CITY PLANNING COMMISSION

July 25, 2022 / Calendar No. 3

C 220198 ZSQ
CORRECTED[1]

IN THE MATTER OF an application submitted by Astoria Owners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the Section 62-837(a) of the Zoning Resolution to modify the height and setback, the maximum residential tower size and the maximum width of walls facing the shoreline requirements of Section 62-34 (Height and Setback Regulations on Waterfront Blocks), in connection with a proposed mixed use development, within a general large-scale development, on property generally bounded by the westerly streetline of the former 3rd Street, the U.S. Pierhead and Bulkhead Line, a line 330 feet southeasterly of the westerly streetline of the former 3rd Street, a line 228.5 feet northeasterly of 26th Avenue, a line 179 feet southeasterly of the westerly streetline of the former 3rd Street, and 26th Avenue (Block 911, Lots 1, and the demapped portion of 3rd Street, in an R7-3/C2-4 District.

Borough of Queens, Community District 1, as shown on a diagram (for illustrative purposes only) dated March 28, 2022 and subject to the conditions of CEQR Declaration E-671.

This application for a special permit was filed by Astoria Owners LLC on November 9, 2021. This application, in conjunction with the related actions, would facilitate the proposed Halletts North mixed-use development and waterfront public access area (WPAA) at 3-15 26th Avenue (Block 911, Lots 1 and 49) in the Astoria neighborhood of Queens, Community District 1.

RELATED ACTIONS

In addition to the special permit (C 220198 ZSQ) that is the subject of this report, implementation of the land use actions associated with the proposed development also requires action by the City Planning Commission (CPC) on the following applications, which are being considered concurrently with this application:

C 220196 ZMQ Zoning map amendment to rezone an M1-1 zoning district to a R7-3/C2-4 zoning district

[1] The report (C 220198 ZSQ) has been administratively corrected on August 25, 2022. The original report inadvertently omitted one of the two findings related to the special permit. The omitted finding was not germane to the approval of this application.

N 220197 ZRQ	Zoning text amendment to establish a Mandatory Inclusionary Housing (MIH) area
N 220353 ZAQ	Waterfront authorization to modify requirements pertaining to the location and minimum dimension of elements within the WPAA
N 220200 ZAQ	Waterfront authorization to modify requirements pertaining to location and minimum and maximum dimensions of elements within the WPAA and requirements regulating materiality, lighting, and vehicle access
N 220202 ZAQ	Waterfront authorization to allow phased development of the WPAA
C 220206 MMQ	City Map change to demap a segment of Third Street north of 26th Avenue

BACKGROUND

A full background discussion and description of this project appears in the report for the related zoning map amendment (C 220196 ZMQ).

ENVIRONMENTAL REVIEW

This application (C 220198 ZSQ), in conjunction with the related applications (C 220196 ZMQ, N 220197 ZRQ, N 220353 ZAQ, N 220200 ZAQ, N220202 ZAQ, and C 220206 MMQ), were reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 21DCP138Q.

A summary of the environmental review, including the Final Environmental Impact Statement (FEIS) dated July 14, 2022, appears in the report on the related application for a zoning map amendment (C 220196 ZMQ).

WATERFRONT REVITALIZATION PROGRAM

This application (C 220198 ZSQ) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013, and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 et seq.) The designated WRP number is 19-227. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

UNIFORM LAND USE REVIEW

On March 28, 2022, this application (C 220198 ZSQ), and related applications (C 220196 ZMQ and C 220206 MMQ), were certified as complete by the Department of City Planning and duly referred to Community Board 1 and the Queens Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 220197 ZRQ) and zoning authorizations (N 220353 ZAQ, N 220200 ZAQ and N 220202 ZAQ) which was referred for information and review on March 28, 2022 in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Queens Community Board 1 held a public hearing on April 19, 2022 on this application (C 220198 ZSQ), in conjunction with the related applications on April 19, 2022 and, on April 27, 2022, adopted two resolutions recommending approval:

1) By a vote of 19 in favor, 14 opposed, and two abstaining, the board adopted a resolution recommending approval of the zoning map amendment (C 220196 ZMQ), zoning text

amendment (N 220197 ZRQ), authorizations (N 220353 ZAQ, N 220200 ZAQ, and N 220202 ZAQ); and

2) By a vote of 31 in favor, two opposed, and two abstaining, the board adopted a resolution recommending approval of the City Map change (C 220206 MMQ).

Borough President Recommendation

The Queens Borough President held a public hearing on April 28, 2022 on this application (C 220198 ZSQ) and the related actions , and, on May 23, 2022, issued a a recommendation to approve the application..

A summary of the Borough President's recommendation and conditions appears in the report for the related zoning map amendment (C 220196 ZMQ).

City Planning Commission Public Hearing

On May 25, 2022 (Calendar No. 7), the CPC scheduled June 8, 2022 for a public hearing on this application (C 220198 ZSQ), in conjunction with the related applications. The hearing was duly held on June 8, 2022 (Calendar No. 29).

There were three speakers in favor and none in opposition, as described in the report for the related zoning map amendment (C 220196 ZMQ), and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit (C 220198 ZSQ), in conjunction with the related actions (C 220196 ZMQ, N 220197 ZRQ, N 220353 ZAQ, N 220200 ZAQ, N 220202 ZAQ, and C 220206 MMQ), is appropriate. A full consideration and analysis of the issues and the reasons for approving the application appear in the report for the related zoning map amendment (C 220196 ZMQ).

FINDINGS

The Commission hereby makes the following findings pursuant to ZR Section 62-837(a), that the bulk modifications on waterfront blocks will not adversely affect access to light and air on surrounding waterfront public access areas, streets and properties; and:

(1) will result in a better site plan and a better relationship between the zoning lot and the adjacent streets, surrounding neighborhood, adjacent open areas and shoreline than would be possible through strict adherence to the regulations; or
(2) are necessary to protect unique natural features such as rock outcroppings, significant grade changes or wetlands, or to accommodate existing buildings or other structures.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on July 14, 2022, with respect to this application (CEQR No. 21DCP138Q), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulation, have been met and that:

1. The environmental impacts disclosed in the FEIS were evaluated in relation to the social, economic, and other considerations associated with the actions that are set forth in this report; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the action, with the modifications set forth and analyzed in the Technical Memorandum dated July 22, 2022, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
3. 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 to this City Planning Commission

report, those project components related to environment and mitigation measures that were identified as practicable.

