifications to the Final Public Access Area Plans may be made only upon the written approval of DPR, which approval shall not be unreasonably withheld or delayed. DPR shall, within fifteen (15) calendar days after receipt of a request for approval of a material modification to the Final Public Access Area Plans, approve or deny such request. If DPR fails to respond to any request by Declarant within the time periods set forth in this Section, then DPR shall be deemed to have approved such request.

6.03 **Resident Engineer**. Declarant covenants to pay, upon receipt of reasonable documentation from DPR and within a reasonable time frame, for defined construction oversight services of one engineer, which engineer shall be a DPR employee or a consultant selected by DPR, at the site of the Public Access Area Phase(s) then being constructed, for the purpose of on-site monitoring of the Public Access Area Work (the "**Resident Engineer**"), provided, however, that the maximum amount which Declarant shall be required to pay under this Section 6.03 with respect to the entire Subject Property is $7,500 (inclusive of any charges for benefits, pension costs, vacation pay, or sick pay, in the case of a DPR employee) for each month during which construction of the Public Access Areas is occurring. The Resident Engineer shall have access to all construction meetings and construction-related documents. Declarant agrees that in the event DPR advises Declarant of issues or concerns based on the Resident Engineer's report(s), Declarant shall meet and confer with DPR in order to resolve these issues or concerns.

6.04 **Insurance.**

(a) Prior to applying for a building permit for construction, Declarant shall obtain the following insurance:

(i) A Commercial General Liability ("**CGL**") insurance policy. The CGL policy shall:

(A) provide coverage to protect the City, DPR and Declarant from all claims for property damage and/or bodily injury, including death, which may arise from the Public Access Area Work;

(B) provide coverage for completed operations;

(C) provide commercial general liability coverage in an amount no less than $5,000,000 combined single limit per occurrence; provided, however, that Declarant may satisfy such $5,000,000 coverage minimum by obtaining standard general liability coverage and excess coverage with an aggregate minimum coverage amount of $5,000,000; and

(D) contain each of the following endorsements;

(1) The City of New York, DPR, together with its officials and employees are additional insureds with coverage at least as broad as set forth in ISO Forms CG 2010 (1/85 ed.) and CG 0001 (1/96 ed.);

(2) If and insofar as knowledge of an "occurrence", "claim" or "suit" is relevant to the City of New York as an additional insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim" or "suit" unless notice thereof is received by the Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department. This paragraph is void if, after New York City is properly served with a lawsuit, New York City requests coverage under the policy provided for herein of such lawsuit in which a default judgment has been entered against New York City and has not been vacated.

(3) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and DPR as additional insureds. Any response by the insurance company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department.

(4) This policy shall not be cancelled, terminated, modified or changed by the insurance company unless thirty (30) days prior written notice is sent by certified mail to the Named Insured and the Commissioner of DPR.

(5) The limit of coverage under this policy applicable to the City and DPR as additional insureds is equal to the limit of coverage applicable to the Named Insured.

(ii) A Worker's Compensation insurance policy in accordance with the laws of the State of New York from a licensed insurance company.

(iii) Employer's Liability Insurance for any one occurrence with a limit of not less than $1,000,000;

(iv) Any Auto, Hired Auto and Non-owned Auto Insurance for any one occurrence not less than $3,000,000; provided, however, that Declarant may satisfy such $3,000,000 coverage minimum by obtaining standard automobile coverage and excess coverage with an aggregate minimum coverage amount of $3,000,000.

(b) Prior to applying for a building permit for construction of any Public Access Area Phase, Declarant shall file with DPR proof that Declarant has insurance in place that meets the requirements stated in this Section with respect to construction of the applicable Public Access Area Phase and if Declarant chooses to meet this proof with an insurance certificate, the insurance certificate shall be accompanied by a sworn statement in a form prescribed by DPR from the insurance company or from a licensed insurance broker certifying that the insurance certificate may be relied upon as proof that the applicant has insurance that meets the requirements stated in this Section with respect to construction of the applicable Public Access Area Phase.

(c) Declarant shall provide a copy of any required policy within thirty (30) days of a request for such policy to the DPR or the New York City Law Department.

(d) Declarant shall notify in writing the CGL insurance carrier and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury or accident and any claim or suit arising therefrom, immediately but not later than twenty (20) days after such event. Declarant's notice to the CGL insurance carrier (or other applicable carrier) must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as Declarant as Named Insured." Declarant's notice to the insurance carrier shall contain the following information: the name of Declarant, Declarant's phone number, the date of the occurrence, the location (street address and borough) of the occurrence and the identity of the persons or things injured, damaged or lost, or such other information as the insurance carrier may require. Declarant's failure to comply with the provisions of this Section 6.04 shall not be a default under this Agreement unless Declarant's failure to follow such provisions shall result in a denial of coverage to the City.

(e) All insurance required under this Section 6.04 shall be issued by companies which have an A.M. Best rating of at least A-7 or a Standards & Poors rating of at least AA and are duly licensed to do business in the State of New York and must be in effect until the earlier to occur of (i) title to the completed Public Access Area Phase is transferred to the City or (ii) a Notice of Final Completion is issued by the City with respect to such Public Access Area Phase.

6.05 **Construction Security**. To secure Declarant's obligation to construct the Public Access Areas, Declarant shall, prior to the commencement of construction of each Public Access Area Phase, deliver to DPR a completion guaranty, substantially in the form of **Exhibit M** annexed hereto, made by such Person(s) as are the principal guarantors of the construction financing for the Development (the "**Guaranty**").

6.06 **Failure to Perform**.

(a) If Declarant commences construction of a Public Access Area Phase and thereafter substantially ceases construction of such Public Access Area Phase for six (6) months for any reason other than the occurrence of a Force Majeure Event, and if such cessation shall continue for thirty (30) days after DPR's written notice thereof to Declarant (a "**Cessation Notice**"), DPR may, at its option, prior to the date upon which Declarant resumes construction of the applicable Public Access Area Phase, but not less than thirty (30) days following Declarant's receipt of the Cessation Notice, enter upon the Subject Property for the purpose of completing the applicable Public Access Area Phase and to enforce its remedies under the Guaranty.

(b) Declarant hereby grants to the City and its contractors, agents, employees and sub-contractors a license to enter upon the Subject Property for the purpose of exercising its rights under Section 6.06(a) hereof, including the use of heavy construction equipment such as bulldozers, front-end loaders and the like as may be necessary to perform the Public Access Area Work, provided that the City shall use reasonable efforts to minimize disruption of any construction of a Development Phase and to avoid damage to any portion of the Subject Property or any improvements thereon. The City hereby agrees to indemnify, defend and hold each Indemnified Party harmless from and against any Claim paid or incurred by Declarant by reason of the City's exercise of its rights under this Section 6.06, except to the extent such claim is caused by or contributed by the negligence of the Indemnified Parties.

(c) If DPR exercises its rights under Section 6.06 hereof and thereafter substantially completes a Public Access Area Phase, DPR shall issue a Notice of Substantial Completion with respect thereto. Declarant shall make the conveyances set forth in Section 7.03 in accordance with the provisions thereof. Such conveyance shall occur on the date or promptly following the date which DPR issues a Notice of Substantial Completion for the applicable Public Access Area Phase, such to be in determined solely in the discretion of DPR.

ARTICLE VII

TEMPORARY CERTIFICATES OF OCCUPANCY

7.01 **TCO.**

(a) With the exception of buildings or improvements located on the Upland Parcel, to which the provisions of this Article 7 shall not apply, and subject to the terms of Article 9 hereof, Declarant shall not apply for or accept a TCO for any New Building until all of the following conditions have been met with respect to the Public Access Area Phase constructed in connection with the building:

(i) DPR has issued a Notice of Substantial Completion for the Public Access Area Phase constructed in connection with the New Building;

(ii) Declarant has delivered to the City the Transfer Documents for the Waterfront Access Area constructed in connection with the New Building, in form and substance reasonably satisfactory to the City;

(iii) Declarant has delivered to the City the Easement Documents for the Public Access Area Phase constructed in connection with the New Building, in form and

substance reasonably satisfactory to the City, and only in connection with Public Access Area Phase 4, has delivered to the City the Comfort Station Easement;

(iv) Declarant has reimbursed DPR for the costs of the Resident Engineer set forth in Section 6.03 hereof, subject to the further provisions of this Section. DPR shall, within ten (10) days of receipt of a request by Declarant for a statement of the amount to be paid by Declarant for the Resident Engineer, deliver such statement. If DPR does not timely deliver such statement, Declarant may obtain the TCO notwithstanding its failure to pay the costs of the Resident Engineer, and in such event, Declarant shall thereafter reimburse DPR upon receipt of such statement;

(v) Declarant and DPR have executed the Waterfront Maintenance Area Maintenance Agreement and the Retained PAA Maintenance Agreement for the Waterfront Maintenance Areas and Retained PAA Maintenance Areas constructed in connection with the New Building, and only in connection with the Public Access Area Phase constructed in conjunction with the redevelopment of the Refinery Complex, have executed the Comfort Station Maintenance Easement and the Retained PAA Maintenance Agreement which includes Comfort Station maintenance provisions;

(vi) Declarant has made the first Annual Waterfront Maintenance Area Maintenance Payment, pursuant to Section 7.04 hereof, with respect to the portion of the Waterfront Maintenance Area constructed in connection with the New Building;

(vii) Declarant has provided to the City a letter of credit, or other security reasonably acceptable to the City, in an amount equal to one-third of the Annual Waterfront Maintenance Area Maintenance Payment (the "**Waterfront Maintenance Area Maintenance Security**");

(viii) Declarant has provided to the City the Retained PAA Maintenance Security for the portion of the Retained PAA Maintenance Areas constructed in connection with the New Building; and

(ix) Declarant has provided to the City the Completion Letter of Credit for the portion of the Public Access Areas constructed in connection with the New Building; provided, however, that if DPR has issued a Notice of Final Completion for such portion of the Public Access Areas at the time Declarant seeks a TCO for the applicable New Building, no Completion Letter of Credit shall be required for such applicable portion of the Public Access Areas.

(b) Within ten (10) days after satisfaction of the conditions set forth in Section 7.01(a), the Chair shall certify in writing to DOB that Declarant has met the requirements of Section 62-624(e) of the Zoning Resolution.

(c) If, by reason of the occurrence of a Force Majeure Event, Declarant has obtained a TCO prior to completion of the conditions set forth in Section 7.01(a) above, upon cessation of the Force Majeure Event, Declarant shall, as promptly as possible, satisfy the conditions of Section 7.01(a). If the Force Majeure Event relates solely to the construction of the Waterfront Access Area, Declarant shall deliver the Easement Documents to the City prior to the issuance of a TCO.

7.02 **Notice of Substantial Completion**. Declarant shall notify DPR and DCP at such time as it believes that a Public Access Area Phase is Substantially Complete and shall request that DPR issue a certificate, in the form of **Exhibit N** annexed hereto (a "**Notice of Substantial Completion**"), to Declarant certifying Substantial Completion of such Public Access Area Phase. No later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the Public Access Area Phase is not Substantially Complete and the items which need to be completed. If DPR notifies Declarant that such Public Access Area Phase has not been Substantially Completed in accordance with the Final Public Access Area Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed or unsatisfactorily performed (a "**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DPR of such completion. No later than ten (10) calendar days after receipt of such notice, DPR shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List. If DPR fails to provide a notice to Declarant within the time periods set forth in this Section, then DPR shall be deemed to have issued a Notice of Substantial Completion in respect of the applicable Public Access Area Phase.

7.03 **Transfer of Title and Conveyance of Public Access Easements**.

(a) In connection with each transfer of title to the Waterfront Access Areas to the City, and no earlier than the date on which Declarant notifies DPR and DCP pursuant to Section 7.02 hereof that a Public Access Area Phase is Substantially Complete (each such date of delivery, a "**Transfer Date**"), Declarant shall deliver to the City the following documents (collectively, the "**Transfer Documents**"): (i) a bargain and sale deed with covenants against grantor's acts, in form reasonably acceptable to the City, signed and acknowledged by Declarant and in proper form for recording, conveying all of Declarant's right, title and interest in and to the portion of the Waterfront Access Areas in such Public Access Area Phase, (ii) an American Land Title Association Owner's Policy approved for use in the State of New York with New York Coverage Endorsement Appended (ALTA Owner's Policy) issued in accordance with the terms and conditions thereof naming the City as the Insured (a "**Title Policy**"), with limits of liability reasonably acceptable to the City to insure the City that there are no liens or encumbrances on the applicable portion of the Waterfront Access Areas being conveyed to the City, except for Permitted Encumbrances, with the title insurance premium for the Title Policy fully paid by Declarant at the time of issuance of such policy, (iii) a survey of the Waterfront Access Areas in such Public Access Area Phase to be conveyed, prepared by a land surveyor licensed in New York State, in accordance with the Minimum Standard of Detail Requirements for ALTA/ACSM Land Title Surveys for Urban Surveys (2005) or other such standard as may be deemed acceptable to the City, (iv) all required transfer tax returns signed by Declarant, (v) documentation evidencing the subdivision of the portion of the Waterfront Access Area then being conveyed into one or more separate tax lots, and (vi) as-built construction drawings of the Waterfront Access Area in digital format, along with full size copies on mylar paper in archival ink. All of the Transfer Documents shall be consistent with the provisions of this Section 7.03(a) and in form and substance reasonably satisfactory to the City. Within ten (10) days of receipt of

the Transfer Documents meeting the requirements hereof, the City shall cause the deed to be recorded in the Register's Office. In the event that the Register's Office makes an objection to the recordation of some or all of the Transfer Documents in the form delivered by Declarant, Declarant shall cooperate with the City in curing any such objections.

(b) Declarant shall also grant to the City the Public Access Easements to the applicable portions of the Public Access Areas built in conjunction with the portion of the Waterfront Access Area then being conveyed, as more particularly described in, and in accordance with the provisions of, Article X hereof. In connection with the grant of Public Access Easements to the City, on each Transfer Date, Declarant shall deliver to the City the following documents (collectively, the "**Easement Documents**"): (i) the Public Access Easement required in conjunction with the portion of the Waterfront Access Area then being conveyed, executed and acknowledged by Declarant, substantially in the form annexed hereto as **Exhibit O**, together with any necessary administrative and technical changes acceptable to the City, which Public Access Easement shall, *inter alia*, grant to the City and the general public the right to use, for access to the Access Streets and the Retained PAA constructed in connection with the portion of the Waterfront Access Area then being conveyed, (ii) the Buffer Area Maintenance Easement required in conjunction with the portion of the Waterfront Access Area then being conveyed, executed and acknowledged by Declarant, substantially in the form annexed hereto as **Exhibit P**, together with any necessary administrative and technical changes acceptable to the City, which Buffer Area Maintenance Easement shall, *inter alia*, grant to the City, acting through DPR, an easement to perform certain maintenance, repair and reconstruction in the Buffer Areas, (iii) the Waterfront Maintenance Area Access Easement applicable to the portion of the Waterfront Access Area then being conveyed, executed and acknowledged by Declarant, substantially in the form annexed hereto as **Exhibit Q**, together with any necessary administrative and technical changes acceptable to the City, which Waterfront Maintenance Area Access Easement shall, *inter alia*, permit the City and its respective employees, contractors, subcontractors and agents to enter upon the Access Streets and the Retained PAA Maintenance Areas to perform certain maintenance, repair and reconstruction in the Waterfront Maintenance Areas; (iv) a Title Policy, with premium paid, from a Title Company, insuring that the easements then being conveyed are superior to any Title Exceptions, except for the Permitted Encumbrances, (v) a survey of the Public Access Easements to be conveyed, prepared by a land surveyor licensed in New York State, in accordance with the Minimum Standard of Detail Requirements for ALTA/ACSM Land Title Surveys for Urban Surveys (2005) or other such standard as may be deemed acceptable to the City, and (vi) all required transfer tax returns signed by Declarant. All of the Easement Documents shall be in form and substance reasonably satisfactory to the City. Within ten (10) days of receipt of the Easement Documents meeting the requirements hereof, the City shall cause the applicable Easement Documents to be recorded in the Register's Office. If the Register's Office makes an objection to the recordation of some or all of the Easement Documents in the form delivered by Declarant, Declarant shall cooperate with the City in curing any such objections.

(c) On the Transfer Date corresponding with Substantial Completion of Public Access Area Phase 4, in addition to the Easement Documents set forth in Section 7.03(b) above, Declarant shall deliver to the City the Comfort Station Easement, executed and acknowledged by Declarant, substantially in the form annexed hereto as **Exhibit R**, together

with any necessary administrative and technical changes acceptable to the City, which Comfort Station Easement shall, *inter alia*, grant to the City and the general public the right to access and use the Comfort Station, as more particularly described in the Comfort Station Easement.

(d) The transfer of title to the Waterfront Access Areas as provided for herein shall not reduce the Floor Area (as defined in the Zoning Resolution) that may be developed on the Subject Property, or affect any calculations relating to lot coverage or other provisions of the Zoning Resolution wherein the land of the Waterfront Access Areas was included, and Declarant shall have the right to use the total area of the Subject Property, including the land conveyed to the City as provided herein, for all purposes related to permitted Floor Area, floor area ratio, lot coverage and other zoning calculations for the Proposed Development, notwithstanding the conveyances of Waterfront Access Areas to the City.

7.04 **Maintenance Fund for Waterfront Maintenance Areas**. Pursuant to Section 62-624(e) of the Zoning Resolution, Declarant shall establish an account for the maintenance and repair of the Waterfront Maintenance Areas (the "**Waterfront Maintenance Area Maintenance Account**"). Prior to the issuance of a TCO in respect of any New Building, and on each January 1 occurring thereafter, Declarant shall deposit the Annual Waterfront Maintenance Area Maintenance Payment, in respect of the applicable Public Access Area Phase, into the Waterfront Maintenance Area Maintenance Account (such obligation, the "**Funding Obligation**"). Notwithstanding any contrary term set forth in this Agreement, if the date of the first payment of the Waterfront Maintenance Area Maintenance Payment is other than a July 1, the Waterfront Maintenance Area Maintenance Payment shall be appropriately pro-rated, based on the number of days remaining in the calendar year in question and a deemed calendar year of 360 days. Funds in the Waterfront Maintenance Area Maintenance Account shall be paid and applied from time to time in accordance with the terms of the Waterfront Maintenance Area Maintenance Agreement.

7.05 **Security for Maintenance of Retained PAA Maintenance Areas**. Prior to obtaining a TCO for any New Building pursuant to Section 7.01(a), Declarant shall deliver to the City one or more clean, irrevocable letters of credit or other security reasonably acceptable to the City, for a term of not less than one year, naming the City as beneficiary, in the amount that has been certified by Declarant's landscape architect as being sufficient to cover 125% of the annual cost of maintaining the Retained PAA Maintenance Areas located in such Public Access Area Phase, subject to the reasonable approval of DPR (the "**Retained PAA Maintenance Security**"). The Retained PAA Maintenance Security shall be held in accordance with, and renewed from time to time, in accordance with the terms of the Retained PAA Maintenance Agreement.