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

RESOLVED, that City Planning Commission, in its capacity as the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination and consideration and findings described in this report, the application submitted by Astoria Owners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the Section 62-837(a) of the Zoning Resolution to modify the height and setback, the maximum residential tower size and the maximum width of walls facing the shoreline requirements of Section 62-34 (Height and Setback Regulations on Waterfront Blocks), in connection with a proposed mixed use development, within a general large-scale development, on property generally bounded by the westerly streeline of the former 3rd Street*, the U.S. Pierhead and Bulkhead Line, a line 330 feet southeasterly of the westerly streetline of the former 3rd Street*, a line 228.5 feet northeasterly of 26th Avenue, a line 179 feet southeasterly of the westerly streetline of the former 3rd Street, and 26th Avenue (Block 911, Lots 1, and the demapped portion of 3rd Street, in an R7-3/C2-4 District, Borough of Queens, Community District 1, is approved, as modified, and subject to the following terms and conditions:

1. The property that is the subject of this application (C 220198 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Studio V

Architecture and Ken Smith Workshop, filed with this application and incorporated in this Resolution:

Dwg No.	Title	Last Date Revised
Z-010.00	Zoning Analysis Table	07/25/2022
Z-011.00	Base Plane and Floor Area	07/25/2022
Z-100.00	Zoning Lot Site Plan	07/25/2022
Z-200.00	Waiver Plan	07/25/2022
Z-202.00	Waiver Sections	07/25/2022
Z-203.00	Waiver Sections	07/25/2022
Z-204.00	Waiver Sections	07/25/2022
Z-205.00	Waiver Sections	07/25/2022
Z-206.00	Waiver Sections	07/25/2022
Z-207.00	Height and Setback Waivers	07/25/2022
Z-208.00	Height and Setback Waivers	07/25/2022
L-100.00	Waterfront Access Area Plan/Zoning Lot Plan	07/25/2022
L-110.00	WPAA Zoning Compliance Chart 1/2	07/25/2022
L-111.00	WPAA Zoning Compliance Chart 2/2	07/25/2022
L-200.00	Dimension Plan	07/25/2022
L-210.00	Materials Plan	07/25/2022
L-220.00	Grading Plan	07/25/2022
L-230.00	Planting Plan	07/25/2022
L-231.00	Plant Images	03/24/2022
L-240.00	Seating and Furnishings Plan	07/25/2022
L-250.00	Exercise Equipment Plan	07/25/2022
L-300.00	Sections 1	07/25/2022
L-301.00	Sections 2	07/25/2022
L-302.00	Sections 3	07/25/2022

L-400.00	Landscape Details	07/25/2022
L-401.00	Furnishing Details	07/25/2022
L-402.00	Furnishing Details	07/25/2022
LT-100	Lighting Plan	07/25/2022
LT-101	Lighting Photometric Plan	07/25/2022
LT-102	Lighting Cutsheets	07/25/2022

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 (a) the restrictive declaration attached hereto as Exhibit A to this report, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, Queens County; and (b) the WPAA Maintenance Agreement associated with such declaration and attached as Exhibit F thereto shall have been executed. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

5. 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.

6. 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.

7. 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.

8. 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 220198 ZSQ), duly adopted by the City Planning Commission on July 25, 2022 (Calendar No. 3), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

DANIEL R. GARODNICK, Esq., *Chair*
KENNETH J. KNUCKES, Esq., *Vice Chairman*
DAVID J. BURNEY, LEILA BOZORG, ALFRED C. CERULO, III,
JOSEPH I. DOUEK, RICHARD W. EADDY,
ORLANDO MARIN, RAJ RAMPERSHAD, *Commissioners*

LEAH GOODRIDGE, *Commissioner, VOTING NO*

RESTRICTIVE DECLARATION

Made by:

ASTORIA OWNERS LLC

Dated:

[ ], 2022

QUEENS COUNTY
Block 911, Lot 1
Former 3rd Street north of 26th Avenue

RECORD AND RETURN TO:

HERRICK, FEINSTEIN LLP
2 PARK AVENUE, 14TH FLOOR
NEW YORK, NY 10016
ATTENTION: MITCHELL KORBEY, ESQ.

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SCHEDULE OF EXHIBITS

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EXHIBIT B	DESCRIPTION OF DEMAPPED PROPERTY
EXHIBIT C	CERTIFICATION OF PARTIES IN INTEREST
EXHIBIT D	WAIVERS
EXHIBIT E	DRAWINGS
EXHIBIT F	WPAA MAINTENANCE AGREEMENT
EXHIBIT G	FORM OF NOTICE OF SUBSTANTIAL COMPLETION
EXHIBIT H	FORM OF NOTICE OF FINAL COMPLETION

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RESTRICTIVE DECLARATION

Declaration ("**Declaration**") made as of this ____ day of _____, 202_, by Astoria Owners LLC ("**Declarant**"), a New York limited liability company, having an address at 43 West 47th Street, Suite 203, New York, NY 10036.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property located in the Borough of Queens, Queens County, City and State of New York, which property is designated on the tax map of the City of New York, Kings County (the "**Tax Map**") as the and Block 911, Lot 1 (collectively, the "**Subject Property**") as more particularly described in **Exhibit A** annexed hereto;

WHEREAS, the New York City Planning Commission (the "**CPC**") and New York City Council ("**Council**") have approved a demapping action under Application No. C 220206 MMQ (the "**Street Demapping Application**") with respect to certain land formerly mapped as 3rd Street north of 26th Avenue, comprising certain land which will be incorporated into the Tax Map as Block 911, Lot 1 (the "**Demapped Property**") as more particularly described in **Exhibit B** annexed hereto; and

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution ("**Zoning Resolution**" or "**ZR**"), and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, all parties in interest, as that term is defined in the definition of "**zoning lot**" in Section 12-10 of the Zoning Resolution ("**Parties in Interest**," or each, individually, a "**Party in Interest**"), to the Subject Property, as shown on the certification prepared by [TITLE COMPANY] (the "**Title Company**") a copy of which certification is attached hereto as **Exhibit C**, have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as **Exhibit D**, which instruments are intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant desires to develop on the Subject Property a mixed-use building comprised of up to three building segments (the "**Proposed Development**"), 46,288.34 square feet of WPAA (defined below) and 1,477.96 square feet of other public access areas (the "**Public Access Area**" or "**PAA**"); and

WHEREAS, Declarant shall provide approximately 1.10 acres (47,766.30 square feet)of publicly accessible open space, as shown on the Drawings, as part of the Subject Property, which will include a waterfront esplanade that will run the entire length of the Subject Property, providing multi-layered active and passive recreation space.

WHEREAS, in connection with the Proposed Development, Declarant is required to provide Waterfront Public Access Areas (the "**Waterfront Public Access Area**" or "**WPAA**") and visual corridors (hereinafter referred to as the "**Visual Corridors**") pursuant to Section 62-50

of the Zoning Resolution; and

WHEREAS, in connection with the Proposed Development and construction of the Waterfront Public Access Area, Declarant filed applications with the New York City Department of City Planning ("**DCP**") for approval by the Chairperson of the CPC (the "**Chairperson**") or the CPC, as applicable, for: (a) a zoning map amendment (Application No. 220196 ZMQ) (the "**Zoning Map Amendment**"); (b) amendment to Appendix F of the Zoning Resolution (Application No. 220197 ZRQ) (the "**Zoning Text Amendment**"); (c) a special permit pursuant to ZR Section 62-837(a) (Application No. 220198 ZSQ) (the "**Special Permit**"); (d) authorizations of the CPC pursuant to ZR Sections 62-822(a) (Application No. 220353ZAQ), 62-822(b) (Application No. N220200 ZAQ), and 62-822(c) (Application No. N220202 ZAQ) to modify requirements of the Waterfront Public Access Areas and to permit phased development of the Waterfront Public Access Area (the aforesaid authorizations, collectively, the "**Authorizations**"); and (e) a certification of the Chairperson pursuant to ZR Section 62-811 (Application No. N 220199 ZCQ) with respect to compliance with waterfront public access area and visual corridor requirements (the "**Certification**") (all of the foregoing, as the same may be amended, supplemented, or otherwise modified, collectively, the "**Application**"; the Application, excluding the Certification, the "**Discretionary Actions**"); and

WHEREAS, the Commission conducted an environmental review of the Discretionary Actions as lead agency pursuant to City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. ("**CEQR**") and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 ("**SEQRA**"), and issued a Notice of Completion of the Final Environmental Impact Statement ("**FEIS**") on July 14, 2022; and

WHEREAS, to ensure that the development of the Subject Property is consistent with the analysis in the FEIS upon which the Commission has made findings pursuant to CEQR and SEQRA, and incorporates certain project components related to the environment ("**PCREs**") which were material to the analysis of environmental impacts in the FEIS and certain measures ("**Mitigation Measures**") identified in the FEIS to mitigate certain impacts, Declarant has agreed to restrict the development, operation, use, and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

WHEREAS, the Discretionary Actions were approved on July 25, 2022; and

WHEREAS, this Declaration is entered into pursuant to ZR Section 62-74 to set forth the commitments of Declarant to (i) construct the Waterfront Public Access Area in accordance with the requirements of the Zoning Resolution, the Authorizations and the terms of this Declaration, (ii) grant to the City and the general public permanent access easements over the Waterfront Public Access Area upon Substantial Completion (as defined herein) thereof and (iii) assume responsibility to maintain, operate and repair the Waterfront Public Access Area, upon Substantial Completion (as defined herein) thereof, each subject to the terms contained herein; and

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WHEREAS, pursuant to the Application, Declarant intends to construct the Waterfront Public Access Area and Public Access Area and to provide Visual Corridors as shown in the Drawings in **Exhibit E** attached hereto; and

WHEREAS, as a condition to the Certification, Declarant is required to execute and file of record this Declaration confirming that the Declarant shall (i) improve, maintain and operate the WPAA pursuant to Sections 62-52 and 62-70 of the Zoning Resolution and (ii) provide the Visual Corridor(s) pursuant to Section 62-51 of the Zoning Resolution; and

WHEREAS, pursuant to Zoning Resolution Section 62-811, no excavation or building permit may be issued for development of the Subject Property until the Chairperson (as defined hereinabove) has certified to the Department of Buildings (as 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 a restrictive declaration has been executed and recorded pursuant to Section 62-74; and

WHEREAS, in connection with the Certification, Declarant shall execute a maintenance and operation agreement (the "**WPAA Maintenance Agreement**") with the Department of Parks and Recreation ("**DPR**"), which WPAA Maintenance Agreement shall be incorporated by reference into this Declaration and made an enforceable part hereof, a copy of which is attached hereto as **Exhibit F**; and

WHEREAS, Declarant, its successors and assigns, for so long as any shall have any right, title or interest in the Subject Property, shall maintain ownership of the WPAA and shall be responsible for the maintenance and capital repair of the WPAA, subject to the terms and conditions of the WPAA Maintenance Agreement; and

WHEREAS, Declarant desires to restrict (i) the manner in which the Proposed Development will be arranged to provide the Visual Corridors for the life of the Proposed Development and (ii) the manner in which the WPAA may be developed, redeveloped, maintained and operated for the duration of the existence of the Proposed Development and intends such restrictions to benefit all land owners and tenants, including the City of New York (the "**City**"), owning or leasing property within one-half mile of the Subject Property.

NOW THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, transferred, conveyed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations, liens and agreements, which shall run with the land and bind Declarant and its heirs, successors and assigns so long as they have any right, title or interest in the Subject Property or any part thereof.

ARTICLE 1

DEFINITIONS

ARTICLE 2 Definitions.

ARTICLE 3**Affordable Housing Unit**" shall mean any residential unit of housing within any building at the Proposed Development that is rented to "**low income**

households" (as such term is defined in Section 23-911 of the Zoning Resolution) or "**middle income households**" (as such term is defined in Section 23-911 of the Zoning Resolution).

ARTICLE 4"**AG**" shall mean the Attorney General of the State of New York.

(a) "**Applicable Law"** shall mean all presently existing or hereafter enacted laws, orders, ordinances, rules, regulations and requirements of all federal, state, municipal and local governments and their departments, agencies, commissions, boards and officers and any other governmental agency applicable to or having appropriate jurisdiction over the Subject Property or any portion thereof.

ARTICLE 5"**Application**" shall have the meaning given in the Recitals to the Declaration.

ARTICLE 6"**As-Built**" shall have the meaning set forth in Section 4.12.

ARTICLE 7"**As-of-Right Development**" shall mean any development that can be developed and constructed on the Subject Property without utilizing any of the Special Permits or Authorizations.

(a) "**Assessment Property**" shall have the meaning set forth in Section 16.5(a).

(b) "**Association**" shall have the meaning set forth in Section 16.1.

(c) "**Association Members**" shall have the meaning set forth in Section 16.2.

(d) "**Association Obligation Date**" shall have the meaning set forth in Section 16.1.

(e) "**Authorizations**" shall have the meaning set forth in the Recitals.

ARTICLE 8"**Board**" shall have the meaning set forth in Section 15.1.

ARTICLE 9"**Bulkhead Line**" shall mean the Bulkhead Line adopted by the United States Army Corps of Engineers.

ARTICLE 10"**Certification**" shall have the meaning set forth in the Recitals.

ARTICLE 11"**CEQR**" shall have the meaning set forth in the Recitals.

ARTICLE 12"**Chairperson**" shall mean the then Chairperson of the New York City Planning Commission.

ARTICLE 13"**City**" shall mean The City of New York.

ARTICLE 14"**City Recommendations**" shall have the meaning set forth in Section 4.5.

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ARTICLE 15"**Commissioner**" shall mean the Commissioner of the New York City Department of Parks and Recreation or any successor to the jurisdiction thereof.

ARTICLE 16"**Completion Letter of Credit**" shall have the meaning set forth in Section 8.3.

ARTICLE 17"**Coop/Condominium**" shall have the meaning set forth in Section 15.1.

ARTICLE 18"**Coop/Condominium Obligation Date**" shall have the meaning set forth in Section 15.1.

ARTICLE 19"**CPC**" shall have the meaning set forth in the Recitals.

(a) "**CRFN**" have the meaning set forth in the Recitals.

ARTICLE 20"**DCP**" have the meaning set forth in the Recitals.

ARTICLE 21"**DCRE**" shall mean Declaration of Covenants, Restrictions, and Easements establishing the Association.