7.06 **Security for Final Completion**. If Declarant requests a TCO prior to the issuance of a Notice of Final Completion in respect of any Public Access Area Phase, then, prior to the issuance of such TCO, Declarant shall deliver to DPR one or more irrevocable letters of credit or other security in a form reasonably acceptable to the City, naming the City as beneficiary, in an amount that has been certified by Declarant's architect or landscape architect, as applicable, as being 125% of the cost of Finally Completing such Substantially Complete Public Access Area Phase (the "**Completion Letter of Credit**"). If Declarant fails, for a period of three (3) months following the issuance of the Notice of Substantial Completion in respect of the particular Public Access Area Phase, to Finally Complete the Public Access Area Phase, the City may Finally Complete the Public Access Area Phase, whereupon the City may draw upon

the Completion Letter of Credit, to the extent required to pay reasonable costs in connection therewith. Upon the issuance of a Notice of Final Completion in respect of a Public Access Area Phase, the Completion Letter of Credit (as the same may have been reduced by reason of any prior draws thereon) shall be returned to Declarant for cancellation.

7.07 **Indemnification by the City**. Commencing on each Transfer Date, and pursuant to the requirements of the Zoning Resolution, the City shall indemnify, defend and hold harmless (i) Declarant, (ii) the direct and indirect shareholders, members, partners, parents, affiliates and/or subsidiaries of Declarant, (iii) the respective principals, directors, officers and employees of the foregoing Persons identified in the foregoing clauses (i) and (ii) and (iv) the respective successors and assigns of the Persons identified in the foregoing clauses (i), (ii) and (iii) (each such Person, an "**Indemnified Party**") from and against any and all claims, suits, causes of action, losses, damages, judgments, costs and expenses (any of the foregoing, a "**Claim**") arising, from and after the Transfer Date, by reason of (x) the City's ownership, operation, maintenance or repair of the Waterfront Access Areas theretofore conveyed to the City, except to the extent the Claim in question arises by reason of the negligence of an Indemnified Party or the failure to complete the Waterfront Access Areas in accordance with the Final Public Access Area Plans and/or (y) the City's maintenance and repair of the Buffer Areas appurtenant to the Waterfront Access Areas theretofore conveyed to the City, except to the extent that the Claim in question arises by reason of the negligence by an Indemnified Party or the Indemnified Party's failure to construct the Buffer Areas in accordance with the Final Public Access Area Plans. The duty of the City to indemnify, defend and hold harmless hereunder shall be conditioned upon (a) delivery to the Law Department of the City, Office of the Corporation Counsel ("**Corporation Counsel**"), to the attention of the Chief, Torts Division, or any successor thereto, by the Indemnified Party, of the original or a copy of any summons, complaint, process, notice, demand, notice of claim or pleading, within twenty (20) days (or such longer period acceptable to the Chief, Torts Division, provided that any such extension is set forth in writing and signed by the Law Department and the Indemnified Party) after the Indemnified Party receives such document and (b) the reasonable cooperation of the Indemnified Party in the defense of such action or proceeding and in the defense of any action or proceeding against the City based upon the same alleged act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the Indemnified Party that the City provide for its defense pursuant to this Declaration. Upon compliance with the above requirements, the City shall assume the Indemnified Party's defense. Thereafter, if an Indemnified Party fails to or refuses to cooperate in the formation or presentation of its defense, the Corporation Counsel, after providing notice to the Indemnified Party and Declarant and not less than thirty (30) days in which to cure such failure, may discontinue such representation and, in such event, the City's obligation to defend, indemnify and hold harmless shall terminate. An Indemnified Party, at its own expense, may engage its own attorney to assist in its defense, provided that the City shall control the defense for so long as the City shall defend and indemnify such Indemnified Party.

ARTICLE VIII

PERMANENT CERTIFICATES OF OCCUPANCY

8.01 **PCO**. With the exception of buildings or improvements located in the Upland Parcel, to which this Article 8 shall not apply, and subject to the provisions of Article 9 hereof, Declarant shall not accept a PCO for any New Building located in the Development Property until DPR has issued a Notice of Final Completion with respect to the Public Access Area Phase associated with such New Building.

8.02 **Performance of Work**. Subject to the provisions of Article 9 hereof, Declarant shall, within three (3) months after issuance of a Notice of Substantial Completion for a Public Access Area Phase, Finally Complete construction of such Public Access Area Phase, unless the Resident Engineer certifies, in writing, that it will take longer than three (3) months to Finally Complete such Phase (in which event Declarant shall Finally Complete such Public Access Area Phase prior to the expiration of such longer period). If Declarant fails to Finally Complete construction of a Public Access Area Phase within the applicable period, DPR may, at its option, upon not less than thirty (30) days' notice to Declarant, (i) complete such Public Access Area Phase in accordance with the Final Public Access Area Plans; (ii) cause Declarant to remove all of its equipment and any other items impeding DPR's completion of the Public Access Area Phase and (iii) draw upon the Completion Letter of Credit, to the extent required to pay for the reasonable costs and expenses incurred to remove such equipment and impediments (if applicable) and Finally Complete the applicable Public Access Area Phase. If the City does not draw upon the entire amount of the Completion Letter of Credit, DPR shall return the balance of the proceeds of the Completion Letter of Credit to Declarant promptly after Final Completion of the applicable Public Access Area Phase. Declarant hereby grants the City and its contractors, agents, employees and sub-contractors a license to enter upon the Retained PAA, to the extent required to exercise its rights under this Section 8.02. The City hereby agrees to indemnify, defend and hold each Indemnified Party harmless from and against any Claims arising by reason of the City's exercise of its rights under this Section 8.02, except to the extent such claim is caused by or contributed by the negligence of the Indemnified Parties.

8.03 **Notice of Final Completion**. Declarant shall notify DPR and DCP at such time as it believes that a Public Access Area Phase is Finally Complete and shall request that DPR issue a certificate, in the form of **Exhibit S** (a "**Notice of Final Completion**"), to Declarant certifying Final Completion. No later than twenty (20) days after receipt of such request, DPR shall either issue the Notice of Final Completion or deliver to Declarant a notice specifying in detail the reasons why the applicable Public Access Area Phase is not Finally Complete. If DPR notifies Declarant that such Public Access Area Phase has not been Finally Completed in accordance with the Final Public Access Area Plans, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DPR of such completion. No later than twenty (20) days after receipt of such notice, DPR shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If DPR fails to provide either of such notices to Declarant within the time periods set forth in this Section, then

DPR shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion in accordance with the provisions of this Section 8.03 shall be conclusive evidence with respect to Declarant that the Waterfront Access Areas have been constructed in accordance with the design and construction specifications approved by DPR, including the Final Public Access Area Plans.

8.04 **Access Permit**. The City hereby grants to Declarant and its contractors, agents, employees, and sub-contractors a license to enter upon the Waterfront Access Areas for the purpose of performing the construction work required to obtain the Notice of Final Completion (the "**Waterfront Access Area Access Permit**"). Declarant agrees that such licenses shall be exercised in such manner as to not unduly interfere with the use and enjoyment of the Waterfront Access Areas by the public. Prior to performing any construction work in the Waterfront Access Areas following conveyance of same to the City, Declarant shall execute a form of license provided by DPR in the form of **Exhibit T** annexed hereto, together with any necessary administrative and technical changes acceptable to the City.

8.05 **Warranties**. Declarant agrees to obtain such warranties on all products used in the Waterfront Access Areas as are customarily provided by manufacturers in connection with such products and to have the City included as a named beneficiary on all such warranties. Declarant further agrees to provide to the City, from its general contractor or any of its subcontractors, a warranty against defects, including customary warranties with respect to plant material installed by Declarant or its contractors, and including the obligation to repair same, in the portions of the Waterfront Access Areas conveyed from time to time to the City, for a period of one year from the date of the Notice of Final Completion with respect to the applicable Public Access Area Phase.

ARTICLE IX

FORCE MAJEURE.

9.01 **Force Majeure**. If Declarant is unable to Substantially Complete or Finally Complete a Public Access Area Phase by reason of a Force Majeure Event, Declarant may, upon notice to the Chair and DPR (a "**Delay Notice**"), request that the Chair, in consultation with DPR, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chair, in consultation with DPR, shall thereafter determine whether a Force Majeure Event exists, and in all events shall, upon notice to Declarant no later than ten (10) days after its receipt of the Delay Notice, certify that a Force Majeure Event either exists or does not exist. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies that a Force Majeure Event exists, the Chair shall grant Declarant appropriate relief, including notifying DOB that a TCO or a PCO (as applicable) may be issued for any buildings, or portions thereof, located within the Development Phase associated with such Public Access Area Phase. Any delay arising by reason of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence the applicable Public Access Area Work. As a condition to granting relief as aforesaid, the Chair may require that Declarant

post a letter of credit or other security, in a form reasonably acceptable to the Chair and naming the City as beneficiary, to secure Declarant's obligation to perform all requirements of Article VIII to Finally Complete the applicable Public Access Area Phase upon the cessation of the Force Majeure Event. Such security shall be in a sum equal to 175% of the estimated cost of the remaining work required to Finally Complete the applicable Public Access Area Phase, as certified by Declarant's architect or landscape architect. Declarant shall be obligated to re-commence construction of the applicable Public Access Area Phase to Substantially Complete or Finally Complete same at the end of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determines the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time for Substantial Completion or Final Completion, as the case may be. If Declarant fails to resume performance of the applicable Public Access Area Work within three (3) months after cessation of the Force Majeure Event (as reasonably determined by the Chair), the City may undertake performance of the applicable Public Access Area Work, and draw upon the aforesaid security, to the extent required to complete the Public Access Area Work. Upon Final Completion of the applicable Public Access Area Work (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grants the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Article 9. The City hereby agrees to indemnify, defend and hold each Indemnified Party harmless from and against any Claims arising by reason of its exercise of the self-help rights set forth in this Article 9, except to the extent such claim is caused by or contributed by the negligence of the Indemnified Parties.

ARTICLE X

EASEMENTS

10.01 **Public Access Easements.**

(a) Declarant agrees that it shall grant the City and the general public permanent, perpetual and non-exclusive public access easements (i) over the Retained PAA for pedestrian use, and (ii) over the roadbeds of the Access Streets, for automobile use, in each case unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Public Access Area Plans or as are otherwise permitted by the City), from the surface of the roadbed or the pavement up to the sky (each, a "**Public Access Easement**"; collectively, the "**Public Access Easements**"), subject to the terms and conditions set forth in this Article 10.

(i) **The Phase 2 Public Access Easement**. The Public Access Easements on the roadbed of the Access Street at South 4th Street west of Kent Avenue, and in the Retained PAA constructed in connection with Public Access Area Phase 2 (the "**Phase 2 Public Access Easement**"), shall be effective only from and after the date that Declarant obtains a Notice of Substantial Completion for Public Access Area Phase 2. At the time of the conveyance of the Phase 2 Public Access Easement, Declarant shall deliver to the City a title insurance policy insuring the City's interest in the Phase 2 Public Access Easement consistent with the requirements of Section 7.03.

(ii) **The Phase 3 Public Access Easement**. The Public Access Easements on the roadbed of the Access Street at South 3rd Street west of Kent Avenue, and in the Retained PAA constructed in connection with Public Access Area Phase 3 (the "**Phase 3 Public Access Easement**") shall be effective only from and after the date that Declarant obtains a Notice of Substantial Completion for Public Access Area Phase 3. At the time of the conveyance of the Phase 3 Public Access Easement, Declarant shall deliver to the City a title insurance policy insuring the City's interest in the Phase 3 Public Access Easement consistent with the requirements of Section 7.03.

(iii) **The Phase 4 Public Access Easement**. The Public Access Easements on the roadbed of the Access Street at South 2nd Street west of Kent Avenue, and in the Retained PAA constructed in connection with Public Access Area Phase 4 (the "**Phase 4 Public Access Easement**") shall be effective only from and after the date that Declarant obtains a Notice of Substantial Completion for Public Access Area Phase 4. At the time of the conveyance of the Phase 4 Public Access Easement, Declarant shall deliver to the City a title insurance policy insuring the City's interest in the Phase 4 Public Access Easement consistent with the requirements of Section 7.03.

(iv) **The Phase 5 Public Access Easement**. The Public Access Easements on the roadbed of the Access Street at South 1st Street west of Kent Avenue, and in the Retained PAA constructed in connection with Public Access Area Phase 5 (the "**Phase 5 Public Access Easement**") shall be effective only from and after the date that Declarant obtains a Notice of Substantial Completion for Public Access Area Phase 5. At the time of the conveyance of the Phase 5 Public Access Easement, Declarant shall deliver to the City a title insurance policy insuring the City's interest in the Phase 5 Public Access Easement consistent with the requirements of Section 7.03.

(v) **The Phase 6 Public Access Easement**. The Public Access Easements in the Retained PAA constructed in connection with Public Access Area Phase 6 (the "**Phase 6 Public Access Easement**") shall be effective only from and after the date that Declarant obtains a Notice of Substantial Completion for Public Access Area Phase 6. At the time of the conveyance of the Phase 6 Public Access Easement, Declarant shall deliver to the City a title insurance policy insuring the City's interest in the Phase 6 Public Access Easement consistent with the requirements of Section 7.03.

(b) With respect to each Public Access Easement Phase, Declarant agrees that liens, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the easements granted herein. The rules and regulations of the DOT shall apply to the Access Streets in the same manner as if the Access Streets were public streets. DOT may place signs within the Access Streets for the purpose of regulating traffic and parking therein. All laws pertaining to vehicular and pedestrian traffic and parking shall apply, and be enforceable by the City therein in the same manner as if the Access Streets were public streets.

10.02 **Closing of Public Access Easements**. Notwithstanding Section 10.01 above, Declarant may close all or any portion of a Public Access Easement (a) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under an Access Street or the Retained PAA or for the repair thereof, (b) as may be approved

by DOB or DOT in connection with work on any of the buildings in the Development Property or (c) in the event of an emergency or hazardous condition; provided that Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or mitigation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform such work in such a manner that the public will continue to have access to the Waterfront Access Areas. Except in cases of emergency, Declarant shall provide seven (7) Business Days prior notice to the public of any temporary closure of the Retained PAA (or any portion thereof) or any temporary closure of any portion of an Access Street, by posting signs at appropriate locations. In cases of emergency, Declarant shall provide such public notice as soon as practicable and shall promptly, but in no event more than two (2) Business Days after such closure, give notice to DPR that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof. In addition to the foregoing, Declarant shall have the right to close all or any portions of the Access Streets or the Retained PAA to the City and the general public one (1) Business Day in each year to preserve its ownership interest in such portions of the Access Streets and the Retained PAA. Declarant agrees that the closure of portions of the Access Streets or the Retained PAA to the City and the general public in order to preserve its ownership interest therein shall occur on not less than two (2) separate days each year so as to ensure that there is always at least one Access Street open to the public.

10.03 **Waterfront Maintenance Area Access Easement**. Declarant shall grant the City the Waterfront Maintenance Area Access Easement to permit the City and its respective employees, contractors, subcontractors and agents to enter upon, in or through any Access Streets and Retained PAA at any time, for the purpose of accessing the Waterfront Maintenance Areas and performing maintenance, repair and reconstruction within such Waterfront Maintenance Areas. In the event that the City shall exercise its rights under the Waterfront Maintenance Area Access Easement to perform any work which involves the use of vehicles, including bulldozers, front-end loaders and other similar construction equipment, the City shall only conduct such work between the hours of 8 a.m. and 5 p.m. on Business Days, and shall provide Declarant with at least five (5) calendar days' prior notice of such work. Notwithstanding the foregoing, in the event of an emergency, the City shall not be required to provide prior notice and may use heavy construction equipment as it reasonably deems necessary to effect such repair. In exercising the Waterfront Maintenance Area Access Easement, the City shall use reasonable efforts to minimize damage to the Access Streets and the Retained PAA. The City shall be liable for any damage to the Access Streets or the Retained PAA resulting from the City's exercise of the Waterfront Maintenance Area Access Easement and shall indemnify and hold harmless each of the Indemnified Parties from and against any and all Claims arising from the City's exercise of its rights under the Waterfront Maintenance Area Access Easement, or the negligence of the City, its agents, servants or employees in undertaking its obligations under the Waterfront Maintenance Area Access Easement, unless such Claims arise by reason of the negligence, recklessness or willful acts of the Indemnified Parties.

10.04 **Buffer Area Maintenance Easement**. Declarant agrees to grant the Buffer Area Maintenance Easement to permit the City and its respective employees, contractors,

subcontractors and agents to enter upon, in or through any Buffer Area, pursuant to the Waterfront Maintenance Area Maintenance Agreement, for the purpose of maintaining, repairing and reconstructing the Buffer Areas. In exercising the Buffer Area Maintenance Easement, the City shall use reasonable efforts to minimize damage to any Buffer Area and the buildings abutting them. The City shall be liable for any damage to the Buffer Areas, and the buildings abutting them, resulting from the City's exercise of the Buffer Area Maintenance Easement and shall indemnify and hold harmless each Indemnified Party from and against any and all Claims arising from the City's or DPR's exercise of the Buffer Area Maintenance Easement, or the negligence of the City, its agents, servants or employees, in undertaking its obligations under the Buffer Area Maintenance Easement, unless such Claims arise by reason of the negligence, recklessness or willful acts of the Indemnified Parties.

10.05 **Comfort Station.** Following Substantial Completion of Public Access Area Phase 4, Declarant agrees to grant the Comfort Station Easement to permit the City and the general public access to, and use of, the Comfort Station. The Comfort Station shall be maintained by Declarant in accordance with the Retained PAA Maintenance Agreement to be delivered in connection with the Public Access Area Phase constructed in conjunction with the redevelopment of the Refinery Complex. It shall be cleaned of dirt and litter as necessary, but in no event less than once per day. Damaged or defective fixtures, equipment and materials, including, without limitation, toilets, sinks, pipes, paper towel dispensers, air dryers, tiles, painting, and signage, shall be promptly repaired in a good and workmanlike manner or promptly replaced. In order to ensure that the Comfort Station is properly maintained, Declarant shall conduct weekly inspections of the Comfort Station at such times as shall be appropriate to ensure minimum interference with public use of the Comfort Station. A log shall be maintained by Declarant containing the dates and times of all inspections and maintenance tasks, and a description of all repairs and replacements of equipment and materials pursuant to this Section 10.05. Such log shall be available for review by DPR upon request.

ARTICLE XI

ADMINISTRATION

11.01 **Hours of Operation**. Declarant acknowledges that the hours of operation of the Public Access Areas shall be determined by the City. Notwithstanding the foregoing, the City has advised Declarant that it intends that the Public Access Areas shall be open and accessible from 6:00 a.m. until 10:00 p.m. between April 15 and October 31 and from 7:00a.m. to 8:00 p.m. between November 1 and April 14. If the City wishes to change these hours, it shall consult with Declarant prior to implementing such change. The City further agrees that the hours of operation for the Public Access Areas shall be consistent with the hours of operation for other waterfront parks managed by DPR.

11.02 **Use of the Refinery Complex Open Space**. In addition to, and without limiting the generality of, the administrative restrictions and guidelines governing usage of the Public Access Areas provided for herein or by Legal Requirements, Declarant acknowledges that the Refinery Complex Open Space shall be subject to DPR Rules and Regulations.

11.03 **Maintenance of the Waterfront Maintenance Areas by City**. Commencing on each Transfer Date, the City shall be solely responsible for maintenance of the portion of the Waterfront Access Areas conveyed to the City on such Transfer Date, as well as the Buffer Areas appurtenant thereto. The City acknowledges and agrees that Declarant shall have no obligation or responsibility for the maintenance or repair of the Waterfront Maintenance Areas from and after the conveyance of the Waterfront Access Areas to the City. The City further agrees that it shall maintain the Waterfront Maintenance Areas pursuant to the terms and conditions of the Waterfront Maintenance Area Maintenance Agreement.

11.04 **Maintenance of Retained PAA Maintenance Areas and Access Streets**. From and after each Transfer Date, Declarant shall be solely responsible for the maintenance of and repairs to the Comfort Station, the Retained PAA Maintenance Areas and the Access Streets over which the transfer of a Public Access Easement to the City has theretofore become effective (the "**Maintenance Obligation**"). The Maintenance Obligation requires that Declarant maintain the Retained PAA Maintenance Areas in accordance with the provisions of the Retained PAA Maintenance Agreement, and maintain the Access Streets in accordance with the provisions of a builders pavement plan approved by DOT for the Access Streets.

11.05 **Private Access to Waterfront Maintenance Areas**. Declarant acknowledges that any private access from a private residence in the Proposed Development directly to the Waterfront Maintenance Areas is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such private access to the Waterfront Maintenance Areas.

11.06 **Commercial Access to Waterfront Maintenance Areas**. Declarant acknowledges that any direct access to the Waterfront Maintenance Areas from commercial establishments in the Proposed Development is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such commercial access to the Waterfront Access Areas.

11.07 **Commercial and Non-Public Uses of Waterfront Maintenance Areas**. Declarant acknowledges that any commercial use of the Waterfront Maintenance Areas is subject to review and approval by DPR, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the operation of such commercial uses in the Waterfront Maintenance Areas.

ARTICLE XII

ENFORCEMENT

12.01 **Failure to Make Annual Waterfront Maintenance Area Maintenance Payment**. If Declarant fails to make the Annual Waterfront Maintenance Area Maintenance Payment by the date set forth in Section 7.04 and such default is not cured within fifteen (15) days after receipt by Declarant of written notice of such failure, the City shall have the right to draw upon the Waterfront Maintenance Area Maintenance Security, as well as, subject to the provisions of Section 12.05(b) hereof, such other rights as may be available to it at law or equity

and as are provided under this Declaration. If the City has drawn down on the Waterfront Maintenance Area Maintenance Security pursuant to this Section, Declarant shall, within sixty (60) days of such draw, deposit with DPR an amount equal to the amount so drawn.

12.02 **Denial of Public Access**. If DPR has reason to believe that the use and enjoyment of the Public Access Areas by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the Public Access Easements is in violation of the provisions of this Declaration, the City shall have, after (a) notice to Declarant and (b) an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space.

12.03 **Enforcement by City; No Enforcement by Third Parties**.

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

(b) No Person other than Declarant, any Mortgagee, all holders of all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property and, from and after the Association Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

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

12.05 **Notice and Cure**.

(a) Before any agency, department, commission or other subdivision of the City institutes any proceeding or proceedings to enforce any of the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, it shall give Declarant thirty (30) days written notice of such alleged breach or other violation, during which period Declarant shall have the opportunity to effect a cure of such alleged breach or other violation, except that such right to cure shall not apply to the failure to notify Corporation Counsel under the provisions of Section 7.07 hereof. If Declarant commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure.

(b) If Declarant fails to cure a breach or other violation under this Declaration within the applicable grace period provided in Section 12.05(a), then, prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Declarant in connection with such failure, the City shall give any Mortgagee (other than the holder of a mortgage secured by a condominium unit or other individual residential unit), which has notified the City of its interest in the Subject Property, thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

(c) If after due notice as set forth in this Section, Declarant and the Mortgagee fail to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

(d) Notwithstanding the foregoing, in the event of a denial of public access of an ongoing nature or interference on a continuing basis with the City's rights under the Waterfront Maintenance Area Access Easement, the cure period to which Declarant shall be entitled shall be reduced to twenty-four (24) hours from Declarant's receipt of notice thereof. If such denial of access or interference continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction, and the provisions of Section 12.05 shall not apply to such denial of public access.

ARTICLE XIII

MISCELLANEOUS

13.01 **Effective Date; Lapse; Cancellation**.

(a) This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date.

(b) Promptly, and no later than ten (10) days after Final Approval of the Applications and prior to application for any building permit relating to the Subject Property, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Applications and required by this Declaration to be recorded in public records, in the Register's Office, indexing them against the entire Subject Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents from the Register's Office. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(c) Notwithstanding anything to the contrary contained in this Declaration, if all Approvals given in connection with the Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Commission so certified by the Register's Office. If some of the Approvals given in connection with the Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration in accordance with Section 13.07 hereof.

13.02 **Binding Nature; Successors**.

(a) The provisions of this Declaration shall be covenants running with the land and shall inure to the benefit of, and bind, the respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided that no Mortgagee shall have any performance or payment obligations under this Declaration unless and until such Mortgagee succeeds to a Possessory Interest), and all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property (provided that no such individual unit mortgagee shall have any performance or payment obligations under this Declaration unless and until such mortgagee succeeds to a Possessory Interest) and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property. Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

(b) Notwithstanding anything to the contrary contained in this Declaration, (i) neither the Association nor any Unit Interested Party (other than Declarant, if Declarant is a Unit Interested Party) shall have any obligations under this Declaration to construct the Public Access Areas, and (ii) no owner of an Affordable Housing Unit shall have any obligation with respect to or be subject to levy or execution for the Funding Obligation or maintenance of the Retained PAA Maintenance Areas. Notwithstanding the foregoing, in the event that a TCO or PCO has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure, and Declarant is no longer a Unit Interested Party, Declarant shall remain obligated as Declarant until a Notice of Final Completion has been issued for the applicable Public Access Area Phase.

13.03 **Limitation of Liability**.

(a) The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the

collection of any money judgment recovered against Declarant or its successors and assigns, and no other property of Declarant or its principals, partners, shareholders, directors, members, officers or employees or successors and assigns 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, and Declarant shall have no personal liability under this Declaration. In the event that any building in the Proposed Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against selected individual units only. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any Mortgage, the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of Article XV. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

(b) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such successor-in-interest is the holder of a fee interest in, or is a Party in Interest of, the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in interest's interest.

13.04 **Governing Law**. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

13.05 **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 and the judgment of such court shall be upheld on final appeal, or the time for further review of

such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

13.06 **Applications**. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

13.07 **Modifications**.

(a) This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval of the Commission, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation. Declarant shall not modify this Declaration so as to make any Affordable Housing Unit subject to the Funding Obligation or the Maintenance Obligation or to assessment for either of the foregoing during the term of any "Lower Income Housing Plan Written Agreement," entered into between Declarant and the City, acting through the New York City Department of Housing Preservation and Development.

(b) Notwithstanding the provisions of Section 13.07(a) above, any modification to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest.

(c) Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof, (i) all Unit Interested Parties, (ii) all boards of managers of any condominium association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(d) From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under this Declaration. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefore, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing

this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

13.08 **Offering Plan**. In the event that cooperative or condominium units are offered for sale in any building in the Proposed Development, a summary of the terms of this Declaration shall be included in any offering plan issued in connection therewith. Such offering plan shall clearly identify the rights and obligations pursuant to this Declaration of any cooperative or condominium that may be formed.

13.09 **Property Owners' Association**. In order to perform Declarant's obligations with respect to the Maintenance Obligation and the Annual Waterfront Maintenance Area Maintenance Payment, to renew and maintain the Waterfront Maintenance Area Maintenance Security, and not to prevent access by the public to the Public Access Areas in violation of the provisions hereof, Declarant shall cause to be organized a property owners' association (the "**Association**") upon the earliest of the following occurrences: (i) the issuance of a TCO for any portion of the Proposed Development (A) governed by a condominium regime, (B) conveyed to a housing corporation to be governed by a cooperative regime, or (C) governed by such other legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners, (ii) a fee interest in any portion of the Subject Property (not including a fee interest conveyed pursuant to individual residential condominium or cooperative housing unit sales) is conveyed to any other Person, or (iii) the first Transfer Date, provided, however, that the buildings built pursuant to the corresponding Development Phase are governed by a condominium regime, conveyed to a housing corporation to be governed by a cooperative regime, or such other legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners. If an Association is required to be formed as set forth above, the provisions of Article XV shall be operative.

13.10 **Indemnification**. 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 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 Declarant's obligations under this Declaration, provided, however, that nothing in this Section 13.10 shall impose on the Association any indemnification obligations other than with respect to the obligations set forth in Section 13.07(d) and Section 13.09 and the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

13.11 **Exhibits**. Any and all exhibits, appendices, or attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

13.12 **Acknowledgement of Covenants**. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property.

13.13 **Representations**. Declarant represents and warrants that there are no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

13.14 **Further Assurances**. Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

13.15 **Estoppel Certificates**. Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Agreement is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

13.16 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

ARTICLE XIV

NOTICES

14.01 **Notices**.

(a) All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If intended for Declarant, to: The Refinery LLC
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

With a copy to: Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

If intended for the City, to:	Director, Department of City Planning 22 Reade Street New York, New York 10007 and Commissioner, Department of Parks and Recreation The Arsenal, Central Park New York, New York 10021
With a copy to:	Office of the General Counsel New York City Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
If intended for DCP, to:	Director, Department of City Planning 22 Reade Street New York, New York 10007
With a copy to:	Office of the General Counsel New York City Department of City Planning 22 Reade Street New York, New York 10007
If intended for DPR, to:	Commissioner, Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
With a copy to:	Office of the General Counsel Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
If intended for DEP, to:	Deputy Commissioner New York City Department of Environmental Protection 59-17 Junction Blvd Flushing, New York 11373

If intended for OER, to: Mayor's Office of Environmental Remediation
100 Gold Street, 2nd Floor
New York, NY 10038

(i) If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

(ii) From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the City and DPR of its address for notice.

(b) Declarant, DCP or DPR or their respective representatives, by notice given as provided in this paragraph, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE XV

PROPERTY OWNERS' ASSOCIATION

15.01 **Applicability**. The provisions of this Article XV shall only apply if Declarant shall form an Association with respect to the Subject Property.

15.02 **Filing Requirements**. The Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. Declarant shall certify in writing to the Chair and the Commissioner, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York Secretary of State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fails to comply with the provisions of this Section 15.02, the City may proceed with any available enforcement measures.

15.03 **Obligations**. The Association shall be established to, among other things, assume Declarant's Maintenance Obligation and obligations to pay the Annual Waterfront Maintenance Area Maintenance Payment and to renew and maintain the Waterfront Maintenance Area Maintenance Security as set forth in this Declaration.

15.04 **Members**. The members of the Association (the "**Association Members**") shall consist of (a) the fee owners of any portion of the Proposed Development other than the City and any Unit Interested Party, (b) the boards of managers of such portion of the Proposed Development as are subject to a declaration of condominium, and (c) the boards of directors of such portion of the Proposed Development as are subject to a cooperative regime.

15.05 **Powers**. To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

(a) impose fees or assessments against the Association Members, for the purpose of collecting funds reasonably necessary to satisfy the obligations of the Association pursuant to this Declaration;

(b) collect, receive, administer, protect, invest and dispose of funds;

(c) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article XV;

(d) 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 obligations of the Association pursuant to this Declaration; and

(e) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law.

15.06 **Successors**. Every deed conveying title to, or a partial interest in, the Subject Property (other than a deed to an Affordable Housing Unit or a deed delivered to the City in connection with the transfer of title to the Waterfront Access Areas to the City pursuant to Section 7.03, every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that (a) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration, and (b) maintenance of the Retained PAA Maintenance Areas, the Access Streets, and the cost of maintenance of the Waterfront Maintenance Areas, and all other obligations of the Association under this Declaration, are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

15.07 **Assessments**.

(a) The Association shall assess all real property within the Subject Property, other than the portion thereof consisting of the Waterfront Access Areas and other than Affordable Housing Units, (the "**Assessment Property**") in order to obtain funds for the Maintenance Obligation, the Funding Obligation, and for any other obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the boards of managers of a condominium, a reasonable basis for such proration shall be conclusively established if the Attorney General accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration. The boards of managers of each condominium shall collect such assessments from the owners of individual residential or commercial units ("**Unit Owners**"), other than the Affordable Housing Unit for delivery to the Association in accordance with the condominium declarations. The liability of any fee owner of any portion of the Assessment Property shall be

limited to such owner's interest in the Assessment Property, on an in rem basis only, for the collection of any money judgment recovered against such owner, and no other property of such owner shall be subject to levy, execution, or other enforcement procedure for satisfaction of such judgment and such owner shall have no personal liability under this Declaration, and the liability of any Unit Owner is limited to such Unit Owner's obligation to pay his or her prorated share of the periodic assessment to the Association or to the condominium association.

(b) Each periodic assessment by the Association, together with such interest, costs and reasonable attorney's fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney's fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the board of managers of a condominium, 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 such condominium for unpaid common charges of the condominium. The periodic assessments charged to an Association Member which is the board of managers of a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section 15.07. Any Unit Owner may eliminate the Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association to the condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Areas or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Unit Owner's interest in the Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) Notwithstanding any contrary term set forth in this Declaration, the Association Members who may be assessed for the operation and maintenance of the Public Access Areas shall not include the holder of a mortgage or other lien encumbering (i) the fee

estate in the Assessment Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee's estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any Parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "**Possessory Interest**") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article XV until the mortgagee or lien holder succeeds to such Possessory Interest.

[NO FURTHER TEXT ON THIS PAGE]

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

THE REFINERY LLC,
a New York limited liability company

By: _____
Name:
Title:

The City hereby joins in the execution of this Declaration solely for the purpose of confirming its obligations hereunder.

THE CITY OF NEW YORK

By: _____
Name:
Title: Deputy Mayor

[Notary page on the following page]

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the ____ day of _____ _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the ____ day of _____ _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

TABLE OF CONTENTS

EXHIBITS

EXHIBIT A

LEGAL DESCRIPTION

PARCEL I (BLOCK 2414 LOT 1)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Grand Street with the westerly side of Kent Avenue;

RUNNING THENCE westerly along the southerly side of Grand Street and on a line which would be a continuation of the southerly side of Grand Street, if said street were extended westerly 576 feet 11-3/8 inches to the pierhead line of the East River as adopted by Chapter 763 of the Law of 1857 approved by the Secretary of War on February 25, 1918;

THENCE southerly along the said pierhead line 1297 feet 6 inches to a point where the same would be intersected by the northerly side of South 5th Street, if the northerly side of South 5th Street were extended westerly;

THENCE easterly along the northerly side of South 5th Street, if same were extended westerly and the northerly side of South 5th Street, 496 feet 8 inches to the corner formed by the intersection of the northerly side of South 5th Street with the westerly side of Kent Avenue;

THENCE northerly along the westerly side of Kent Avenue, 1320 feet 7-3/4 inches to the corner the point or place of BEGINNING.

PARCEL II (BLOCK 2428 LOT 1)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly side of Kent Avenue with the southerly side of South 3rd Street;

RUNNING THENCE easterly along the southerly side of South 3rd Street, 320 feet;

THENCE southerly, 180 feet to the northerly side of South 4th Street;

THENCE westerly along the northerly side of South 4th Street, 320 feet to the corner formed by the intersection of the northerly side of South 4th Street with the easterly side of Kent Avenue;

THENCE northerly along the easterly side of Kent Avenue, 180 feet to the point or place of BEGINNING.

EXHIBIT B

DEVELOPMENT PLANS

(attached)

EXHIBIT C

PUBLIC ACCESS AREA PLANS

(attached)

EXHIBIT D

PARTIES-IN-INTEREST CERTIFICATIONS

(attached)

EXHIBIT E

FORM OF WAIVER OF PARTY-IN-INTEREST

(attached)

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this _____ day of June, 2010 by DOMINO MEZZ HOLDINGS LLC (the "Mortgagee"), having its principal place of business at _____.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of those certain mortgages set forth on **Schedule A** annexed hereto and made a part hereof (collectively, the "Mortgage");

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2414, Lot 1 and Block 2428, Lot 1 on the Tax Map of the City of New York, County of Kings, and more particularly described in **Schedule B** 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 The Refinery LLC;

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject Property;

WHEREAS, the Declaration, which is intended to be recorded in the Office of the City Register of the City of New York, Kings County 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.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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.

DOMINO MEZZ HOLDINGS LLC

By: _____
Name:
Title:

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the ____ day of _____ _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

Schedule A

The Mortgage

1. ACQUISITION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT made by THE REFINERY LLC to THE COMMUNITY PRESERVATION CORPORATION dated 6/30/2004, recorded 1/24/2005 as CRFN 2005000042913 to secure the sum of $31,000,000.00 and interest.

   a. ASSIGNMENT OF MORTGAGE 1 made by THE COMMUNITY PRESERVATION CORPORATION to MARATHON STRUCTURED FINANCE FUND L.P. dated as of 7/11/2005, recorded 8/8/2005 as CRFN 2005000442090.

2. GAP MORTGAGE made by THE REFINERY LLC to MARATHON STRUCTURED FINANCE FUND L. P. dated as of 7/19/2002, recorded 8/8/2005 as CRFN 2005000442091 to secure the sum of $23,722,584.00 and interest.

   a. CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT made between THE REFINERY LLC and MARATHON STRUCTURED FINANCE FUND L.P. dated as of 7/19/2005, recorded 8/8/2005 as CRFN 2005000442092. Consolidates Mortgages 1 and 2 into a single lien of $54,722,584.00.

   b. ASSIGNMENT OF MORTGAGE made by MARATHON STRUCTURED FINANCE FUND, L.P. to LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE MARATHON REAL ESTATE CDO 200 6-1 GRANTOR TRUST dated as of 5/18/2006, recorded 8/17/2006 as CRFN 2006000465541. Assigns Mortgages 1 and 2 as consolidated.

   c. ASSIGNMENT OF MORTGAGE made by LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE MARATHON REAL ESTATE CDO 2006-1 GRANTOR TRUST to DOMINO MEZZ HOLDINGS LLC dated as of 9/10/2007, recorded 10/2/2007 as CRFN 2007000501501. Assigns Mortgages 1 and 2 as consolidated.

3. SECOND MORTGAGE made by THE REFINERY LLC to MARATHON STRUCTURED FINANCE FUND L.P. dated as of 7/19/2005, recorded 8/8/2005 as CRFN 2005000442093 to secure the sum of $6,149,350.00 and interest.

   a. ASSIGNMENT OF MORTGAGE made by MARATHON STRUCTURED FINANCE FUND, L.P. to LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE MARATHON REAL ESTATE CDO 200 6-1 GRANTOR TRUST dated as of 5/18/2006, recorded 10/2/2007 as CRFN 2007000501500. Assigns Mortgage 3.

   b. ASSIGNMENT OF MORTGAGE made by LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE MARATHON REAL ESTATE CDO 2006-1 GRANTOR TRUST to DOMINO MEZZ HOLDINGS LLC dated as of 9/10/2007, recorded 10/2/2007 as CRFN 2007000501501. Assigns Mortgage 3.