ARTICLE 22"**Declarant**" shall mean the named Declarant and the heirs, successors and assigns of the named Declarant except that (i) Declarant shall not include the holder of a mortgage or deed of trust on all or any portion of the Subject Property unless and until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, (ii) Declarant shall include a Coop/Condominium only from and after the Coop/Condominium Obligation Date as set forth in Section 12.1, and (iii) Declarant shall include the Association only from and after the Association Obligation Date as set forth in Section 16.1.

ARTICLE 23"**Declaration**" shall mean this document and any exhibits attached hereto an incorporated herein.

ARTICLE 24"**Delay Notice**" shall have the meaning set forth in Section 8.4.

ARTICLE 25"**Demapped Property**" shall have the meaning set forth in the Recitals.

ARTICLE 26"**Development Phase**" shall mean either Waterfront Development Phase 1, Waterfront Development Phase 2, or Waterfront Development Phase 3, as applicable, and "**Development Phases**" shall mean all three Waterfront Development Phases, collectively.

ARTICLE 27"**Development Property**" shall mean the Subject Property exclusive of the Waterfront Public Access Area.

ARTICLE 28"**Development Sequence**" shall mean the sequenced development of Waterfront Development Phase 1, Waterfront Development Phase 2, and Waterfront Development Phase 3 in accordance with the Drawings and Waterfront Zoning Lot Phasing Plans, as applicable.

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ARTICLE 29"**DOB**" shall mean the New York City Department of Buildings or any successor to its jurisdiction.

ARTICLE 30"**DPR**" shall have the meaning set forth in the Recitals.

ARTICLE 31"**Drawings**" shall mean the following drawings showing the plans for the Waterfront Public Access Area and Public Access Area prepared by Studio V Architecture, and attached hereto as **Exhibit E**, as the same may be modified thereafter in accordance with this Declaration:

Drawing No.	Title	Date
	Survey	6/25/2018
L-001.00	Phasing 1 Plan	7/25/2022
L-002.00	Phasing 2 Plan	7/25/2022
L-003.00	Phasing Plan 3	7/25/2022
L-100.00	Waterfront Access Area Plan/Zoning Lot Plan	7/25/2022
L-110.00	WPAA Zoning Compliance Chart 1/2	7/25/2022
L-111.00	WPAA Zoning Compliance Chart 2/2	7/25/2022
L-200.00	Dimension Plan	7/25/2022
L-210.00	Materials Plan	7/25/2022
L-220.00	Grading Plan	7/25/2022
L-230.00	Panting Plan	7/25/2022
L-231.00	Plant Images	3/24/2022
L-240.00	Seating and Furnishings Plan	7/25/2022
L-250.00	Exercise Equipment Plan	7/25/2022
L-300.00	Sections 1	7/25/2022
L-301.00	Sections 2	7/25/2022
L-302.00	Sections 3	7/25/2022
L-400.00	Landscape Details	7/25/2022
L-401.00	Furnishing Details	7/25/2022
L-402.00	Furnishing Details	7/25/2022
LT-100	Lighting Plan	7/25/2022
LT-101	Lighting Photometric Plan	7/25/2022
LT-102	Lighting Cutsheets	7/25/2022

ARTICLE 32"**Effective Date**" shall mean the date on which the Certification is approved.

ARTICLE 33"**Federal/State Public Access Area Approvals**" shall have the meaning set forth in Section 3.2 hereof.

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ARTICLE 34"**FEIS**" shall have the meaning set forth in the Recitals.

ARTICLE 35"**Final Completion**" or "**Finally Complete**" shall mean the completion of all relevant items of work, including any Punch List or other items that remain to be completed after Substantial Completion.

ARTICLE 36"**Final Plans and Specifications/100% Construction Drawings**" shall include, but not be limited to, the entire bid book including all finalized specifications and final contract documents describing the Waterfront Work (as hereinafter defined). The submission should consist of two (2) sets of half-scale plans plus an electronic file containing the above items. Declarant shall submit complete final plans and specifications drawings to DPR upon completion of work. Acceptable submittals of such drawings shall conform to DPR's then existing standards for such record drawings. The finalized Final Plans and Specifications/100% Construction Drawings record drawings shall include the following: Declarant's company name, address and telephone number, Subject Project Name, Address, drawing date, the term Final Plans and Specifications/100% Construction Drawings, signature of the principal of the Declarant, and a statement certifying that the Final Plans and Specifications/100% Construction Drawings record drawings are accurate and correct.

ARTICLE 37"**Floor Area**" shall mean "floor area" as defined in Section 12-10 (floor area) of the Zoning Resolution.

ARTICLE 38"**Force Majeure**" shall mean that a Force Majeure Event has occurred.

ARTICLE 39"**Force Majeure Event**" shall include, but not be limited to, (i) governmental restrictions, regulations or controls; (ii) enemy or hostile government action, civil commotion, insurrection, revolution, terrorism or sabotage; (iii) fire or other casualty; (iv) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (v) failure or inability of a public utility to provide power, heat or light or any other utility service; (vi) strikes, lockouts or labor disputes; (vii) inability to obtain labor or materials or reasonable substitutes therefor (unless due to any act or omission of Declarant); (viii) acts of God; (ix) a taking of the whole or a portion of the Subject Property by condemnation or eminent domain; (x) denial to Declarant by any party of a right of access to any adjoining real property which right is vested in Declarant by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) any undue material delay in the issuance of approvals by any department or agency of the City, the State of New York or the United States that is not caused by any act or omission of Declarant; (xii) underground or soil conditions that were not and could not reasonably have been foreseen by Declarant prior to their discovery or occurrence; (xiii) the pendency of any litigation relating to the Application or to the underlying sections of the Zoning Resolution; (xiv) public health emergencies declared by the Governor of the State of New York or the Mayor of the City of New York affecting Declarant's ability to undertake and/or pursue construction of the Waterfront Public Access Area; or (xv) any other condition similar to the foregoing which are beyond Declarant's reasonable control.

ARTICLE 40"**Inspector**" shall have the meaning set forth in Section 9.3.

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ARTICLE 41"**Legal Requirements**" shall mean all laws, rules and regulations pertaining to the construction of the Waterfront Work (as hereinafter defined).

ARTICLE 42"**Maintenance Obligation**" shall have the meaning set forth in Section 11.2.

ARTICLE 43"**Mitigation Measures**" shall have the meaning set forth in the Recitals.

ARTICLE 44"**Mortgagee**" shall mean (i) the holder of a first mortgage on all or any portion of the Subject Property, other than the holder of a mortgage solely on one or more individual residential or commercial condominium units in the Proposed Development, who has given written notice of its name and address to DCP and DPR, and (ii) the holder of a pledge of the direct or indirect equity interests in Declarant who has given written notice of its name and address to DCP and DPR. Any Party in Interest to this Declaration is not obligated to provide DCP and DPR its name and address.

ARTICLE 45"**New Building**" shall mean any building or building segment constructed or redeveloped on the Subject Property pursuant to the Proposed Development.

ARTICLE 46"**Notice of Final Completion**" shall have the meaning set forth in Section 7.2.

ARTICLE 47"**Notice of Substantial Completion**" shall have the meaning set forth in Section 6.2.

ARTICLE 48"**Offering Plan**" shall have the meaning set forth in Section 15.2.

ARTICLE 49"**Party in Interest**" shall mean a party in interest as defined in Section 12-10 (definition of zoning lot) of the Zoning Resolution.

ARTICLE 50"**PCO**" shall mean a Permanent Certificate of Occupancy issued by DOB.

ARTICLE 51"**PCREs**" shall have the meaning set forth in the Recitals.

ARTICLE 52"**Proposed Development**" shall have the meaning set forth in the Recitals.

ARTICLE 53"**Public Access Easement**" shall have the meaning set forth in Section 10.1.

ARTICLE 54"**Punch List**" shall have the meaning set forth in Section 8.2.

ARTICLE 55"**Register's Office**" shall have the meaning set forth in the Recitals.

ARTICLE 56"**SEQRA**" shall have the meaning set forth in the Recitals.

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ARTICLE 57"**Shore Public Walkway**" shall mean the areas labeled "Shore Public Walkway" on the Drawings.

ARTICLE 58"**Special Permit**" shall have the meaning set forth in the Recitals.

ARTICLE 59"**State**" shall mean the State of New York.

ARTICLE 60"**Subject Property**" shall have the meaning set forth in the Recitals.

ARTICLE 61"**50% Submission**," and "**80% Submission**" shall have the following meanings:

ARTICLE 62 Where 50% Submission includes, but is not limited to, conceptual drawings, furnishing details, a complete set of contract drawings and all specifications, especially all custom specifications; and

ARTICLE 63 Where 80% Submission includes, but is not limited to, all bid items, all specifications and all drawings.

ARTICLE 64 Each submission of construction drawings should consist of two (2) sets of half scale plans plus an electronic file containing the above items.

ARTICLE 65"**Substantial Completion**" or "**Substantially Complete**" shall mean that the Waterfront Work associated with the Waterfront Public Access Area has been constructed substantially in accordance with the Drawings and has been completed to such an extent that all portions of the Waterfront Public Access Area associated with the Waterfront Work may be operated and made available for public use, notwithstanding that (i) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed; or (ii) Declarant has not completed any relevant planting or vegetation or other tasks that may be required to occur seasonally

(a) "**Successor Declarant**" shall have the meaning set forth in Section 15.1(b).

ARTICLE 66"**TCO**" shall mean a Temporary Certificate of Occupancy issued by DOB for any New Building.

ARTICLE 67 "**Title Company**" shall mean a title insurance company licensed to do business by the State of New York.

ARTICLE 68"**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.

ARTICLE 69"**Waterfront Public Access Area**" **or "WPAA"** shall have the meaning set forth in the Recitals.

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ARTICLE 70"**Waterfront Phase 1**" shall mean the Waterfront Public Access Area delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

ARTICLE 71"**Waterfront Phase 1 Plan**" shall mean drawing L-001.00 of the Waterfront Public Access Area Plans.

ARTICLE 72"**Waterfront Phase 2**" shall mean the Waterfront Public Access Area delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

ARTICLE 73"**Waterfront Phase 2 Plan**" shall mean drawing L-002.00 of the Waterfront Public Access Area Plans.

ARTICLE 74"**Waterfront Phase 3**" shall mean the Waterfront Public Access Area delineated on the waterfront Zoning Lot Phasing, Phase 3 Plan.

ARTICLE 75"**Waterfront Phase 3 Plan**" shall mean drawing L-003.00 of the Waterfront Public Access Area Plans.

ARTICLE 76"**WPAA Maintenance Agreement**" shall have the meaning set forth in the Recitals.

ARTICLE 77"**WPAA Maintenance Security**" shall have the meaning set forth in Section 6.3 hereof.

ARTICLE 78"**Waterfront Work**" shall mean the work necessary to construct the Waterfront Public Access Area and Public Access Area in accordance with this Declaration. This shall include any work on substructure elements, which may include, but not be limited to, the bulkhead, pilings and platform.

ARTICLE 79 "**Visual Corridor**" shall mean the Visual Corridor labelled "Visual Corridor Diagram."

(a) "**Zoning Resolution**" shall have the meaning set forth in the Recitals.

(b) "**Zoning Text Amendments**" shall have the meaning set forth in the Recitals.

ARTICLE 80

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

ARTICLE 81 Development of the Subject Property.

ARTICLE 82 As-of-Right Development. The provisions of paragraph (b) of this Section 2.1 shall not apply to an As-of-Right Development. Notwithstanding the foregoing, and for the avoidance of doubt, any As-of-Right Development shall be developed in accordance with the terms and conditions of Article 4 of this Declaration and Article VI, Chapter 2 of the Zoning Resolution.

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ARTICLE 83 Phasing. In connection with Declarant's request for an Authorization for phased development of the WPAA, pursuant to ZR Section 62-822(c), Declarant hereby covenants and agrees, subject to the provisions of this Declaration, that: (aa) Declarant shall develop the WPAA on the Subject Property in Development Phases in accordance with the Development Sequence, i.e., commencing with Waterfront Phase 1 and then commencing with Waterfront Phase 2 and Waterfront Phase 3; and (bb) that Declarant may not apply for or accept a TCO or PCO for any portion of a New Building in a Development Phase until the applicable portion of the WPAA associated with such Development Phase has been Substantially Completed. Declarant may choose to develop multiple Development Phases simultaneously, subject to the provisions of this Section 2.1(b).

ARTICLE 84 Recitals. The Declarant hereby incorporates by reference the above recitals into this Declaration.

ARTICLE 85

PERFORMANCE OF THE WATERFRONT WORK

ARTICLE 86 Construction of Waterfront Public Access Area. If Declarant develops the Subject Property, then Declarant shall be required to perform the Waterfront Work and construct the Waterfront Public Access Area and Public Access Area substantially in accordance with the Drawings, the Final Plans and Specifications/100% Construction Drawings, and this Declaration and, once constructed, shall maintain the WPAA and PAA as set forth herein. The WPAA and PAA shall be accessible by the public as shown on the Drawings, during the hours of operation of the WPAA and PAA, as delineated in Section 11.1. The Waterfront Work associated with the Waterfront Public Access Area shall be required at such time as Declarant develops the Subject Property as set forth in this Declaration, subject to Section 2.1(b) hereof.

ARTICLE 87 State and Federal Permits. Declarant has advised the City that construction of portions of the WPAA and PAA will require one or more permits and approvals 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 WPAA and PAA that do not conform with the Drawings and, with respect to the WPAA, the provisions of the WPAA Maintenance Agreement.