4. GAP MORTGAGE made by THE REFINERY LLC to DOMINO MEZZ HOLDINGS LLC dated as of 9/10/2007, recorded 10/2/2007 as CRFN 2007000501503 to secure the sum of $23,941,655.44 and interest.

   a. CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT made between THE REFINERY LLC and DOMINO MEZZ HOLDINGS LLC dated as of 9/10/2007, recorded 10/2/2007 as CRFN 2007000501504. Consolidates Mortgages 1 through 4 into a single lien of $84,813,589.44.

5. SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT made by THE REFINERY LLC to DOMINO MEZZ HOLDINGS LLC dated as of 9/10/2007, recorded 10/2/2007 as CRFN 2007000501505 to secure the sum of $16,741,000.00 and interest.

6. THIRD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT made by THE REFINERY LLC to DOMINO MEZZ HOLDINGS LLC dated as of 10/10/2008, recorded 10/27/2008 in CRFN 2008000420482 to secure the sum of $18,645,410.56 and interest.

Schedule B

Legal Description

PARCEL I (BLOCK 2414 LOT 1)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Grand Street with the westerly side of Kent Avenue;

RUNNING THENCE westerly along the southerly side of Grand Street and on a line which would be a continuation of the southerly side of Grand Street, if said street were extended westerly 576 feet 11-3/8 inches to the pierhead line of the East River as adopted by Chapter 763 of the Law of 1857 approved by the Secretary of War on February 25, 1918;

THENCE southerly along the said pierhead line 1297 feet 6 inches to a point where the same would be intersected by the northerly side of South 5th Street, if the northerly side of South 5th Street were extended westerly;

THENCE easterly along the northerly side of South 5th Street, if same were extended westerly and the northerly side of South 5th Street, 496 feet 8 inches to the corner formed by the intersection of the northerly side of South 5th Street with the westerly side of Kent Avenue;

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EXHIBIT F

ALTERNATE PHASING PLAN

(attached)

EXHIBIT G

PUBLIC ACCESS AREA CONCEPT DRAWINGS

(attached)

EXHIBIT H

FORM OF RETAINED PAA MAINTENANCE AGREEMENT

(attached)

RETAINED PAA MAINTENANCE AGREEMENT

THIS RETAINED PAA MAINTENANCE AGREEMENT (this "**Agreement**"), made as of _____, 200__ _____ ___, 20__, by and among _____, a _____ (["**Entity**"), _____ Property Owners Association, Inc., a New York not-for-profit corporation having an address at _____ (the "**POA**"; and together with Entity, collectively,]"**Owner**") and the City Of New York ("**City**"), acting by and through the New York City Department of Parks & Recreation ("**DPR**"), having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065.

RECITALS

WHEREAS, [Entity] is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2414, Lot ___, on the tax map of the City of New York (the "**Subject Property**") as more particularly described on Exhibit A annexed hereto and made a part hereof;

WHEREAS, [the POA is a property owners' association comprising all of the fee owners of the Subject Property and the boards of managers of any portion of the Subject Property which is subject to a declaration of condominium, and with the responsibility for paying certain costs in connection with the Waterfront Access Areas (as defined in the Declaration (hereinafter defined))];

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**") and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, Owner intends to develop the Subject Property in five (5) phases by constructing three (3) new predominantly residential buildings and one (1) new mixed use building, and redeveloping one (1) existing building to a residential, retail and community facility use (collectively, the "**Proposed Development**"), one or more of which buildings may have been developed prior to the date hereof;

WHEREAS, Owner or its predecessor in interest has submitted application No. [_____], and application No. [_____], … (said applications, collectively, the "**Applications**") to the Department of City Planning ("**DCP**") requesting that the Chair of the City Planning Commission (the "**Chair**") certify that the drawings (the "**Drawings**") submitted with the Applications comply with the requirements of Article VI. Chapter 2 of the Zoning Resolution;

WHEREAS, in connection with the approval by the Chair of the Applications, Owner or its predecessor in interest executed, delivered and recorded a restrictive declaration, dated _____ ___, 20__, governing, *inter alia*, the development of the Subject Property (the "**Declaration**"), a copy of which is attached hereto as Exhibit B;

WHEREAS, [Entity], or its predecessor in interest, has completed Public Access Area Phase 2 (as defined in the Declaration);

WHEREAS, [Entity], or its predecessor in interest, has constructed the Retained PAA Maintenance Areas (as defined in the Declaration) appurtenant to Public Access Area Phase [__];

WHEREAS, [FOR COMFORT STATION PHASE, REPLACE THE PRECEDING RECITAL WITH THE FOLLOWING: [Entity], or its predecessor in interest, has constructed the Retained PAA Maintenance Areas (as defined in the Declaration) appurtenant to Public Access Area Phase 4 and the Comfort Station (as defined in the Declaration); as used in this Agreement, the term "Retained PAA Maintenance Areas" shall mean, collectively, the Retained PAA Maintenance Areas (as defined in the Declaration) and the Comfort Station.]

WHEREAS, pursuant to the terms of the Declaration, upon completion of any Public Access Area Phase which includes any Retained PAA Maintenance Areas, [Entity], or its predecessor in interest, shall convey to the City a permanent access easement for the use and enjoyment of the Retained PAA Maintenance Areas by the public and [Entity], or its predecessor in interest, has conveyed or is about to convey such public access easement to the City;

WHEREAS, [FOR COMFORT STATION PHASE, REPLACE THE PRECEDING RECITAL WITH THE FOLLOWING: pursuant to the terms of the Declaration, upon completion of Public Access Area Phase [4], [Entity], or its predecessor in interest, shall convey to the City a permanent access easement for the use and enjoyment of the Retained PAA Maintenance Areas by the public and a permanent easement for the use and enjoyment of the Comfort Station, and [Entity], or its predecessor in interest, has conveyed or is about to convey such easements to the City;]

WHEREAS, pursuant to the terms of the Declaration, Owner has agreed to maintain and operate the Retained PAA Maintenance Areas and to execute this Retained PAA Maintenance Agreement;

WHEREAS, Owner and the City wish to provide for their respective rights and obligations in connection with the maintenance and operation of the Retained PAA Maintenance Areas; and

WHEREAS, it is the intent of the parties that the Retained PAA Maintenance Areas be maintained in accordance with the standards and specifications set forth in this Agreement

NOW, THEREFORE, in consideration of the foregoing, Owner and the City agree as follows:

I. DEFINITIONS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Declaration.

1.01. "**Budget**" shall have the meaning set forth in Section 2.02(b) of this Agreement.

1.02. "**Commissioner**" shall mean the Commissioner of DPR or any successor to the jurisdiction thereof.

1.03. "**Promenade Activities**" shall have the meaning set forth in Section 4.02 of this Agreement.

II. MANAGEMENT

2.01. Obligation to Maintain. Owner shall provide or, in Owner's sole discretion, cause to be provided, all services required for the maintenance and repair of the Retained PAA Maintenance Areas in accordance with the provisions of this Agreement and to the reasonable satisfaction of the Commissioner, provided that the Commissioner shall not require a higher level of maintenance than is customarily required under similar maintenance and operation agreements or similar agreements entered into pursuant to the Zoning Resolution. Such services shall include keeping and maintaining the Retained PAA Maintenance Areas in good condition and making replacements, if needed, in accordance with the terms of this Agreement.

2.02. Budget

(a) On an annual basis, Owner shall deliver to the Commissioner (i) a statement setting forth the costs and expenses of maintenance and operation of, and describing the maintenance work performed in respect of, the Retained PAA Maintenance Areas during the immediately preceding calendar year (or if Owner utilizes a fiscal year which does not correspond to a calendar year, the immediately preceding fiscal year) and (ii) a proposed budget for the current calendar or fiscal year, as the case may be (the "**Proposed Budget**"). Owner shall not be required to prepare more than one Budget in each year.

(b) Within thirty (30) calendar days of receipt by the Commissioner of the Proposed Budget, the Commissioner shall approve or disapprove said Proposed Budget, such approval not to be unreasonably withheld or denied. If the Commissioner disapproves such Proposed Budget, the Commissioner shall state in writing the reasons for such disapproval. Owner shall thereafter submit a revised Proposed Budget and the Commissioner, exercising reasonable judgment, shall within thirty (30) calendar days of receipt of such revised Proposed Budget, approve or disapprove the revised Proposed Budget. In the event of a further disapproval, Owner shall submit further revised Proposed Budget(s) and the Commissioner shall approve or disapprove same, in the manner set forth herein. The Proposed Budget approved by the Commissioner pursuant to this Section 2.02, or determined in accordance with Section 3.06(b) hereof, shall be referred to hereafter as the "**Budget**"). Notwithstanding anything to the contrary set forth in this Section 2.02, a determination by the Commissioner pursuant to Section 3.06(b) shall be conclusive to establish the amount of the approved Budget for the then applicable year.

III. MAINTENANCE AND REPAIR

3.01. In General. Owner shall be responsible for the ordinary maintenance and repair of the Retained PAA Maintenance Areas in accordance with the standards set forth in this Article III and consistent with an "acceptable" rating under the Parks Inspection Program, and consistent with the Budget. All such maintenance shall be performed in a good and worker-like manner.

3.02. Cleaning.

(a) Dirt, litter and obstructions shall be removed, as needed, and leaves collected and removed, as needed, to maintain the Retained PAA Maintenance Areas in a clean, neat and good condition.

(b) All walkways, sidewalks, lighting and all other improvements and facilities installed in the Retained PAA Maintenance Areas 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 painted over or removed, as appropriate to the nature of the surface, within forty-eight (48) hours of its appearance.

(d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reason whatsoever, shall be promptly removed.

3.03. Snow Removal. Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than twenty-four (24) hours after each snowfall or accumulation of ice.

3.04. Landscape Maintenance. In addition to the obligations set forth in Section 3.02 hereof, the maintenance program for the planted portions of the Retained PAA Maintenance Areas shall consist 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 second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

(i) Remove any winter protectives from trees, shrubs and other planting materials.

(ii) Remove all landscaping debris including leaves and dead branches.

(iii) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form.

(iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(v) Apply commercially available nitrogen-rich fertilizer to trees, shrubs, planting materials 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 grassed areas as needed.

(b) Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

(i) Rake and collect leaves from Retained PAA Maintenance Areas.

(ii) Wrap trees, shrubs and other plant materials as necessary to ensure adequate winter protection.

(iii) Apply commercially available nitrogen-rich fertilizer to all lawn areas.

(iv) Reseed grassed 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. The following work shall be undertaken and carried out 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 grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.

(iv) Weed as needed, no less than on a bi-weekly basis.

3.05. Repairs and Replacement. Repairs and replacements of park facilities within the Retained PAA Maintenance Areas, including, without limitation, furnishings, equipment and light bulbs, shall occur as needed to maintain such facilities in good order and working condition. Owner shall exercise due diligence in commencing the repair or replacement of same as promptly as possible, and subject to the notice requirements of Section 4.03 hereof, as applicable, and in completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be consistent with the Final Public Access Area Plans (as defined in the Declaration). Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Retained PAA Maintenance Areas:

(a) Benches, Bleachers or Other Seating: 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. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

(c) Pavements: All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.

(d) Signage: All park 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. Such replacement signage shall be subject to the prior review and approval of DPR.

(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 to match the installed color.

(f) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size. In the event of the loss of more than ten (10) trees or of all trees of any species, Owner shall consult with DPR and provide appropriate replacements for such trees as determined by the Commissioner exercising reasonable judgment. Branches from mature trees that are at eye level (six feet or less from the ground) in an active area shall be pruned.

(g) Construction Defects & Hazardous Conditions: Owner shall periodically inspect the Retained PAA Maintenance Areas for construction defects and hazardous conditions and shall provide copies of inspection reports to DPR, together with a schedule for the prompt repair and remediation of any construction defects or hazardous conditions identified therein, as well as a description of any safety measures required on an interim basis to protect public safety.

(h) [FOR COMFORT STATION PHASE, ADD THE FOLLOWING: Fixtures, Equipment and Materials: Any damaged or defective fixtures, equipment and materials, including, without limitation, toilets, sinks, pipes, paper towel dispensers, air dryers, tiles, painting, and signage shall be promptly repaired and maintained, or replaced, as necessary.]

3.06. Retained PAA Maintenance Security.

(a) To secure its obligation to maintain the Retained PAA Maintenance Areas, prior to issuance of a TCO (as defined in the Declaration) for any Development Phase (as defined in the Declaration) (except the Phase 1 Development), Owner shall deliver the Retained PAA Maintenance Security (as defined in the Declaration) upon construction and conveyance of each Public Access Area Phase (as defined in the Declaration) to the City. The Retained PAA Maintenance Security shall be for a five (5) year term and shall be renewed prior to the expiration thereof. Failure to renew the Retained PAA Maintenance Security at least thirty (30) days prior to the expiration date of such retained PAA Maintenance Security shall constitute default under this Agreement. If the Retained PAA Maintenance Security is not renewed at least

thirty (30) calendar days prior to the expiration date of such Retained PAA Maintenance Security, and Owner is in default under this Agreement, then the City shall be entitled, following notice to Owner and a ten (10) day grace period within which to cure such default, to draw down on the Retained PAA Maintenance Security for the purpose of maintaining the Retained PAA Maintenance Areas in accordance with this Agreement. Owner shall promptly replenish any sums drawn down and used by the City for the maintenance of the Retained PAA Maintenance Areas so that the available Retained PAA Maintenance Security remains at the amount set pursuant to the terms of this Agreement.

(b) No less than thirty (30) days prior to opening to the public, Owner shall provide the initial Retained PAA Maintenance Security, which shall be in an amount that has been certified by a registered architect or landscape architect, approved by Owner, as being sufficient to cover 125% of the then current annual cost of maintaining the Retained PAA Maintenance Areas. The Retained PAA Maintenance Security shall be replaced or increased, as appropriate, every five (5) years with an irrevocable letter of credit or other security (such security shall be in such form as shall be reasonably acceptable to the City). In a year in which the Retained PAA Maintenance Security is required to be replaced (a "**Replacement Year**"), if a Budget for such Replacement Year has been approved in accordance with the provisions of Section 2.02 of this Agreement, the Retained PAA Maintenance Security shall be in an amount which is 125% of the Budget. If, in a Replacement Year, the Proposed Budget has not yet been approved within five (5) Business Days of the Date on which the Retained PAA Maintenance Security shall be replaced, the Retained PAA Maintenance Security shall be replaced or increased by the greater of (i) 125% of the Budget for the previous year, as adjusted based on changes in the CPI (as defined in the Declaration), or (ii) the Budget for the previous year increased by the percentage increase of the average of wages the of all published trades in the Labor Law §§ 220 and 230 Prevailing Wage Schedules, to be established by the New York City Comptroller's Office, measured from the year in which the last Retained PAA Maintenance Security was provided. Notwithstanding the previous sentence, upon approval of the Budget in accordance with Section 2.02 for such Replacement Year, Owner shall increase or decrease the Retained PAA Maintenance Security accordingly.

(c) Notwithstanding the above, at DPR's option, if prior to the expiration of any security, another security under the Restrictive Declaration is issued, Parks may require Owner to reissue any such earlier security, such that the earlier security will expire concurrently with any new security. The amount of the earlier issued security shall be determined as if the date of issue of the later security was the actual expiration date of the earlier issued security.

3.07. [FOR COMFORT STATION PHASE, ADD THE FOLLOWING: Comfort Station.

(a) Owner shall at all times keep the Comfort Station clean, litter-free, neat, fumigated, disinfected, deodorized, and in every respect sanitary. The Comfort Station shall be cleaned and maintained in accordance with PIP Standards, attached hereto as Exhibit C. Owner shall provide regular cleaning and maintenance services for the Comfort Station (up to and including the perimeter of the Comfort Station). Owner shall provide equipment maintenance contracts, or directly provide maintenance services deemed by DPR to be equivalent to service contracts, for the equipment on the Comfort Station. Owner shall adhere to the maintenance

schedules recommended by the manufacturers for all mechanical systems and equipment.

(b) Owner shall conduct inspections of the Comfort Station at least once a week to ensure that the Comfort Station is properly maintained, at such times as shall be appropriate to ensure minimum interference with public use of the Comfort Station. Owner shall maintain a log containing the dates and times of all inspections and maintenance tasks, and a description of all repairs and replacements of equipment and materials. Such log shall be available for review by DPR upon request.]

IV. OPERATION AND ACCESS

4.01. Hours of Operation. Owner acknowledges that the hours of operation of the Retained PAA Maintenance Areas shall be determined by the City. Notwithstanding the foregoing, the City has advised Owner that it intends that the Retained PAA Maintenance Areas shall be open and accessible from 6:00 a.m. until 10:00 p.m. between April 15 and October 31 and from 7:00 a.m. to 8:00 p.m. between November 1 and April 14. If the City wishes to change these hours, it shall consult with Owner prior to implementing such change. The City further agrees that the hours of operation for the Retained PAA Maintenance Areas shall be consistent with the hours of operation for other waterfront parks managed by DPR.

4.02. General Use of the Retained PAA Maintenance Areas.

(a) The Retained PAA Maintenance Areas may be used by all members of the public for activities (collectively, "**Promenade Activities**") appropriate to Retained PAA Maintenance Areas of similar design and size in New York City, including, but not limited to, the Promenade Activities listed in Section 4.02(b). With respect to any activities carried on in all or any part of the Retained PAA Maintenance Areas, no member of the public shall use the Retained PAA Maintenance Areas for an activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to the property or any person.

(b) For purposes of this Agreement, "Promenade Activities" shall include, but not be limited to, the following:

(i) walking or standing;

(ii) walking domestic animals (provided such animals are leashed and properly curbed);

(iii) jogging;

(iv) sitting on benches and seating areas provided in the Retained PAA Maintenance Areas; and

(v) use of public facilities provided in the Retained PAA Maintenance Areas for their intended purposes.

(c) For purposes of this Agreement, the term "**Special Event**" shall mean an organized assembly, meeting, exhibit, program, public performance or other public function or activity to which the public is invited which is permitted by DPR through its permitting process as in effect from time to time or by Owner pursuant to rules and regulations developed pursuant to Section 4.05.

(d) DPR shall have the right to organize and hold or permit Special Events, subject to the approval of Owner, in the Retained PAA Maintenance Areas. DPR shall give written notice to Owner of any proposed Special Event no later than thirty (30) Business Days prior to the date of such Special Event. Unless Owner notifies DPR in writing no later than ten (10) Business Days after receipt of such notice, DPR shall be allowed to hold such Special Event. DPR shall require the organizer(s) of any Special Event to post such security as Owner shall require for the purpose of insuring the security, clean-up and repair of the Retained PAA Maintenance Areas necessitated by said activities. Notwithstanding the provisions of the immediately preceding sentence, in the event that clean-up and repair is not undertaken by such organizers or the issuers of such security following any such Special Event, DPR shall promptly undertake, at its sole cost, such additional clean-up and repair as is necessitated by such Special Event.