ARTICLE 88 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 portions of the WPAA required in connection with a New Building no later than fifteen months after obtaining a New Building permit for such New Building from the City, or if Declarant obtains the Federal/State Public Access Area Approvals and the Federal/State Public Access Area Approvals do not include approval for all portions of the WPAA required in connection with such New Building 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 WPAA required in connection with such New Building no later than fifteen months after obtaining

a New Building permit for such New Building from the City, Declarant shall so notify DPR (with respect to the WPAA) and DCP. Provided that, in the exercise of their reasonable judgment, DPR (with respect to the WPAA) 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 Waterfront 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 may be deemed to constitute a Force Majeure Event pursuant to the terms of this Declaration and Circumstances Beyond the Control of the Owner pursuant to the provisions of the WPAA Maintenance Agreement with respect to Declarant's obligation to Substantially and/or Finally Complete such portion of the WPAA required in connection with such New Building. In such event, Declarant may obtain a TCO or PCO with respect to a New Building in Waterfront Phase, (x) provided that Declarant has satisfied all conditions to the issuance of such TCO or PCO with respect to such New Building, except for completion of any elements or satisfaction of any conditions required in order to Substantially Complete or Finally Complete the WPAA required in connection with such New Building that could not be completed or satisfied due to inability to obtain the Federal/State Public Access Area Approvals, and (y) subject to the provisions for Force Majeure set forth in Article IX hereof and subject to the provisions for Circumstances Beyond the Control of the Owner pursuant to the provisions of the WPAA Maintenance Agreement.

ARTICLE 89 Modifications of Final Waterfront Public Access Area Plans. Declarant shall have the right to make non-material modifications to the Drawings to respond to unanticipated field conditions in accordance with the WPAA Maintenance Agreement.

ARTICLE 90 Performance of Waterfront Work. Declarant agrees that the Waterfront Work shall be performed in accordance with all Legal Requirements and with the provisions of this Declaration.

ARTICLE 91
DESIGN DEVELOPMENT

ARTICLE 92 Drawings. Declarant agrees that it may not submit any Design Submission pursuant to this Article which is not in substantial conformity with the Drawings without the prior written approval of DPR and DCP. Such written approval by DPR and DCP shall constitute acceptance by the Chairperson of any modifications to the Drawings, which the Chairperson thereafter will, if necessary, incorporate into a recertification pursuant to Zoning Resolution Section 62-811 that the Drawings comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution upon application by the Declarant as hereinafter set forth. Concurrent with submission of Final Plans and Specifications/100% Construction Drawings pursuant to Section 4.11, Declarant shall, if the Drawings have been modified, file an application pursuant to Section 62-811 of the Zoning Resolution revising the Drawings to incorporate all such modifications which have been previously approved in accordance with this Section, whereupon the Chairperson shall certify that the revised Drawings comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution, except to the extent an authorization for modification pursuant to Section 62-822 has been obtained.

ARTICLE 93 Submission of Construction Drawings. Declarant shall submit to DPR the following construction drawings for the Waterfront Work: (i) at 50% completion of such

construction drawings, the 50% Submission; and (ii) at 80% completion of such construction drawings, the 80% Submission (each of the 50% Submission and the 80% Submission, referred to as a "**Design Submission,**" and collectively, the "**Design Submissions**"). Each Design Submission shall include a schedule of estimated costs and designs showing how the Shore Public Walkway will relate to the adjoining properties and shall identify on each page of the submission whether it is part of the 50% Submission, or the 80% Submission. The 80% Submission shall include a lifecycle maintenance cost estimate of the portion of the WPAA covered by the 80% Submission. Additionally, the Design Submissions must include specifications for the Waterfront Work as set forth in Section 4.3, along with such other specifications as Declarant wishes to include. Nothing in this Section shall prevent Declarant from submitting construction drawings of any portion of the Waterfront Public Access Area to DPR at other times as may be agreed by Declarant and DPR.

ARTICLE 94 Marine Structures and Engineered Shoreline Edge Requirements. The Design Submissions shall include drawings for marine structures and engineered shoreline edges for DPR review and approval to include but not be limited to a detailing of the performance specifications for the concrete mix design, rebar type and sizing, pile placement and elevations, load capacity, and assessment (maximum of two years old) of any existing structural components proposed to remain in place, as applicable. The design load of any marine structures and engineered shoreline edges, as applicable, is not to be less than three hundred and fifty (350) pounds per square foot (100 pounds per square foot live load and 250 pounds per square foot superimposed dead load) unless a licensed engineer certifies in writing to DPR that a lesser design load is structurally appropriate for particular portions of the improvements assuming an expected service life of no less than fifty (50) years, assuming customary maintenance and repair throughout the term and a capital maintenance and repair cycle of not less than twenty (20) years and consistent with the uses of such portions of the improvements as reflected in the most recent construction drawings and the anticipated programming for that portion of the marine structures and engineered shoreline edges, in which case such portion of the improvements can be designed to such lesser design load provided that DPR agrees with such certification. Submission of the Final Plans and Specifications/100% Construction Drawings shall include a licensed engineer's statement indicating a projection of (i) the expected service life of the improvements assuming customary maintenance and repair throughout the term and a twenty (20) year capital maintenance and repair cycle (which expected service life shall not be less than fifty (50) years), (ii) the anticipated construction schedule of the improvements, (iii) life cycle cost of the improvements and (iv) confirmation that the structural design meets the loading requirements of the improvements, as applicable, including requirements for emergency vehicle access as required by the New York City Fire Department. Upon completion of such work, Declarant shall provide DPR with copies of the applicable sign-offs from any involved City or State entities as they become available and true and complete copies of the final construction drawings.

ARTICLE 95 Administration. DPR shall manage and coordinate on behalf of the City the review of the Design Submissions. All documents prepared by Declarant pursuant to this Article 3 shall be sent simultaneously to DPR and DCP.

ARTICLE 96 Agency Review Time Periods. DPR shall review the Design Submissions and shall approve or disapprove the same by written notice to Declarant no later than thirty (30) calendar days after delivery to DPR. No separate approval of DCP or the Chairperson shall be

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required. DPR shall approve Design Submissions that are consistent with the Drawings, subject to Section 4.6(a) hereof. If DPR disapproves of, or cannot adequately evaluate, a particular feature or element of a Design Submission, then DPR shall set forth in detail the reasons for such disapproval, indicate why DPR was not able to adequately evaluate the particular Design Submission feature or element, or identify items that were not addressed in the Design Submission that should be addressed in Declarant's next required Design Submission (the "**Design Submission Report**"). Declarant shall thereafter submit a revised Design Submission responsive to DPR's Design Submission Report and, upon receipt thereof, DPR shall approve or disapprove all revised Design Submissions within fifteen (15) calendar days after receipt thereof. DPR may approve a Design Submission with recommendations for modifications (the "**City Recommendations**") and Declarant shall incorporate the City Recommendations in revised construction drawings unless Declarant submits to DPR a written explanation of why it believes that such modifications would unreasonably increase the cost of the Waterfront Work or are otherwise not in conformity with the Drawings. DPR shall, within fifteen (15) calendar days after receipt of a revised Design Submission incorporating the City Recommendations in a manner satisfactory to DPR, approve such Design Submission, or if Declarant's written explanation or revised Design Submission is not satisfactory, disapprove such Design Submission and issue a Design Submission Report. If DPR fails to respond to any submission by Declarant within the time periods set forth in this Section, Declarant shall send a reminder notice requesting DPR's approval within seven (7) days of receipt of such reminder notice. If DPR fails to respond within such seven (7) day period, Declarant may provide a second reminder notice requesting DPR's approval within seven (7) days of receipt of the second reminder notice. If DPR fails to respond within such second seven (7) day notice period, then provided that such reminder notices have been sent to DPR, DPR shall be deemed to have approved such Design Submission, including all of the construction drawings which comprise such Design Submission.