(e) Owner shall have the right to organize and hold or permit Special Events, subject to the approval of DPR, in the Retained PAA Maintenance Areas. Owner shall give written notice to DPR of any proposed Special Event no later than thirty (30) Business Days prior to the date of such event. Unless DPR notifies Owner in writing no later than ten (10) Business Days after receipt of such notice, Owner shall be allowed to hold such Special Event. Owner shall require the organizer(s) of any Special Event to post reasonable security for the purpose of insuring the security, clean-up and repair of the Retained PAA Maintenance Areas necessitated by said activities. Notwithstanding the provisions of the immediately preceding sentence, in the event that clean-up and repair is not undertaken by such organizers or the issuers of such security following any such Special Event, Owner shall undertake such additional clean-up and repair as is necessitated by such Special Event.

4.03. Closure for Repairs. Owner may close all or a portion of the Retained PAA Maintenance Areas (a) for the repair, restoration, rehabilitation, renovation or replacement of the Retained PAA Maintenance Areas or pipes, utility lines or conduits or the equipment on or under the Retained PAA Maintenance Areas, or (b) in the event of an emergency or hazardous condition; provided that Owner will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect such repairs or remediation. Owner shall, wherever possible, perform such work in such a manner that the public will continue to have at least partial access to the Retained PAA Maintenance Areas; and shall exercise due diligence in the performance of such repairs or mitigation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly. Except in cases of emergency and when it is not possible, Owner shall provide seven (7) days advance notice to the public of any temporary closure of the Retained PAA Maintenance Areas (or any portion thereof) by posting signs at appropriate locations. In cases of emergency, Owner shall provide such public notice as soon as practicable and shall promptly give notice to DPR that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof. Owner shall, at

its sole cost and expense, promptly repair and restore the Retained PAA Maintenance Areas in accordance with the Final Public Access Area Plans upon completion of any work performed under this Section.

4.04. Staffing. Upon any portion of the Retained PAA Maintenance Areas being open and accessible to the public, Owner shall have the discretion to employ, appoint, select, contract with or otherwise hire the services of an appropriate number of qualified attendants, gardeners, groundskeepers, laborers, supervisors and similar personnel to maintain and operate such area in accordance with the terms of this Agreement. Owner shall at all times have the sole and exclusive right and power to select, appoint, employ, direct, supervise, control, remove, discipline and discharge all persons it employs for the purpose of carrying out its obligations under this Agreement.

4.05. Rules and Regulations.

(a) Owner shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the Retained PAA Maintenance Areas, which rules and regulations shall not conflict with DPR Rules and Regulations (56 RCNY §1-01 et seq.). In addition, Owner may from time to time modify the DPR Rules and Regulations, with the consent of DPR. Owner shall operate the Retained PAA Maintenance Areas in conformity with the DPR Rules and Regulations unless and until it promulgates rules and regulations of its own for use of the Retained PAA Maintenance Areas.

(b) Prior to instituting any rule or regulation or modifying any existing rule or regulation, Owner shall submit a copy of such rule or regulation or such proposed modification to DPR for approval.

(c) If DPR fails to object to a proposed rule, regulation or modification of an existing rule or regulation within thirty (30) Business Days of the submission of such rule, regulation or modification, DPR shall be deemed to have approved such rule, regulation or modification and the same shall, at the discretion of Owner, take effect. Notwithstanding the foregoing, if DPR subsequently objects to any such rule, regulation or modification of an existing rule, it shall be immediately rescinded. Any such rule, regulation or modification of an existing rule shall be posted in the Retained PAA Maintenance Areas in accordance with section 4.07 hereof.

4.06. Illumination. During the hours in which the Retained PAA Maintenance Areas is open, all pedestrian walkways and paths shall be illuminated from one half hour before sunset to one half hour after sunrise and such illumination shall be provided in accordance with the requirements set forth in Section 62-673 of the Zoning Resolution.

4.07. Signage. Upon the Retained PAA Maintenance Areas being open and fully accessible to the public as provided hereinabove, appropriate signage, indicating hours open to the public, accessibility to individuals with disability, the identity of Owner and the entity responsible for maintenance shall be provided in accordance with Section 62-674 of the Zoning Resolution and as shown on the Drawings. Any signage not shown on the Drawings shall be

approved in writing by DPR prior to installation of signage. Such signage shall be maintained and replaced as needed in accordance with the provisions of Section 3.05(d) of this Agreement.

V. ENFORCEMENT

5.01. Right of Access. Pursuant to the Declaration, Owner has granted the City, acting through DPR, the Waterfront Maintenance Area Access Easement (as defined in the Declaration) for the purpose of maintaining, repairing and reconstructing the Waterfront Access Areas. Pursuant to the Waterfront Maintenance Area Access Easement, the City and its respective employees, contractors, subcontractors and agents shall have the right to enter upon, in or through any portion of the Retained PAA, to perform such maintenance, repair and reconstruction. In the event that the City shall exercise its rights under the Waterfront Maintenance Area Access Easement to perform any work which involves the use of vehicles, including bulldozers, front end loaders and other similar construction equipment, the City shall provide Owner with five (5) calendar days notice, and only conduct such work between the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding holidays). Notwithstanding the foregoing, in the event of an emergency to repair any dangerous and unsafe conditions, the City shall not be required to provide prior notice and may use heavy construction equipment as it reasonably deems necessary to effect such repair. In exercising the Waterfront Maintenance Area Access Easement, the City shall use best efforts to minimize damage to the Access Streets and the Retained PAA. The City shall be liable for any damage to the Access Streets or the Retained PAA resulting from the City's exercise of the Waterfront Maintenance Area Access Easement and shall indemnify and hold harmless Owner and its respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's or DPR's exercise of the Waterfront Maintenance Area Access Easement, or the negligence of the City or DPR, its agents, servants or employees in undertaking its obligations under the Waterfront Maintenance Area Access Easement, unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Owner, its agents or its employees.

5.02. Default.

(a) If Owner fails to perform any of its obligations under this Agreement, the Commissioner shall give Owner thirty (30) days written notice of such alleged violation, during which period Owner shall have the opportunity to effect a cure. If the Commissioner finds that Owner has diligently commenced and diligently prosecuted efforts to effect a cure during such thirty (30) day period, then the aforesaid thirty (30) day period shall be extended for so long as Owner continues to proceed diligently with the effectuation of such cure. If the Commissioner finds that Owner is unable to commence to effect a cure of an alleged violation in the initial thirty (30) day period due to Force Majeure (as defined in the Declaration), then upon application by Owner, the Commissioner, in the exercise of his or her reasonable judgment and upon such conditions as he or she may deem appropriate, may allow an additional period of time in which to commence to effect a cure.

(b) If Owner fails to cure a violation within the applicable grace period provided in Section 5.02(a), then upon the expiration of said grace period, the Commissioner

shall give each Mortgagee thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

(c) Notwithstanding anything contained in this Agreement to the contrary (including, without limitation, Section 5.02(b)), the Commissioner may give forty-eight (48) hours notice with respect to any default by Owner which creates an imminent hazard to life or safety or constitutes an emergency condition. Owner shall promptly, within forty-eight (48) hours, cure or commence to cure such condition in accordance with the provisions of this Agreement.

(d) In the event that any alleged violation of this Agreement has not been cured within the grace period provided in Sections 5.02(a) and (b), DPR shall be entitled to draw down on the Retained PAA Maintenance Security and to apply such monies to the performance of such obligation and, subject to Section 5.05 hereof, shall be entitled to any other remedy available in law or at equity, except that such remedies shall not include termination of this Agreement. If DPR has drawn down the Retained PAA Maintenance Security as provided above, Owner shall within five (5) Business Days thereafter post a new Retained PAA Maintenance Security replacing the Retained PAA Maintenance Security drawn down by the City. Nothing set forth herein shall prevent DPR from performing any obligation of Owner not performed by Owner (after notice and a chance to cure in accordance with the provisions of this Agreement), in accordance with this Section, prior to drawing down on the Retained PAA Maintenance Security and then drawing down on the Retained PAA Maintenance Security to the extent necessary to reimburse or otherwise pay for such work. Further, nothing set forth herein shall prevent DPR from drawing down sooner on the Retained PAA Maintenance Security if it is proceeding under Section 5.02(c).

5.03. Binding on Successors. The restrictions, covenants and agreements set forth in this Agreement shall be binding upon Owner and any successor-in-interest only for the period during which Owner and any successor-in-interest is the holder of a fee interest in or is a party-in interest of the Subject Property and only to the extent of such fee interest or the interest rendering Owner a party-in-interest. At such time as the named Owner has no further fee interest in the Subject Property and is no longer a party-in-interest of the Subject Property, Owner's obligations and liability with respect to this Agreement shall wholly cease and terminate from and after the conveyance of Owner's interest and Owner's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Owner's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

5.04. Intentionally Omitted.

5.05. Limitation of Liability. The City shall look solely to the interest of Owner in the Subject Property on an in rem basis only, for the collection of any judgment recovered against Owner or the enforcement of any monetary remedy based upon any breach by Owner under this Agreement, and no other property of Owner shall be subject to levy, execution or other

enforcement procedure for the satisfaction of the monetary remedies of the City under or with respect to this Agreement, and Owner shall have no personal liability under this Agreement. In the event that any building in the Proposed Development is made subject to a declaration of condominium, every condominium unit (other than any condominium unit that contains only affordable housing units as defined in Section 62-352 of the Zoning Resolution) shall, as successor in interest to Owner, be subject to levy or execution for the satisfaction of any monetary remedies of the City, provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against individual units; and provided, further, that each such unit owner shall be liable under this Agreement only to the amount of such unit owner's prorated share, based on such unit owner's percentage interest in such condominium.

5.06. Denial of Access. The provisions of Section 12.02 of the Declaration are incorporated herein by reference.

VI. RIGHT OF ENTRY TO RETAINED PAA MAINTENANCE AREAS

6.01. Owner hereby grants the City, its agents, or its contractors, the right, after prior written notice of such intention to enter, to enter upon the Retained PAA Maintenance Areas upon a Maintenance Default (hereinafter defined) to perform Owner's maintenance obligations set forth herein until such time as Owner resumes the performance of such obligations. A "Maintenance Default" shall occur when Owner has failed to perform any of its maintenance obligations under this Agreement and neither Owner nor any Mortgagee has diligently commenced and diligently prosecuted efforts to effect a cure as provided in Section 5.02.

VII. INSURANCE

7.01. Owner shall at all times after Substantial Completion of the Retained PAA Maintenance Areas carry paid-up insurance of such type and with such limits as set forth in the Declaration.

7.02. Upon Substantial Completion of the Retained PAA Maintenance Areas, as determined by DPR in accordance with Section 6.04 of the Declaration, Owner shall file with DPR proof that it has all insurance policies required by the Commissioner in place and that such policies meet the requirements stated in this Section. If Owner chooses to meet this proof with an insurance certificate, the insurance certificate shall be accompanied by a sworn statement in a form prescribed by DPR from the insurance company or from a licensed insurance broker certifying that the insurance certificate may be relied upon as proof that the applicant has insurance that meets the requirements stated in this Article VII.

7.03. Owner shall provide a copy of any required policy within thirty (30) Business Days of a request for such policy to the DPR or the New York City Law Department.

7.04. Owner shall notify the insurance carrier in writing of any loss, damage, injury or accident or any claim or suit arising therefrom, immediately but not later than twenty (20) days after it learns of such event. Owner's notice to the carrier must expressly specify that "this notice is being given on behalf of the City and DPR as Additional Insureds as well as Owner as

Named Insured." Owner's notice to the insurance carrier shall contain the following information: the name of Owner, Owner's phone number, the date of the occurrence, the location (street address and borough) of the occurrence and the identity of the persons or things injured, damaged or lost. Owner's failure to comply with the provisions of this Section shall not be deemed a default under this Agreement unless such failure results in a denial of coverage to the City.

7.05. All insurance required under this Article VII shall be issued by companies which have an A.M. Best rating of at least A-7 or a Standard & Poor's rating of at least AA and are duly licensed to do business in the State of New York and must be in effect at all times when the Retained PAA Maintenance Areas is open to and usable by the public. In the event of cancellation thereof DPR shall be notified at least thirty (30) Business Days in advance thereof.

VIII. MISCELLANEOUS

8.01. Amendments. This Agreement may not be modified or amended except by a written instrument executed by Owner and DPR after consultation with the Chair.

8.02. Cancellation. This Agreement may not be canceled except by written instrument executed by Owner and DPR.

8.03. Notices. All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If to Owner: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

With a copy to: Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

If to DPR: New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065
Attn: Office of the General Counsel

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all

purposes hereunder five (5) Business Days after it shall be mailed, or, if delivered by hand, when actually received.

8.04. Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York.

8.05. Reliance by Third Parties. No person or entity other than Owner, the City, DPR or a legal representative, successor in interest or assignee of such party shall be entitled to rely on this Agreement or the performance of Owner or the City hereunder. This Agreement is not made for the benefit of any other person or entity and no such other person or entity shall be entitled to enforce or assert any claim arising out of or in connection with this Agreement.

8.06. Indemnity.

(a) Owner shall indemnify and hold harmless the City, DPR and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Owner's default under this Agreement (including, without limitation, if Owner is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement 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), or the negligence of Owner, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Owner shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(b) The City shall indemnify and hold harmless Owner and its respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's or DPR's default under this Agreement (including, without limitation, if the City or DPR is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement 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), or the negligence of the City or DPR, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Owner, its agents or its employees; provided, however, that the City's duty to indemnify, defend and hold harmless hereunder shall be subject to Owner's compliance with the provisions of Section 7.07 of the Declaration.

8.07. Right to Sue.

(a) Nothing contained herein shall prevent Owner from asserting any claim or action against the City arising out of the City's performance, or failure of performance as to any

of the City's obligations under this Agreement or the exercise, by the City, of any of its rights under this Agreement.

(b) Nothing contained herein shall prevent the City from asserting any claim or action against Owner arising out of Owner's obligations under this Agreement, or the exercise, by Owner of any of its rights under this Agreement.

8.08. Approvals. Wherever in this Agreement the certification, consent or approval of Owner, the Chair, or the Commissioner is required or permitted to be given, it is understood that time is of the essence and such certification, consent or approval will not be unreasonably withheld or delayed. If the Chair or Commissioner fails to act upon a request for an approval within the time limits provided in this Agreement, or where no time limits are provided, within a reasonable period of time, the City shall be deemed to have consented to, and will not oppose, expedited judicial review of any such failure to act.

8.09. Exhibits. The Exhibits attached hereto are incorporated into this Agreement.

8.10. Third Party Claims.

(a) In the event any claim is made or any action brought in any way relating to the Agreement herein (except any claim made or action brought by Owner, or any claim or any action brought by the City or any of its agencies or instrumentalities against Owner) Owner shall diligently render to DPR and/or the City of New York without compensation any and all assistance which DPR and/or the City of New York may require of Owner.

(b) Owner shall report to DPR and the Department of Law in writing within ten (10) business days of the initiation by or against Owner of any legal action or proceeding in connection with or relating to this Agreement

8.11. Recording. Upon receipt of the recorded, original Agreement, DPR will notify Owner and Owner's counsel of such receipt.

8.12. Binding Nature; Successors. The provisions of Section 13.02 of the Declaration are incorporated herein by reference

8.13. Severability. In the event that any provision of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by any court of competent jurisdiction after all appeals are exhausted or the time for appeal has expired, such provisions shall be severable and the remainder of the Agreement shall continue to be in full force and effect.

8.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

[ENTITY]

By: _____
Name: _____
Title: _____

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

By: _____
Name: _____
Title: _____

EXHIBIT A

EXHIBIT I

PERMITTED ENCUMBRANCES

1. Letters Patents, recorded in the Secretary of State's Office in Liber 44 cp 59 and Liber 44 cp 60.

2. Letters Patents recorded in Liber 1003 cp 142, Liber 842 cp 421, Liber 1557 cp 170, Liber 907 cp 352 and Liber 905 cp 195.

3. Commerce Grants recorded in Liber 1538 cp 249, Liber 1220 cp 387, Liber 1220 cp 388 and Liber 1220 cp 389.

Exceptions 1-3 above shall be considered a Permitted Encumbrance only if the title commitment includes affirmative insurances from the Title Company that the covenants and restrictions set forth therein have not been violated and that a future violation will not result in a forfeiture of reversion of title and that, as to the land and/or existing or future buildings or improvements located inshore (inland) of the bulkhead line (which bulkhead line is delineated on survey made by Joseph Nicoletti, P.c. dated 10/26/2001, re-dated to 6/28/2001 (the "**Survey**") and, with respect to the most southerly 74.50 feet of the premises inshore (inland) of the westerly line of the three-story building shown on the Survey, the exercise of any rights or remedies under or with respect to any of the letters patent or commerce grants will not result in a right of re-entry, in a forfeiture or loss of title to the insured, or the insured being cut off or subordinated.

4. Deed from The City of New York to The American Sugar Refining Company dated 11/3/1958, recorded 11/3/1958 in Liber 8676 Page 5.

5. Agreement made between The American Sugar Refining Company and The City of New York dated 7/14/1958, recorded in Liber 8660 Page 169.

6. Railroad Consents recorded in Liber 2092 cp 477, Liber 2241 cp 14, Liber 2241 cp 18, Liber 2133 cp 383 and Liber 2133 cp 393 (affects Kent Avenue only).

7. Waiver of Legal Grades recorded in Reel 3603 Page 1932. Policy insures the insured mortgagee that same contains no provision for forfeiture or reversion of title (affects block 2414 Lot 1 only).

8. Final Certificates of Eligibility from The New York City Department of Finance recorded in Reel 5979 Page 1411 and Reel 5979 Page 1421 and under CRFN 200300036223 and CRFN 2003000362224.

9. Rights of the Federal Government to enter upon and take possession without compensation of lands now or formerly lying below the high water mark of the East River.

Exception 9 above shall be considered a Permitted Encumbrance only if the title commitment includes affirmative insurances from the Title Company against loss or damage suffered due to the exercise upon the land of the rights referred to in said exception so as to require the removal, without fair value compensation (not exceeding the face amount of the Title Policy), of any improvements on said land or the taking of said land inshore of the bulkhead line (which bulkhead line is delineated on the Survey) and, with respect to the most southerly 74.5 feet of the premises inshore (inland) of the westerly line of the three-story building shown on the Survey.

10. Riparian rights and easements of others over the East River.

EXHIBIT J

FORM OF WATERFRONT MAINTENANCE AREA MAINTENANCE AGREEMENT

(attached)

WATERFRONT MAINTENANCE AREA MAINTENANCE AGREEMENT

THIS WATERFRONT MAINTENANCE AREA MAINTENANCE AGREEMENT (this "**Agreement**") is made as of _____ ___, 20__, by and among _____, a _____ ("**Entity**"), _____ Property Owners Association, Inc., a New York not-for-profit corporation having an address at _____ (the "**POA**"; and together with Entity, collectively, "**Owner**") and the City Of New York ("**City**"), acting by and through the New York City Department of Parks & Recreation ("**DPR**"), having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021.