ARTICLE 97 Standards for Review.

ARTICLE 98 Declarant acknowledges that DPR may disapprove any Design Submission thereof that:

ARTICLE 99would, in DPR's reasonable judgment, make the Waterfront Public Access Area too costly or impractical to maintain;

ARTICLE 100would, in DPR's reasonable judgment, create an unusual risk to public safety; or

ARTICLE 101does not, in DPR's reasonable judgment following consultation with DCP, substantially conform to the most recently approved Design Submission, or Drawings as may have been previously modified with the approval of DPR and DCP pursuant to Section 4.1.

ARTICLE 102 Upon approval by DPR of the 50% Submission, or the 80% Submission, each such approval shall be binding on DPR, and DPR may not disapprove a feature or element on a subsequent Design Submission or on the Final Plans and Specifications/100% Construction Drawings, which has not been revised or modified by Declarant on such subsequent Design Submission or on the Final Plans and Specifications/100% Construction Drawings,

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except where such disapproval is based on information that was not reasonably available at the time of the initial approval, or new conditions have arisen since the initial approval that materially affect the ability to proceed with the design set forth in the previously approved Design Submission. Notwithstanding the foregoing, nothing in this Declaration is intended to release Declarant from its obligation to ensure that the WPAA conforms with all relevant provisions of the Zoning Resolution.

ARTICLE 103 In reviewing any Design Submission, DPR shall work with Declarant to avoid changes that increase the cost of the Waterfront Work and in any event shall use reasonable efforts to minimize any requested changes that increase the cost of the Waterfront Work.

ARTICLE 104 State and Federal Permits.

ARTICLE 105 Declarant has advised the City that construction of the Waterfront Public Access Area, including the Waterfront Work, will require certain permits and approvals (the "**Permitted Work**") from the New York State government and the Federal government (collectively, the "**Federal/State Approvals**"). Declarant, at its sole cost and expense, covenants to proceed in good faith and to diligently apply for and prosecute applications for all Federal/State Approvals and for any City permits and approvals necessary for the Waterfront Work. In connection with its efforts to obtain the Federal/State Approvals, Declarant shall not file or otherwise formally submit to any federal or state agency any plans, drawings or illustrative representations of the Waterfront Public Access Area that do not conform with the Drawings or Design Submissions submitted pursuant to this Declaration and have not been approved in writing by DPR and DCP.

ARTICLE 106 Declarant shall submit to DPR copies of all associated permits relating to any waterfront structural work such as construction, reconstruction, and/or rehabilitation of the bulkhead, pier and/or platform, prior to such work being performed.

ARTICLE 107 Schedule. In order to ensure that DPR and DCP have adequate time to prepare for the review process contemplated by this Article 4 Declarant shall notify DPR and DCP in writing of its intention to commence the design process for the Waterfront Work at least thirty (30) days prior to submitting the 50% Submission, such notification to include an anticipated schedule for: (i) submission of the 50% Submission; (ii) the 80% Submission; (iv) the Final Plans and Specifications/100% Construction Drawings; (v) commencement of construction of the portion of the Waterfront Public Access Area that is the subject of the notice; and (vi) commencement of any private development associated with the Waterfront Public Access Area that is the subject of the notice. After notifying DPR and DCP as outlined above, Declarant shall make a good faith effort to timely notify DPR of any material changes in the previously anticipated schedule. Declarant shall not submit the 50% Submission and the 80% Submission simultaneously.

ARTICLE 108 Modifications Due to Failure to Obtain Permits.

ARTICLE 109 If Declarant determines that, despite its good faith efforts, it will be unable to obtain the Federal/State Approvals for all or any portion of the Permitted Work at

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the time required to obtain TCOs by the date that the Proposed Development is eligible for issuance of TCOs, Declarant shall so notify DPR and DCP. Provided that, exercising their reasonable judgment, DPR and DCP concur that (i) Declarant has exercised good faith in seeking to obtain the Federal/State Approvals, and (ii) Declarant is unlikely to obtain the Federal/State Approvals by a date upon which approvals are needed in order to obtain a TCO by the date that the Proposed Development is eligible for issuance of TCOs, Declarant may submit to DPR and DCP for their approval a proposed modification to the Drawings to provide a substitute site plan and public amenity. Approval of such substitute site plan and public amenity shall serve as a determination by the Chairperson that he/she is prepared to recertify the Drawings pursuant to Section 62-811 to incorporate the substitute site plan and public amenity. In the event that, due to delays caused by provision of the substitute site plan and public amenity approved by DCP and DPR, Substantial Completion does not occur by the date that the Proposed Development is eligible for issuance of TCOs, Declarant may obtain TCOs for the Proposed Development notwithstanding the requirements of Section 8.1 provided that Declarant is proceeding expeditiously towards Substantial Completion of the substitute public amenity; and provided further that as a condition to issuance of any TCO, DPR and DCP may require Declarant to provide an alternative form of security as reasonably necessary to assure completion of the substitute public amenity.

ARTICLE 110 Notwithstanding Section 4.9(a), DPR and DCP may decline to make such determination where the conditions set forth in such Section are met and direct Declarant by written notice to continue to seek the Federal/State Approvals; provided, however, that such direction shall constitute a Force Majeure Event subject to the provisions of Section 8.5. In the event that DPR and DCP direct Declarant to continue to seek the Federal/State Approvals pursuant to this subdivision and Declarant is unable to obtain such Federal/State Approvals within six (6) months thereafter, DPR and DCP may at any time thereafter direct Declarant to provide a substitute site plan and public amenity in the manner provided for in Section 3.9(a).

ARTICLE 111 Modification of Drawings. In the event that, in connection with the Design Submissions, Declarant and DCP and DPR agree that one or more modifications of the Drawings are appropriate, DCP shall issue a written approval thereof. Such written approval by DCP shall serve as a determination by the Chairperson that he/she is prepared to recertify the Drawings to incorporate the modification. Together with its application for approval of Final Plans and Specifications/100% Construction Drawings, Declarant shall file an application pursuant to Section 62-811 of the Zoning Resolution requesting that the Chairperson certify that the revised Drawings comply with the requirements of Article VI, Chapter 2. The Chairperson shall issue such certification within thirty (30) days of such complete application.

ARTICLE 112 Final Plans and Specifications/100% Construction Drawings. No later than thirty (30) calendar days prior to the date on which Declarant intends to commence construction of any portion of the Waterfront Work, Declarant shall submit to DPR the Final Plans and Specifications/100% Construction Drawings for such portion of the Waterfront Work. The Final Plans and Specifications/100% Construction Drawings shall be reviewed in accordance with the time periods and standards set forth in Sections 4.5 and 4.6 hereof. If DPR fails to respond in such thirty (30) day period, the Final Plans and Specifications/100% Construction Drawings shall be deemed approved in all respects and for all purposes of this

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Declaration. Nothing contained in this Declaration shall be construed to give the City or any agency thereof (including an Inspector, as defined herein, or any engineers or field inspectors) the right to require changes to the Final Plans and Specifications/100% Construction Drawings.