RECITALS

WHEREAS, Entity is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2414, Lot ___, on the tax map of the City of New York (the "**Subject Property**") as more particularly described on Exhibit A annexed hereto and made a part hereof;

WHEREAS, the POA is a property owners' association comprising all of the fee owners of the Subject Property and the boards of managers of any portion of the Subject Property which is subject to a declaration of condominium, and with the responsibility for paying certain costs in connection with the Waterfront Maintenance Areas (as hereinafter defined);

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**") and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, Owner intends to develop the Subject Property in five (5) phases by constructing three (3) new predominantly residential buildings and one (1) new mixed use building, and redeveloping one (1) existing building to a residential, retail and community facility use (collectively, the "**Proposed Development**"), one or more of which buildings may have been developed prior to the date hereof;

WHEREAS, Owner or its predecessor in interest has submitted application No. [_____], and application No. [_____], ... (said applications, collectively, the "**Applications**") to the Department of City Planning ("**DCP**") requesting that the Chair of the City Planning Commission (the "**Chair**") certify that the drawings (the "**Drawings**") submitted with the Applications comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, in connection with the approval by the Chair of the Applications, Owner or its predecessor in interest executed, delivered and recorded a restrictive declaration, dated _____ ___, 2010 governing the development of the Subject Property (the "**Declaration**"), a copy of which is attached hereto as Exhibit B;

WHEREAS, pursuant to the Declaration, and the Public Access Area Plans annexed thereto, Owner or its predecessor in interest intends to construct on the Subject Property a Shore Public Walkway (as defined in the Declaration), the Supplemental Public Access Areas (as

defined in the Declaration) and the Refinery Building Open Space (as defined in the Declaration) (all of the foregoing, collectively, the "**Waterfront Access Areas**");

WHEREAS, the Waterfront Access Areas will be constructed pursuant to each Public Access Area Phase (as defined in the Declaration);

WHEREAS, pursuant to the Declaration, and the Public Access Area Plans annexed thereto, there will be an area between each building of the Proposed Development and the Waterfront Access Areas (each such area, a "**Buffer Area**") over which Owner intends to grant the Buffer Area Maintenance Easement (as defined in the Declaration) to the City;

WHEREAS, pursuant to the Declaration, upon Substantial Completion of each Public Access Area Phase, Owner will (a) convey to the City fee simple absolute title to the Waterfront Access Areas constructed pursuant to such Public Access Area Phase, (b) grant to the City the Buffer Area Maintenance Easement in connection with the Buffer Areas abutting the buildings constructed in connection with such Public Access Area Phase, and (c) grant to the City the Waterfront Maintenance Area Access Easement over the Retained PAA and Access Streets constructed pursuant to such Public Access Area Phase;

WHEREAS, pursuant to the Declaration, upon conveyance to the City of each portion of the Waterfront Access Areas, DPR shall be responsible for the maintenance and capital repair of such portion of the Waterfront Access Areas, together with the Buffer Areas constructed in connection therewith (the Waterfront Access Areas, together with the Buffer Areas, shall be hereinafter referred to as the "**Waterfront Maintenance Areas**");

WHEREAS, Entity, or its predecessor in interest, has, as of the date hereof, Substantially Completed construction of Public Access Area Phase 2 (as defined in the Declaration);

WHEREAS, pursuant to the Declaration, Entity or its predecessor in interest, has created the Waterfront Maintenance Area Maintenance Account (as defined in the Declaration) and has made the first required Annual Waterfront Maintenance Area Maintenance Payment, which amount will be increased upon the conveyance of each subsequent Public Access Area Phase;

WHEREAS, Entity, the POA and the City wish to provide for their respective rights and obligations in connection with the maintenance and operation of the Waterfront Maintenance Areas; and

WHEREAS, it is the intent of the parties that the Waterfront Maintenance Areas be maintained in accordance with the standards and specifications set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual obligations contained herein, the parties agree as follows:

1. DEFINITIONS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Declaration.

1.1 "**Commissioner**" shall mean the Commissioner of DPR or any successor to the jurisdiction thereof.

2. TERM

Commencing on the Transfer Date for a Public Access Area Phase, DPR shall be solely responsible for the ordinary maintenance of, and repairs to, the Waterfront Maintenance Areas constructed pursuant to such Public Access Area Phase, including, without limitation, the bulkhead, piles and other waterfront structures. DPR acknowledges and agrees that Owner shall thereafter have no obligation or responsibility for the maintenance, operation, repairs or improvement of the Waterfront Maintenance Areas constructed pursuant to such Public Access Area Phase.

3. SERVICES

3.1 General Scope. DPR will perform all ordinary maintenance and repairs, capital repairs and improvements, recreational, horticultural and security services for the Waterfront Maintenance Areas in accordance with the Zoning Resolution. DPR will operate and maintain the Waterfront Maintenance Areas to a high standard of service and cleanliness consistent with an "acceptable" rating under the Parks Inspection Program. The Waterfront Maintenance Area Maintenance Account shall be used by DPR exclusively for the funding of the services set forth in this Agreement for the Waterfront Maintenance Areas. Notwithstanding the foregoing, DPR agrees and acknowledges that its obligations to maintain and repair the Waterfront Maintenance Areas in accordance with this Agreement is not conditioned upon or limited by the amount of funds in the Waterfront Maintenance Area Maintenance Account. DPR further agrees and acknowledges that if the amount of funds in the Waterfront Maintenance Area Maintenance Account is not sufficient to maintain or repair the Waterfront Maintenance Areas as required hereunder, DPR shall be solely responsible for any additional costs attributable to such maintenance or repairs.

3.2 Hours of Operation. Owner acknowledges that the hours of operation of the Waterfront Maintenance Areas shall be determined by the City. Notwithstanding the foregoing, the City has advised Owner that it intends that the Waterfront Maintenance Areas shall be open and accessible from 6:00 a.m. until 10:00 p.m. between April 15 and October 31 and from 7:00 a.m. to 8:00 p.m. between November 1 and April 14. If the City wishes to change these hours, it shall consult with Owner prior to implementing such change. The City further agrees that the hours of operation for the Waterfront Maintenance Areas shall be consistent with the hours of operation for other waterfront parks managed by DPR.

3.3 Cleaning.

(a) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Waterfront Maintenance Areas in clean, neat and good condition.

(b) All walkways, sidewalks, lighting and all other improvements and facilities installed in the Waterfront Maintenance Areas 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 painted over or removed, as appropriate to the nature of the surface, within forty-eight (48) hours of its appearance.

(d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reason whatsoever, shall be promptly removed.

3.4 Snow Removal. Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

3.5 Landscape Maintenance. In addition to the obligations set forth in Section 3.3 hereof, the maintenance program for the planted portions of the Waterfront Maintenance Areas shall consist of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season".

3.6 Spring Start-up Period. The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

(a) Remove any winter protectives from trees, shrubs and other planting materials.

(b) Remove all landscaping debris including leaves and dead branches.

(c) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form.

(d) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(e) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate.

(f) Remove any sand deposited as a result of winter sandings.

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

(h) Reseed grassed areas as needed.

3.7 Season Closing Period. The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

(i) Rake and collect leaves from Waterfront Maintenance Areas.

(j) Wrap trees, shrubs and other plant materials as necessary to ensure adequate winter protection.

(k) Apply commercially available nitrogen rich fertilizer to all lawn areas.

(l) Reseed grassed areas as needed.

3.8 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. The following work shall be undertaken and carried out during the Growing Season:

(m) Inspect trees on a regular basis and spray when necessary.

(n) 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.

(o) Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.

(p) Weed as needed, no less than on a bi-weekly basis.

3.9 Repairs and Replacement. Non-capital replacements and repairs of park facilities within the Waterfront Maintenance Areas, including, without limitation, furnishings, equipment and light bulbs, shall occur as needed to maintain such facilities in good order and working condition. DPR shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Waterfront Maintenance Areas:

(q) Benches, Bleachers or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary.

(r) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

(s) Pavements: All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.

(t) Signage: All park 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.

(u) Painting: All items with painted surfaces shall be painted on an "as needed" basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color.

3.10 Plant Materials and Trees. Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size. Branches from mature trees that are at eye level (six feet or less from the ground) in an active area shall be pruned.

3.11 Park Repairs. Small, non-capital repairs to benches, walls, fencing, gates, paved surfaces, walkways and other structures and features of the Waterfront Maintenance Areas shall be performed as needed to maintain the facilities in good and working condition. DPR will report to Owner on any park repairs that cannot be completed within 48 hours and will provide a timeframe for completion for these repairs.

3.12 Capital Repairs. DPR shall be fully responsible for capital repairs. All capital repairs shall be performed in accordance with the Final Public Access Area Plans unless DPR reasonably determines that such compliance is not feasible or economic in which event DPR shall use, to the extent feasible, replacement materials which are consistent with the quality and design set forth in the Final Public Access Area Plans.

3.13 Illumination. During the period in which the Waterfront Maintenance Areas is open, all pedestrian walkways and paths shall be adequately illuminated from one half hour before sunset to one half hour after sunrise.

3.14 Signs. DPR will post and maintain all standard park signs.

3.15 Security. DPR shall provide security using its Park Enforcement Patrol (PEP) personnel, as reasonably determined by DPR to provide appropriate coverage for the Waterfront Maintenance Areas, based upon coverage needs for other DPR properties constructed pursuant to Section 62-931 of the Zoning Resolution and acknowledges that the Annual Waterfront Maintenance Area Maintenance Payment includes funding for such security. In addition, PEP personnel will be available 24 hours a day through DPR's Central Communications Office.

3.16 Maintenance. DPR shall maintain the Waterfront Maintenance Areas at a high standard of service and cleanliness. DPR staff assigned to the Waterfront Maintenance Areas will be available 24 hours a day through DPR Central Communications Office.

3.17 Performance Monitoring and Inspection. The Waterfront Maintenance Areas will be included in the Parks Inspection Program, and random inspections will be conducted by DPR inspection staff. These inspections will be based on the guidelines contained in the Parks Inspection Manual. DPR will provide the results of all inspections to Owner.

4. VEHICLES AND EQUIPMENT

DPR will provide needed vehicles, equipment and supplies to perform the agreed services.

5. MAINTENANCE SECURITY

Simultaneously with the execution of this Agreement, Owner shall post a maintenance payment security in the form of a maintenance bond or irrevocable letter of credit (such maintenance bond or letter of credit shall be in such form as shall be reasonably acceptable to the DPR) naming the City as beneficiary in an amount equal to four (4) months of the Annual Waterfront Maintenance Area Maintenance Payment (such security, the "**Waterfront Maintenance Area Maintenance Security**"). Upon completion of the Waterfront Maintenance Areas, the Waterfront Maintenance Area Maintenance Security shall be replaced every five (5) years with a new security in an amount that is equal to one third of the Annual Waterfront Maintenance Area Maintenance Payment for such year. Notwithstanding the previous sentence, at Parks' option, if prior to the expiration of any security, another security under the Restrictive Declaration is issued, Parks may require Owner to reissue any such earlier security, such that the earlier security will expire concurrently with any new security. The amount of the earlier issued security shall be determined as if the date of issue of the later security was the actual expiration date of the earlier issued security.

If Owner fails to make the Annual Waterfront Maintenance Area Maintenance Payment by June 30 of each year and such default is not cured within fifteen (15) days after receipt by Owner of written notice of such failure, then the City shall have the right to draw upon the Waterfront Maintenance Area Maintenance Security. If the City has drawn down on the Waterfront Maintenance Area Maintenance Security pursuant to this Section, Owner shall, within sixty (60) days of such action by the City, deposit with DPR an amount equal to the required amount of the Waterfront Maintenance Area Maintenance Security.

6. SUBCONTRACTING

DPR will notify Owner of any sub-contracts it plans to utilize for the performance of its obligations, in whole or in part, under this Agreement.

7. MAINTENANCE EASEMENT

Pursuant to the Declaration, Owner has granted the City, acting through DPR, a Waterfront Maintenance Area Access Easement through the Access Streets and the Retained PAA for the purpose of maintaining, repairing and reconstructing the Waterfront Maintenance Areas. Pursuant to the Waterfront Maintenance Area Access Easement, the City and its respective employees, contractors, subcontractors and agents shall have the right to enter upon, in or through any portion of the Retained PAA and the Access Streets, to perform such maintenance, repair and reconstruction. In the event that the City shall exercise its rights under the Waterfront Maintenance Area Access Easement to perform any work which involves the use of vehicles, including bulldozers, front end loaders and other similar construction equipment, the City shall provide Owner with five (5) calendar days notice, and only conduct such work between the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding holidays). Notwithstanding the foregoing, in the event of an emergency to repair any dangerous and unsafe

conditions, the City shall not be required to provide prior notice and may use heavy construction equipment as it reasonably deems necessary to effect such repair. In using the Waterfront Maintenance Area Access Easement, the City shall use reasonable efforts to minimize damage to the Access Streets and the Retained PAA. The City shall be liable for any damage to the Access Streets or the Retained PAA resulting from the City's exercise of the Waterfront Maintenance Area Access Easement and shall indemnify and hold harmless Owner and its respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's or DPR's exercise of the Waterfront Maintenance Area Access Easement, or the negligence of the City or DPR, its agents, servants or employees in undertaking its obligations under the Waterfront Maintenance Area Access Easement, unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Owner, its agents or its employees.

8. NOTICES AND REPORTING

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If to Entity: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

With a copy to: Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

If to POA: [_____]
[_____]
[_____]
[_____]
Attention: [_____]

If to DPR: Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065
Attn: Office of the General Counsel

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all

purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

9. MISCELLANEOUS

9.1 Amendments. This Agreement may not be modified or amended except by a written instrument executed by Owner and DPR after consultation with the Chair.

9.2 Cancellation. This Agreement may not be canceled except by written instrument executed by Owner and DPR.

9.3 Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York. All actions arising under or relating to this Agreement shall be brought exclusively in the appropriate court in the County of New York State of New York. Each of the parties hereto agree to submit to personal jurisdiction and to waive any objection as to venue in the County of New York, State of New York.

9.4 Reliance by Third Parties. No person or entity other than Owner, the City, DPR or a legal representative, successor in interest or assignee of such party shall be entitled to rely on this Agreement or the performance of Owner or the City hereunder. This Agreement is not made for the benefit of any other person or entity and no such other person or entity shall be entitled to enforce, or assert any claim arising out of or in connection with this Agreement.

9.5 Indemnity.

(v) Owner shall indemnify and hold harmless the City, DPR and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Owner's default under this Agreement (including, without limitation, if Owner is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement 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), or the negligence of Owner, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Owner shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of the City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(w) The City shall indemnify and hold harmless Owner and its respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's or DPR's default under this Agreement (including, without limitation, if the City or DPR is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement 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), or the negligence of the City or DPR, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Owner, its agents or its employees; provided, however, that the City's duty to indemnify, defend and hold harmless hereunder shall be subject to Owner's compliance with the provisions of Section 7.07 of the Declaration.

9.6 Right to Sue.

(x) Nothing contained herein shall prevent Owner from asserting any claim or action against the City arising out of the City's performance, or failure of performance as to any of the City's obligations under this Agreement or the exercise, by the City, of any of its rights under this Agreement. Nothing contained herein shall prevent the City from asserting any claim or action against Owner arising out of Owner's obligations under this Agreement, or the exercise, by Owner of any of its rights under this Agreement. Notwithstanding the foregoing, Owner shall have no right to assert any claim or action against the City under this Agreement during the pendency of any action brought by the City related to Owner's denial of access to DPR to enter the Waterfront Maintenance Areas where such action was filed by the City prior to the filing of the claim or action by Owner.

(y) The obligation of Owner to make the Annual WAA Maintenance Payment is absolute and unconditional and nothing contained herein, including, without limitation, any claim which Owner may assert against the City, shall entitle Owner to a right of set-off against its obligation to make the Annual WAA Maintenance Payment.

(z) If DPR believes that Owner is interfering on a continuing basis with the City's rights under the Maintenance Easement or the Buffer Area Maintenance Easement, as applicable, then, in addition to any other remedies as may be available to it at law or equity and as are provided in this Agreement or in the Declaration, the City may seek a mandatory injunction to enforce its rights under the Maintenance Easement Buffer Area Maintenance Easement.

9.7 Third Party Claims.

(aa) In the event any claim is made or any action brought in any way relating to the Agreement herein (except any claim made or action brought by Owner, or any claim or any action brought by the City or any of its agencies or instrumentalities against Owner) Owner shall diligently render to DPR and/or the City of New York without compensation any and all assistance which DPR and/or the City of New York may require of Owner.

(bb) Owner shall report to DPR and the Department of Law in writing within ten (10) business days of the initiation by or against Owner of any legal action or proceeding in connection with or relating to this Agreement.

9.8 Recording. Upon receipt of the recorded, original Agreement, DPR will notify Owner and Owner's counsel of such receipt.

9.9 Agreement Runs with the Land; Binding on Successors. This Agreement and all of the restrictions, covenants and agreements set forth in this Agreement, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title. Without limiting the generality of the foregoing, the restrictions, covenants and agreements set forth in this Agreement shall be binding upon Owner and any successor-in-interest only for the period during which Owner or any such successor-in-interest is the holder of a fee interest in, or is a party-in-interest of the Subject Property and only to the extent of such fee interest or the interest rendering Owner a party-in-interest. At such time as Owner has no further fee interest in the Subject Property and is no longer a party-in-interest of the Subject Property, Owner's obligations and liability with respect to this Agreement shall wholly cease and terminate from and after the conveyance of Owner's interest and Owner's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Owner's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

9.10 Severability. In the event that any provision of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by any court of competent jurisdiction after all appeals are exhausted or the time for appeal has expired, such provisions shall be severable and the remainder of the Agreement shall continue to be in full force and effect.

9.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

[ENTITY]

By: _____
Name: _____
Title: _____

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, the undersigned, personally appeared Dean Owner, 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.

_____
Notary Public

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

On the _____ day of _____, 20__ before me, the undersigned, 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.

_____
Notary Public

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B

EXHIBIT K

GHG AND WATER CREDIT REQUIREMENTS

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 L

SCA LETTER OF INTENT

(attached)

SCA
School Construction Authority

NYC Department of Education

June 4, 2010

The Refinery LLC
28 East 28th Street
New York, NY 10016

Attn: Ms. Susan Pollock

Re: Proposed Construction of a Public School at the New Domino Refinery Site in Brooklyn

Dear Ms. Pollock:

Set forth below are the basic terms upon which The Refinery LLC or an affiliate or successor thereof ("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 New Domino Refinery Site in Brooklyn:

SCHOOL SITE

The New Domino Refinery Site is a portion of the waterfront block on which the Refinery Building is located, designated for real property tax purposes as Lot 1 of Block 2414, which is bounded by the Kent Avenue to the East, South 2nd Street to the North, South 3rd Street to the South, as shown in more detail on Exhibit A hereto.

THE DEVELOPMENT

Developer intends to restore and convert the Refinery Building on the New Domino Refinery Site, subject to the receipt of the necessary public approvals, to a mixed-use development comprised of residential, commercial/retail, and community facility 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 600 seats and have the capacity to serve public school students in pre-kindergarten through eighth grade. The

30-00 Thomson Avenue
Long Island City, NY 11101

718 472 8000 T
718 472 8040 F

facility shall consist of approximately 100,000 gross square feet but in any event no more than 104,135 gross square feet (the "Public School"). The Public School will be constructed as part of the Development pursuant to a school program, to be developed within the reasonable discretion of the DOE/SCA at the appropriate time and provided to Developer. Developer and SCA will work collaboratively to locate outdoor playground space on the Site. Such Public School will be an independently functioning facility located within the lower floors of the Refinery Building with street access, if accepted by DOE/SCA in accordance with the terms of the Restrictive Declaration for The New Domino, and the Public School and school program will be designed, constructed and operated without cost or liability to Developer, except as provided below under "Developer Responsibility for Change Order and Delays" and "Developer Responsibility for Incremental Costs of Constructing the Public School Base Building Work".

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 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" 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, Developer and SCA may enter into a condominium regime with respect to the Public School and the remainder of the Development, or select other means of conveying or leasing the Public School to SCA. The space to be conveyed or leased for the public school is hereinafter referred to as the "Public School Unit".

PURCHASE OF PUBLIC SCHOOL UNIT

Upon completion of the School Base Building Work, in accordance with the School Funding Agreement, Developer shall transfer or lease the Public School Unit to SCA (or a public entity designated by SCA), for consideration of no more than $1.00 for a minimum term of fifty (50) years.

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 based upon SCA standards as shall be set forth in the School Funding Agreement.
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 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), except as provided below under "Developer Responsibility for Change Order and Delays" and "Developer Responsibility for Incremental Costs of Constructing the Public School Base Building Work".
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. 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 costs of change orders that impact the Public School if, and to the extent, they are caused by: (1) Developer changes to the scope of the School Base Building Work after commencement of construction; (2) design defects that are the responsibility of the Development architect; or (3) 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).

DEVELOPER RESPONSIBILITY FOR INCREMENTAL COSTS OF CONSTRUCTING THE PUBLIC SCHOOL BASE BUILDING WORK	Developer and SCA recognize that development of the Base Building Work for the Public School within the Refinery Building may result in design and construction costs that exceed those budgeted by the SCA for new school facilities that are not located within mixed use or historically significant buildings. To the extent that the projected and actual costs of developing the Base Building Work for the Public School in the Refinery Building exceed the budgeted amount for new school facilities of comparable size and timing in the DOE's Five Year Capital Plan, Developer shall be solely responsible for the excess amount, as shall be defined more specifically within the School Funding Agreement.
TRANSFER TAXES	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 by Developer; reimbursement by SCA of Developer's costs allocable to the Public School, except as provided above under "Developer Responsibility for Change Order and Delays" and "Developer Responsibility for Incremental Costs of Constructing the Public School Base Building Work"; 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 approved 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 represent and warrant 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.

Yours very truly,

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

By: Lorraine Grillo
Name: Lorraine Grillo
Title: Acting President & CEO

THE REFINERY LLC

By: Kathleen A. Dunn
Name: KATHLEEN A. DUNN
Title: VICE PRESIDENT

EXHIBIT M

FORM OF COMPLETION GUARANTY

(attached)

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this "**Guaranty**") is made as of _____, 20__, by [_____], an individual having his primary residence at _____ _____ ("[__]") and [_____], a _____ limited liability company having its principal place of business at [_____] ("[__]"; and together with [_____], collectively, "**Guarantors**").

RECITALS

WHEREAS, The Refinery LLC ("**Declarant**") is the owner of certain property identified as Lot 1 of Block 2414 on the Tax Map of the City of New York, Borough of Brooklyn (the "**Property**") and proposes to construct on the Property three (3) new primarily residential buildings and one (1) new mixed use building, which has already commenced;

WHEREAS, the Property is located within a waterfront block as the term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**") and is subject to the requirements of Article VI, Chapter 2 of the Zoning Resolution (the "**Waterfront Zoning**"), including the requirement that certain "Public Access Areas" be developed on the Property, as more particularly set forth in the Waterfront Zoning;

WHEREAS, pursuant to the requirements of the Waterfront Zoning, Declarant entered into that certain Restrictive Declaration (the "**Declaration**"), dated _____, 20__ and recorded as CRFN _____ in the Office of the City Register, Borough of Brooklyn;

WHEREAS, the Declaration provides, among other things, that prior to the commencement of construction of any portion of the Public Access Areas (as defined in the Declaration), Declarant (or such other Declarant (as defined in the Declaration)) shall deliver to the New York City Department of Parks and Recreation ("**DPR**") a completion guaranty to secure the construction by Declarant of the Public Access Areas in accordance with the provisions of the Declaration.

NOW THEREFORE, in consideration of the rights and obligations of Declarant, including Declarant, as set forth in the Zoning Resolution and the Declaration, Guarantors hereby represent, warrant, covenant and agree as follows:

ARTICLE XVI

NATURE AND SCOPE OF GUARANTY

16.01 **Definitions**. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration.

16.02 **Completion**. Guarantors unconditionally and irrevocably guarantee to The City of New York (the "**City**"), subject to applicable notice, grace and/or other periods contained in the Declaration, or any other document entered into in connection therewith, payment of all reasonable costs incurred by the City in exercising its rights under Section 6.06 of the Declaration, with respect to the completion of construction of PAA Phase [_] in accordance with the Final PAA Plans (the "**Guaranteed Obligation**").

16.03 **Nature of Guaranty**. Guarantors hereby irrevocably and unconditionally covenant and agree that they are liable for the Guaranteed Obligation as primary obligors. This Guaranty is an irrevocable, unconditional, absolute, continuing guaranty of performance and not a guaranty of collection. This Guaranty may not be revoked by either Guarantor and shall continue to be effective after the death of Guarantor (if either Guarantor is a natural person, in which event this Guaranty shall be binding upon such Guarantor's estate, legal representatives, executors, administrators and heirs). The modification at any time of the Declaration, the Final PAA Plans or the Drawings shall not release or discharge the obligations of Guarantors to the City with respect to the Guaranteed Obligation.

16.04 **No Reduction By Offset**. The obligation of Guarantors to the City under this Guaranty shall not be reduced, discharged or released by reason of any claim or defense by Declarant against the City, whether such claim or defense arises in connection with the Guaranteed Obligation or otherwise.

16.05 **No Duty to Pursue Others**. It shall not be necessary for the City (and each Guarantor hereby waives any rights which such Guarantor may have to require the City), in order to enforce Guarantors' obligations hereunder, to first (a) enforce its remedies against Declarant under the Declaration or (b) join Declarant in any action seeking to enforce this Guaranty.

16.06 **Waivers**. Each Guarantor hereby agrees to the provisions of the Declaration and waives notice of (a) any amendment or modification of the Declaration, the Drawings or the Final PAA Plans, and (b) any action at any time taken or omitted by the City or Declarant under the Declaration.

16.07 **Expenses**. In the event that either Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantors shall, within thirty (30) days following demand by the City, pay to the City all reasonable out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) incurred by the City in the enforcement hereof. The covenant contained in this Section 1.7 shall survive the performance of the Guaranteed Obligation.

16.08 **Termination**. This Guaranty shall remain in full force and effect until the issuance of a Notice of Final Completion for PAA Phase [_] in accordance with the provisions of the Declaration.

16.09 **Subordination**. This Guaranty is subject and subordinate to repayment in full of any indebtedness which Declarant incurs to finance construction of any New Building built in connection with PAA Phase [_]. The City shall not seek to collect on this Guaranty, or seek judgment against Guarantors on account of this Guaranty until such time as such construction indebtedness is paid in full.

ARTICLE XVII

EVENTS AND CIRCUMSTANCES NOT REDUCING OR DISCHARGING GUARANTORS' OBLIGATIONS

Each Guarantor hereby consents and agrees to each of the following and agrees that no Guarantor's obligations under this Guaranty shall be released, diminished, impaired, reduced or adversely affected by any of the following and waives any common law, equitable,

statutory or other rights (including without limitation rights to notice) which either Guarantor might otherwise have as a result of or in connection with any of the following:

17.01 **Modifications**. Any renewal, extension, or modification of all or any part of the Guaranteed Obligation, the Declaration or any other document, instrument, contract or understanding between Declarant and the City, DPR or DCP pertaining to the Guaranteed Obligation or any failure of the City to notify either Guarantor of any such action.

17.02 **Condition of Declarant or Guarantor**. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Declarant, either Guarantor or any other party at any time liable for the performance of all or part of the Guaranteed Obligation or any sale, lease or transfer of any or all of the assets of Declarant or either Guarantor or any changes in the shareholders, partners or members of Declarant or Guarantor; or any reorganization of Declarant or either Guarantor.

17.03 **Invalidity of Guaranteed Obligation**. The invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligation or the Declaration for any reason whatsoever, except that if the provisions of the Zoning Resolution requiring the execution of the Declaration or construction of the Public Access Areas as a condition of development of the Property are finally, after the exhaustion of all rights of appeal, declared to be unenforceable or illegal, Guarantors' obligations hereunder shall automatically terminate, notwithstanding any provisions of this Guaranty or the Declaration to the contrary.

17.04 **Release of Obligors**. Any full or partial release of the liability of Declarant on the Guaranteed Obligation or any part thereof, or of any co-guarantors, or of any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to perform the Guaranteed Obligation, or any part thereof, it being recognized, acknowledged and agreed by each Guarantor that Guarantors may be required to perform the Guaranteed Obligation in full without assistance or support of any other party, and no Guarantor has been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other parties will be liable to perform the Guaranteed Obligation, or that the City will look to other parties to perform the Guaranteed Obligation.

17.05 **Merger**. The reorganization, merger or consolidation of Declarant into or with any other person or entity.

17.06 **Other Actions Taken or Omitted**. Any other action taken or omitted to be taken with respect to the Declaration or the Guaranteed Obligation, whether or not such action or omission prejudices either Guarantor or increases the likelihood that either Guarantor will be required to perform the Guaranteed Obligation pursuant to the terms hereof; it being the unambiguous and unequivocal intention of each Guarantor that Guarantors shall be obligated to perform the Guaranteed Obligation when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or uncontemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the satisfaction of the Guaranteed Obligation, as evidenced by the issuance by DPR of a Notice of Final Completion.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

18.01 **No Representation By the City**. Neither the City nor any agent or employee thereof has made any representation, warranty or statement to either Guarantor in order to induce Guarantors to execute this Guaranty.

18.02 **Guarantor's Financial Condition**. As of the date hereof, each Guarantor is and will be solvent and has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has and will have property and assets sufficient to satisfy and repay its obligations and liabilities.

18.03 **Legality**. The execution, delivery and performance by each Guarantor of this Guaranty and the consummation of the transactions contemplated hereunder do not and will not contravene or conflict with any law, statute or regulation whatsoever to which either Guarantor is subject or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or result in the breach of, any indenture, mortgage, charge, lien, or any contract, agreement or other instrument to which either Guarantor is a party or which may be applicable to either Guarantor. This Guaranty is a legal and binding obligation of each Guarantor and is enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

18.04 **Consents**. No consent, approval, authorization or order of any court or governmental authority or other person is required for the execution, delivery and performance by either Guarantor of, or compliance by either Guarantor with, this Guaranty or the consummation of the transactions contemplated hereby, other than those which have been obtained by Guarantors.

18.05 **Litigation**. There is no action, suit, proceeding or investigation pending or, to either Guarantor's knowledge, threatened against either Guarantor in any court or by or before any other governmental authority, which would reasonably be expected to (i) materially and adversely affect the ability of either Guarantor to carry out the transactions contemplated by this Guaranty, (ii) materially and adversely affect the value of its property (taken as a whole), (iii) impair the use and operation of its property (taken as a whole), or (iv) impair either Guarantor's ability to pay its obligations in a timely manner.

ARTICLE XIX

NOTICES

19.01 **Notices**. All notices or other written communications hereunder shall be delivered in accordance with Section 14.01 of the Declaration, to the following:

To Guarantors:

c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

With a copy to:

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

To the City:

New York City Department of Parks and Recreation
The Arsenal
830 Fifth Avenue
New York, N.Y. 10021
Attn.: General Counsel

ARTICLE XX

APPLICATION LAW; WAIVER OF JURY TRIAL

20.01 **Governing Law**. This Guaranty shall be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. Any legal suit, action or proceeding against the City or either Guarantor arising out of or relating to this Guaranty shall be instituted in any federal or state court in the city of New York, county of New York, pursuant to section 5-1402 of the New York general obligations law, and each Guarantor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and each Guarantor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

20.02 **Provisions Subject to Applicable Law**. All rights, powers and remedies provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Guaranty or any application thereof shall be invalid, illegal or unenforceable in any respect, the remainder of this Guaranty shall be construed without such provision and this Guaranty and any other application of the term shall not be affected thereby.

ARTICLE XXI

MISCELLANEOUS PROVISIONS

21.01 **No Oral Change**. This Guaranty, and any provisions hereof, may not be modified, amended, waived, extended, restated, changed, discharged or terminated orally or by any act or failure to act on the part of either Guarantor or the City, but only by an agreement in

writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, restatement, change, discharge or termination is sought.

21.02 **Successors, Assigns Etc**. This Guaranty shall be binding upon Guarantors and their respective successors, assigns, heirs and legal representatives, and shall inure to the benefit of the City and their respective successors and assigns forever.

21.03 **Recitals**. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

21.04 **Delay Not a Waiver**. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to either Guarantor shall not be construed to be a waiver of any subsequent default with respect to such Guarantor or any other Person or to impair any remedy, right or power consequent thereon.

21.05 **No Joint Venture or Partnership; No Third Party Beneficiaries**. (a) Guarantors and the City intend that the relationships created hereunder be solely that of guarantor and beneficiary. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Guarantors and the City nor to grant the City any interest in the Property other than that of beneficiary.

(b) This Guaranty is solely for the benefit of the City and nothing contained in this Guaranty shall be deemed to confer upon anyone other than the City any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

[the next page is the signature page]

IN WITNESS WHEREOF, Guarantors have duly executed this Guaranty as of the day and year first written above.

GUARANTORS

_____

[_____]

[_____]

By: _____

Name:

Title:

EXHIBIT O

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

(attached)

[Letterhead of the Commissioner of Parks & Recreation]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: Block 2414, Lot - , Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 7.02 of the Restrictive Declaration made by The Refinery LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that PAA Phase [__] (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

_____

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]

EXHIBIT O

FORM OF PUBLIC ACCESS EASEMENT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") made by THE REFINERY LLC, a New York limited liability company having an address c/o CPC Resources, Inc., 28 East 28th Street, New York, New York 10016 (together with its successors and assigns, collectively, "**Grantor**") in favor of THE CITY OF NEW YORK, (together with all agencies and instrumentalities thereof, collectively "**Grantee**"), a New York municipal corporation with an address at City Hall, New York, New York 10007.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit A annexed hereto and made a part hereof ("**Grantor's Premises**");

WHEREAS, the City is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit B annexed hereto and made a part hereof ("**Grantee's Premises**");

WHEREAS, Grantor's Premises abuts Grantee's Premises;

WHEREAS, Grantor is party to that certain Restrictive Declaration dated _____, 2010 (the "**Declaration**") and recorded in the Office of the Register of the City of New York (the "**Register's Office**") on _____, 2010 as CRFN _____;

WHEREAS, the Declaration requires that Grantor convey to Grantee a perpetual public access easement over a portion of Grantor's Premises, as more particularly described on Exhibit C annexed hereto and made a part hereof (the "**Easement Area**"), upon Substantial Completion of each Public Access Area Phase;

WHEREAS, Public Access Area Phase ___ has been Substantially Completed; and

WHEREAS, Grantor wishes to grant to Grantee such perpetual public access easement over Grantor's Premises.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

ARTICLE 1. Definitions.

Any word used in this Agreement which is defined in the Declaration and not otherwise defined herein, shall have the meaning given to that word in the Declaration.

ARTICLE 2. Grant of Easement.

Grantor hereby grants, conveys and releases to Grantee as of the date hereof a perpetual, non-exclusive surface right-of-way and easement, unobstructed from the ground to the sky in, through, over and upon the Easement Area to Grantee for pedestrian access, ingress and egress by the public, and for automobile use over the roadbeds of the Access Streets (the "**Easement**"), TO HAVE AND TO HOLD the Easement, together with all rights and privileges incidental thereto, unto the Grantee, its successors and assignees.

ARTICLE 3. Effectiveness.

The Easement shall be effective upon execution and delivery of this Agreement by the parties hereto. This Agreement and undertakings by each party hereto shall be enforceable by an action for specific performance.

ARTICLE 4. Operation and Maintenance.

The operation and maintenance of the Access Streets shall be subject to the provisions of the Declaration. The operation and maintenance of the Retained PAA shall be subject to the provisions of the Declaration and the Retained PAA Maintenance Agreement – Phase(s) _____ dated as of _____, 2010.

ARTICLE 5. Agreement to Run With the Land.

This Agreement, the Easement and all other rights and obligations of the parties hereunder, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title.

ARTICLE 6. Notices.

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

To Grantor: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

and

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

To Grantee: Department of Parks and Recreation
The Arsenal, Central Park

830 Fifth Avenue
New York, NY 10065
Attention: General Counsel

and

New York City Law Department
100 Church Street
New York, NY 10007
Attention: Chief, Economic Development Division

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) Business Days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE 7. Recording.

Promptly after the execution hereof, this Agreement shall be recorded with the Register's Office of King's County, indexed against Grantor's Premises and City's Premises. Grantor shall bear the cost of such recording.

ARTICLE 8. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of New York.

(b) This Agreement may not be amended or modified, or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. The consent or approval of no party other than the parties hereunder shall be required for such amendment, modification, waiver or discharge to become effective.

(c) The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

(d) The attached Exhibits are part of this Agreement as though fully set forth in this Agreement.

(e) This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when assembled, shall constitute but one and the same original document. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the parties set forth hereon as signatories of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE REFINERY LLC,
a New York limited liability company

By: _____
Name:
Title:

THE CITY OF NEW YORK

By: _____
Name:
Title:

EXHIBIT P

FORM OF BUFFER AREA MAINTENANCE EASEMENT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") made by THE REFINERY LLC, a New York limited liability company having an address c/o CPC Resources, Inc., 28 East 28th Street, New York, New York 10016 (together with its successors and assigns, collectively, "**Grantor**") in favor of THE CITY OF NEW YORK, (together with all agencies and instrumentalities thereof, collectively "**City**"), a New York municipal corporation with an address at City Hall, New York, New York 10007.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit A annexed hereto and made a part hereof ("**Grantor's Premises**");

WHEREAS, the City is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit B annexed hereto and made a part hereof ("**City's Premises**");

WHEREAS, Grantor's Premises abuts City's Premises;

WHEREAS, Grantor is party to that certain Restrictive Declaration dated _____, 2010 (the "**Declaration**") and recorded in the Office of the Register of the City of New York (the "**Register's Office**") on _____, 2010 as CRFN _____;

WHEREAS, pursuant to the terms, covenants and condition of the Declaration and that certain Waterfront Maintenance Area Maintenance Agreement, dated as of even date herewith, by and between Grantor and City (the "**Maintenance Agreement**"), City, acting by and through the New York City Department of Parks & Recreation ("**DPR**") has agreed to perform certain maintenance, repair and reconstruction (collectively, the "**Buffer Area Maintenance**") in Grantor's Premises

WHEREAS, the Declaration requires that Grantor convey to City an easement over a portion of Grantor's Premises, as more particularly described on Exhibit C annexed hereto and made a part hereof (the "**Easement Area**"), to perform the Buffer Area Maintenance upon Substantial Completion of each Public Access Area Phase;

WHEREAS, Public Access Area Phase ___ has been Substantially Completed; and

WHEREAS, Grantor wishes to grant to City such easement over Grantor's Premises.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and City hereby agree as follows:

ARTICLE 1. Definitions.

Any word used in this Agreement which is defined in the Declaration and not otherwise defined herein, shall have the meaning given to that word in the Declaration.

ARTICLE 2. Grant of Easement.

Grantor hereby grants, conveys and releases to City as of the date hereof a perpetual easement, in, through, over and upon the Easement Area to City for the performance of the Buffer Area Maintenance by City and its respective employees, contractors, subcontractors and agencies (the "**Easement**"), TO HAVE AND TO HOLD the Easement, together with all rights and privileges incidental thereto, unto the City, its successors and assignees.

ARTICLE 3. Effectiveness.

The Easement shall be effective upon execution and delivery of this Agreement by the parties hereto. This Agreement and undertakings by each party hereto shall be enforceable by an action for specific performance.

ARTICLE 4. Operation and Maintenance.

The operation and maintenance of the Buffer Areas shall be subject to the provisions of the Declaration and the Maintenance Agreement.

ARTICLE 5. Agreement to Run With the Land.

This Agreement, the Easement and all other rights and obligations of the parties hereunder, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title.

ARTICLE 6. Notices.

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

To Grantor: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

and

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016

Attention: Mark Levine, Esq.

To City: Department of Parks and Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, NY 10065
Attention: General Counsel

and

New York City Law Department
100 Church Street
New York, NY 10007
Attention: Chief, Economic Development Division

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) Business Days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE 7. Recording.

Promptly after the execution hereof, this Agreement shall be recorded with the Register's Office of King's County, indexed against Grantor's Premises and City's Premises. Grantor shall bear the cost of such recording.

ARTICLE 8. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of New York.

(b) This Agreement may not be amended or modified, or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. The consent or approval of no party other than the parties hereunder shall be required for such amendment, modification, waiver or discharge to become effective.

(c) The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

(d) The attached Exhibits are part of this Agreement as though fully set forth in this Agreement.

(e) This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when assembled, shall constitute but one and the same original document. This Agreement shall be binding when one or more counterparts hereof,

individually or taken together, shall bear the signatures of all the parties set forth hereon as signatories of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE REFINERY LLC,
a New York limited liability company

By: _____
Name:
Title:

THE CITY OF NEW YORK

By: _____
Name:
Title:

EXHIBIT Q

FORM OF WATERFRONT MAINTENANCE AREA ACCESS EASEMENT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") made by THE REFINERY LLC, a New York limited liability company having an address c/o CPC Resources, Inc., 28 East 28th Street, New York, New York 10016 (together with its successors and assigns, collectively, "**Grantor**") in favor of THE CITY OF NEW YORK, (together with all agencies and instrumentalities thereof, collectively "**City**"), a New York municipal corporation with an address at City Hall, New York, New York 10007.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit A annexed hereto and made a part hereof ("**Grantor's Premises**");

WHEREAS, the City is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit B annexed hereto and made a part hereof ("**City's Premises**");

WHEREAS, Grantor's Premises abuts City's Premises;

WHEREAS, Grantor is party to that certain Restrictive Declaration dated _____, 2010 (the "**Declaration**") and recorded in the Office of the Register of the City of New York (the "**Register's Office**") on _____, 2010 as CRFN _____;

WHEREAS, pursuant to the terms, covenants and condition of the Declaration and that certain Waterfront Maintenance Area Maintenance Agreement, dated as of even date herewith, by and between Grantor and City (the "**Maintenance Agreement**"), City, acting by and through the New York City Department of Parks & Recreation ("**DPR**") has agreed to perform certain maintenance, repair and reconstruction (collectively, the "**Maintenance**") in the Waterfront Maintenance Areas (as defined in the Declaration);

WHEREAS, the Declaration requires that Grantor convey to City an easement over a portion of Grantor's Premises, as more particularly described on Exhibit C annexed hereto and made a part hereof (the "**Easement Area**"), to access the Waterfront Maintenance Areas for the purpose of performing the Maintenance upon Substantial Completion of each Public Access Area Phase;

WHEREAS, Public Access Area Phase ___ has been Substantially Completed; and

WHEREAS, Grantor wishes to grant to City such easement over Grantor's Premises.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and City hereby agree as follows:

ARTICLE 1. Definitions.

Any word used in this Agreement which is defined in the Declaration and not otherwise defined herein, shall have the meaning given to that word in the Declaration.

ARTICLE 2. Grant of Easement.

Grantor hereby grants, conveys and releases to City as of the date hereof a perpetual easement, in, through, over and upon the Easement Area to City for the purpose of accessing the Waterfront Maintenance Areas constructed pursuant to Public Access Area Phase ___ (the "**Easement**"), for the performance of certain maintenance, repair and reconstruction in the Waterfront Maintenance Areas, TO HAVE AND TO HOLD the Easement, together with all rights and privileges incidental thereto, unto the City, its successors and assignees.

ARTICLE 3. Effectiveness.

The Easement shall be effective upon execution and delivery of this Agreement by the parties hereto. This Agreement and undertakings by each party hereto shall be enforceable by an action for specific performance.

ARTICLE 4. Operation and Maintenance.

The operation and maintenance of the Easement Area shall be subject to the provisions of the Declaration and the Retained PAA Maintenance Agreement.

ARTICLE 5. Agreement to Run With the Land.

This Agreement, the Easement and all other rights and obligations of the parties hereunder, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title.

ARTICLE 6. Notices.

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

To Grantor: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

and

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

To City: Department of Parks and Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, NY 10065
Attention: General Counsel

and

New York City Law Department
100 Church Street
New York, NY 10007
Attention: Chief, Economic Development Division

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) Business Days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE 7. Recording.

Promptly after the execution hereof, this Agreement shall be recorded with the Register's Office of King's County, indexed against Grantor's Premises and City's Premises. Grantor shall bear the cost of such recording.

ARTICLE 8. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of New York.

(b) This Agreement may not be amended or modified, or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. The consent or approval of no party other than the parties hereunder shall be required for such amendment, modification, waiver or discharge to become effective.

(c) The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

(d) The attached Exhibits are part of this Agreement as though fully set forth in this Agreement.

(e) This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when assembled, shall constitute but one and the same original document. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the parties set forth hereon as signatories of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE REFINERY LLC,
a New York limited liability company

By: _____
Name:
Title:

THE CITY OF NEW YORK

By: _____
Name:
Title:

EXHIBIT R

COMFORT STATION EASEMENT AGREEMENT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") made by THE REFINERY LLC, a New York limited liability company having an address c/o CPC Resources, Inc., 28 East 28th Street, New York, New York 10016 (together with its successors and assigns, collectively, "**Grantor**") in favor of THE CITY OF NEW YORK, (together with all agencies and instrumentalities thereof, collectively "**City**"), a New York municipal corporation with an address at City Hall, New York, New York 10007.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit A annexed hereto and made a part hereof ("**Grantor's Premises**");

WHEREAS, the City is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated on the Tax Map of Kings County as Block ____, Lot ____, and more particularly described in Exhibit B annexed hereto and made a part hereof ("**City's Premises**");

WHEREAS, Grantor's Premises abuts City's Premises;

WHEREAS, Grantor is party to that certain Restrictive Declaration dated _____, 2010 (the "**Declaration**") and recorded in the Office of the Register of the City of New York (the "**Register's Office**") on _____, 2010 as CRFN _____;

WHEREAS, the Declaration requires that Grantor convey to City an easement over a portion of Grantor's Premises, as more particularly described on Exhibit C annexed hereto and made a part hereof (the "**Easement Area**"), for use of the Comfort Station upon Substantial Completion of Public Access Area Phase 4;

WHEREAS, Public Access Area Phase 4 has been Substantially Completed; and

WHEREAS, Grantor wishes to grant to City such easement over the Easement Area.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and City hereby agree as follows:

ARTICLE 1. Definitions.

Any word used in this Agreement which is defined in the Declaration and not otherwise defined herein, shall have the meaning given to that word in the Declaration.

ARTICLE 2. Grant of Easement.

Grantor hereby grants, conveys and releases to City as of the date hereof a perpetual easement, in, through, over and upon the Easement Area to City for the access, use and enjoyment by the City and the general public of the Comfort Station (the "**Easement**"), TO HAVE AND TO HOLD the Easement, together with all rights and privileges incidental thereto, unto the City, its successors and assignees.

ARTICLE 3. Effectiveness.

The Easement shall be effective upon execution and delivery of this Agreement by the parties hereto. This Agreement and undertakings by each party hereto shall be enforceable by an action for specific performance.

ARTICLE 4. Operation and Maintenance.

The operation and maintenance of the Comfort Station shall be subject to the provisions of the Declaration and that certain Retained PAA Maintenance Agreement, dated as of even date herewith, by and between Grantor and City.

ARTICLE 5. Agreement to Run With the Land.

This Agreement, the Easement and all other rights and obligations of the parties hereunder, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title.

ARTICLE 6. Notices.

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

To Grantor: [_____]
c/o CPC Resources, Inc.
28 East 28th Street
New York, New York 10016
Attention: General Counsel

and

Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mark Levine, Esq.

To City: Department of Parks and Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, NY 10065

Attention: General Counsel

and

New York City Law Department
100 Church Street
New York, NY 10007
Attention: Chief, Economic Development Division

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) Business Days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE 7. Recording.

Promptly after the execution hereof, this Agreement shall be recorded with the Register's Office of King's County, indexed against Grantor's Premises and City's Premises. Grantor shall bear the cost of such recording.

ARTICLE 8. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of New York.

(b) This Agreement may not be amended or modified, or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. The consent or approval of no party other than the parties hereunder shall be required for such amendment, modification, waiver or discharge to become effective.

(c) The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

(d) The attached Exhibits are part of this Agreement as though fully set forth in this Agreement.

(e) This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when assembled, shall constitute but one and the same original document. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the parties set forth hereon as signatories of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE REFINERY LLC,
a New York limited liability company

By: _____
Name:
Title:

THE CITY OF NEW YORK

By: _____
Name:
Title:

EXHIBIT S

FORM OF NOTICE OF FINAL COMPLETION

(attached)

[Letterhead of the Commissioner of Parks & Recreation]

[Date]

NOTICE OF FINAL COMPLETION

Re: Block 2414, Lot [__], Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section 8.03 of the Restrictive Declaration made by The Refinery LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that PAA Phase [__] (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

_____

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]

EXHIBIT T

FORM WATERFRONT ACCESS AREAS ACCESS PERMIT

(attached)

THIS PERMIT IS NOT VALID UNLESS BOTH PARTIES HAVE SIGNED PAGE No. 7

PERMIT TO PERFORM WORK ON WATERFRONT ACCESS AREA

Permit No:
Start:
Expiration:

PERMISSION AS REQUESTED IS GRANTED TO YOU AND/OR YOUR ASSIGNEE AS PERMITTEE TO PERFORM WORK ON PUBLIC ACCESS AREA SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH HEREIN:

LOCATION: Domino Sugar Factory Site Public Access Area Phase ___

FOR THE PURPOSE OF: Finally Completing Public Access Area Phase ___ pursuant to that certain Declaration, dated as of _____, 2010, by The Refinery LLC (the "**Declaration**").

THIS PERMIT IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS AND TERMS:

1. Capitalized terms used herein, but not defined herein, shall have the meaning ascribed to such terms in the Declaration. The provisions of the Declaration concerning construction and Final Completion of the Public Access Areas are incorporated herein by reference.

2. The Chief of Operations of the Borough of Brooklyn, Charles Gili at, 718-965-8922, shall be notified by **Permittee** at least forty-eight (48) hours before work is started under this permit.

3. The **"Parks Department"** as used herein shall mean the **Commissioner** of the Department of Parks and Recreation or designee.

4. **Permittee** agrees to assume all responsibility for injury to persons or damage to private and/or City property caused by **Permittee** through the operations of the permit and to save and

hold harmless the **City of New York** and the **Parks Department** from all claims and suits which may arise from this permit that are not caused by the negligence or willful misconduct of the **City of New York** and/or the **Parks Department**, or any of their agents, employees or other representatives.

5. **Permittee** is subject to strict adherence to all City, State and Federal laws and the Rules and Regulations of the **Parks Department** insofar as they apply.

6. **Permittee** shall replace and restore all planted areas, trees, shrubs and other existing structures or substructures, utility lines, roads, walks and/or curbs damaged or destroyed by **Permittee** during the term of this permit and such replacement and restoration during the term of this permit shall be in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions approved by **Parks Department.** All temporary structures, equipment and material of **Permittee** not required for incorporation in the work under this permit shall be removed from the site upon Final Completion of the Public Access Area Phase that is the subject of this permit.

7. No construction work other than necessary maintenance, emergencies or as required by the City of New York, or its appropriate agencies, is to be performed on Parks Department Property on Saturdays, Sundays or Holidays, except by written permission from the **Parks Department**.

8. This permit is terminable at will by the **Parks Department** upon twenty-five (25) days notice to **Permittee** and the **Parks Department** reserves the right to amend this permit to cover new conditions and to cancel this permit at any time and for any reason.

9. Upon direction of the Parks Department, this permit shall be terminated upon Final Completion of the Public Access Area Phase that is the subject of this permit.

10. Barricades, warning devices, signs, flags, and lights, shall be provided and maintained as required for public safety. Permittee is responsible for the adequacy of the safety devices. The **Parks Department** shall have the right to order Permittee to vary and/or increase the safety devices installed on the permit site.

11. The existing drainage and utility systems within the limits of the operations shall be maintained during the period covered by this permit to the satisfaction of the **Parks Department.**

12. a). No tree removals are allowed under this permit.

b). Exception to this policy will be allowed after written requests are approved by the Commissioner.

c). Replacements are to be determined on a square inch for square inch basis; i.e the basal area calculated at a point 4'-6" above finished grade of the replacement trees must equal at least the basal surface area of the existing trees.

d). Replacement trees must be with 3"-3 1/2" trees acceptable to the **Parks Department**.

e). All trees killed or severely damaged shall be replaced as per the above.

13. Operations shall be performed in such manner so that the stability of the existing and adjacent areas are not disturbed. Adjacent park areas or appurtenances shall only be the responsibility of **Permittee** to the extent of any damage caused by **Permittee.**

14. All grass areas disturbed shall be restored with sod in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

15. All areas graded by **Permittee** shall be in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions. Sodding shall be in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

16. Plantings shall be maintained in accordance with the Waterfront Maintenance Area Maintenance Agreement.

17. This permit does not grant **Permittee** exclusive right to the site designated herein. **Permittee** shall coordinate its work with other work being or to be performed in the area by the **Parks Department**, other contractors, or sub-contractors, utility companies or other city or state agencies, if any.

18. This permit is issued for property under the jurisdiction of the **Parks Department**. **Permittee** shall be responsible for securing permits as required from other agencies having jurisdiction in the area or access to the area of operations.

19. All restoration items, subject to settlement, on Parks Department property shall be restored in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

20. **Permittee** is responsible to maintain qualified supervision during all phases of the restoration to make certain that all specifications set forth in the Final Public Access Area Plans and Public Access Area Design Submissions are being adhered to.

21. **Permittee** shall notify the **Parks Department** when the area is ready for final inspection to verify restoration completeness in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

22. This permit, unless previously terminated at the direction of the **Parks Department**, will expire as of the date of Final Completion of the Public Access Area Phase that is the subject of this permit. Extension requests must be made thirty (30) days prior to expiration.

23. **Insurance**. With respect to the work performed pursuant to this permit, Permittee shall maintain the insurance set forth in, and otherwise comply with the requirements of, Section 6.04 of the Declaration. If requested by the **Parks Department**, Permittee shall provide copies of all certificates of insurance

24. **Completion Letter of Credit**. If required pursuant to the terms of the Declaration, **Permittee** shall provide and maintain the Completion Letter of Credit with respect to Finally Completing the Public Access Area Phase that is the subject of this permit.

25. For any questions regarding the permit area, **Permittee** shall contact the **Parks Department** Brooklyn Chief of Operations Office, per condition no. two (2).

26. Prior to any excavation that is not contemplated by the Final Public Access Area Plans or the Public Access Area Design Submissions, **Permittee** shall contact **"One Call Users' Council, Inc."**, toll free at **1-800-272-4480**, to obtain information on underground utilities.

27. Access to the Permit Site shall be on _____.

28. **Permittee** shall maintain all areas used for access to the Permit Site in a condition acceptable to this Agency.

29. All work shall be done in the area shown on the **attached** sketch.

30. **Permittee** shall not use access areas or start work until the required permits and approvals have been obtained from all the appropriate agencies.

31. For any information regarding trees in the permit area, **Permittee** shall call the Brooklyn Director of Forestry, Andrew Raab at, 718-965-7737.

32. **Permittee shall not stockpile any** material within the dripline of the trees.

33. **Permittee** shall perform compensatory pruning of trees **adversely** affected by its work. Pruning shall be done by a **Parks Department** approved licensed arborist when and where directed by the **Parks Department**.

34. **Permittee** shall not permit construction debris to accumulate on site and shall clean up permit site on a regular basis.

35. **Permittee** shall erect warning/danger signs and barricades, and take any other measures necessary for the preservation of public safety. **Permittee** shall maintain same in good condition throughout the duration of the permit.

36. **Permittee** shall circumvent trees by trenching outside the dripline of the trees.

37. **Permittee** shall not park private vehicles on **Parks Department** property without obtaining permits from the Borough Commissioner's Office.

38. **Intentionally left blank.**

39. **Permittee** shall restore all grassy areas disturbed by its work in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

40. Where provision is made for notice to be given, the same shall be given by one side to the other by sending notice by (a) Certified Mail, (b) hand delivery, (c) Federal Express, Express Mail or UPS Overnight, or (d) facsimile, with the confirmation notice constituting evidence of delivery. Notice shall be sent by mail or hand to **Permittee** at the following address: c/o CPC Resources Inc., 28 East 28th Street, New York, New York 10016 or by facsimile to (___) _____; notice shall be sent by mail or hand to the **Parks Department** at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021, Attention: General Counsel or by facsimile to (212) 360-1373.

41. **Permittee** is aware emergency vehicles must always have access through the area.

42. **Permittee** is aware that existing drainage, electrical and sewer lines are in working condition and shall be tested again before the **Parks Department** accepts the restoration work required under this permit.

43. **Permittee** shall submit complete as-built record drawings showing portions of the project pertaining to **Parks Department** property, to the **Parks Department** upon completion or work. Submittals shall be delivered to:

New York City, Parks and Recreation
Permit Section, Olmsted Center
Flushing Meadows - Corona Park
Flushing, New York 11368

44. **Permittee** shall restore all surfaces disturbed by its work in accordance with the Final Public Access Area Plans and Public Access Area Design Submissions.

45. Regardless of the prior existing conditions, all restoration work must be performed at a level consistent with the **Parks Department**'s standard construction procedures for new work.

Very truly yours,

John J. Natoli, P.E.

Chief of Construction

cc: FILE
R. Dimond
D. Shanks-Brown,
A. Olivieri,
Commissioner J. Spiegel
C. Gili
P.C. Dyrenforth
L. Neglia
A. Raab

D. Grulich
D. Howe

Contact Information:

NYCDPR, Charles Gili, 718-965-8922

Permit No.: / For the purpose of:

ACCEPTED AND AGREED RE:

_____
Agency/Company Name

Print Name: _____

Signature: _____

Title: _____

Dated: _____