Upon completion of Waterfront Work, Declarant shall submit copies of the applicable sign-offs from any involved City or State entities and complete Final Plans and Specifications/100% Construction Drawings to DPR . Submittals shall be delivered to:

New York City, Parks and Recreation
Map File, Olmsted Center
Flushing Meadows - Corona Park
Flushing, New York 11368

Acceptable submittals of such Final Plans and Specifications/100% Construction Drawings shall conform to DPR's then existing standards for such record drawings. It shall be Declarant's obligation to inquire with DPR as to its current standards for such record drawings prior to submitting the Final Plans and Specifications/100% Construction Drawings. The final "Final Plans and Specifications/100% Construction Drawings" record drawings shall include the following: Declarant's company name, address and telephone number, Subject Project Name, Address, drawing date, the word "Final Plans and Specifications/100% Construction Drawings", Declarant's signature, and a statement certifying that the "Final Plans and Specifications/100% Construction Drawings" drawings are accurate and correct, provided that the Declarant shall be permitted to use CSI 2004 specification system for the bidding package.

ARTICLE 113 As-Built Drawings. Declarant shall submit complete as-built record drawings to DPR once it believes that the WPAA has been Finally Complete. Submittals shall be delivered to:

New York City, Parks and Recreation
Map File, Olmsted Center
Flushing Meadows - Corona Park
Flushing, New York 11368.

Acceptable submittals of "As-Built" record drawings shall conform to DPR's then existing standards for such record drawings. It shall be Declarant's obligation to inquire with DPR as to its existing standards for such record drawings prior to submitting the "As-Built". The final "As-Built" record drawings shall include the following: Declarant's company name, address and telephone number, Subject Project Name, Address, drawing date, the word "As-Built", Declarant's signature, and a statement certifying that the "As-Built" drawings are accurate and correct, provided that the Declarant shall be permitted to use CSI 2004 specification system for the bidding package.

ARTICLE 114

CONSTRUCTION

ARTICLE 115 Manner of Performance of the Construction Work; Permits. Declarant shall, at its sole cost and expense, undertake the performance of the Waterfront Work for the

applicable Development Phase so as to construct the Waterfront Public Access Area substantially in accordance with the approved Final Plans and Specifications/100% Construction Drawings, except as modified in accordance with the provisions of this Article. Declarant shall perform the Waterfront Work in a good and workmanlike manner, free from mechanics' and materials providers' liens (other than liens which have been bonded over) and in accordance with any applicable Legal Requirements.

ARTICLE 116 Modifications of Final Plans and Specifications/100% Construction Drawings. Declarant shall have the right to make non-material modifications to the Final Plans and Specifications/100% Construction Drawings to respond to unanticipated field conditions. All material modifications to the Final Plans and Specifications/100% Construction Drawings may be modified only upon the written approval of DPR, which approval shall not be unreasonably withheld or delayed. DPR shall, within thirty (30) calendar days after receipt of a request for approval of a material modification to Final Plans and Specifications/100% Construction Drawings, approve or deny such request. If DPR fails to respond to any request by Declarant within such thirty (30) day period, Declarant shall send a reminder notice requesting DPR's approval within seven (7) days of receipt of such reminder notice. If DPR fails to respond within such seven (7) day period, Declarant may provide a second reminder notice requesting DPR's approval within seven (7) days of receipt of the second reminder notice. If DPR fails to respond within such second seven (7) day notice period, then provided that such reminder notices have been sent to DPR, DPR shall be deemed to have approved such request in all respects and for all purposes under this Declaration.

116.1. Security for Construction Defects. Declarant hereby guarantees the construction of the Waterfront Public Access Area against all defects for a period of one year from the date of the Notice of Final Completion. To secure this obligation, the Declarant shall make DPR and the City third party beneficiaries of all construction guaranties under its construction contracts the WPAA Work and shall assign any warranties related thereto.

ARTICLE 117

PROJECT COMPONENTS RELATING TO THE ENVIRONMENT AND MITIGATION MEASURES

ARTICLE 118 Project Components Related to the Environment. Declarant shall implement as part of its construction of the New Building, as appropriate, the following PCREs:

(a) Construction Noise:

i. At its expense, Declarant shall offer window air conditioning units for noise sensitive uses located in 3-08 & 3-10 26th Avenue that do not have an alternate means of ventilation. Declarant shall not accept a new building permit for the construction of Development Phase 1 unless and until the Chairperson in consultation with the Monitor certifies to DOB that (i) such air conditioning units has been offered by mail to those noise sensitive uses listed above and a period for acceptance of not less than 20 days has elapsed, and (ii) where such

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offer has been accepted within the specified period, Declarant has provided such air conditioning units measures at those locations where the owner or resident has made the residence or community facility space available for installation within 60 days of request therefore.

ii. The Declarant is committing to provide noise monitoring to ensure that violations of the *NYC Noise Control Code* do not occur at adjacent receptors during construction. Declarant shall not accept a building permit for the construction of Development Phase 1 until the Chairperson in consultation with the Monitor certifies to DOB in writing that the noise receptors are in place and the construction noise mitigation plan has been provided and deemed acceptable by the Chairperson.

iii. Declarant will follow the requirements of the *New York City Noise Control Code* (also known as Chapter 24 of the Administrative Code of the City of New York, or Local Law 113) for construction noise control measures. Specific noise control measures would be incorporated in a noise mitigation plan(s) as required under the *New York City Noise Control Code*. The noise mitigation plan(s) must be reviewed and approved by the New York City Department of Environmental Protection (DEP), within a reasonable amount of time, before Declarant can accept a building permit for Development Phase 1. The noise control measures could include a variety of source and path controls, including the following:

A. The project would reduce the noise level at the source during the most time-sensitive time period per *NYC Noise Code*. An after-hour noise variance from DEP would be required for weekend and after-hours work.

B. Appropriate usage and maintenance procedures should be followed for all construction equipment to limit noise emissions. The procedures include:

C. Employ the manufacturer's appropriate noise reduction procedures to maintain all equipment and mufflers.

D. Closure of engine's housing doors during operation.

E. Cover portable noise-generating equipment with noise-insulating fabric where feasible and practicable.

F. Use equipment that meets the sound level standards specified in Subchapter 5 of the *New York City Noise Control Code* from the start of construction.

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G. Where feasible and practicable, construction sites would be configured to minimize backup alarm noise.

H. All trucks, other than trucks operate a loading, unloading, or processing device (e.g., concrete mixing trucks), would not be allowed to idle more than three minutes at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the *NYC Administrative Code*.

I. Where logistics allow, path controls (such as portable barriers or shrouds around specific equipment) would be considered during the development of the construction noise mitigation plan.

J. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations.

K. As early in the construction period as logistics would allow diesel- or gas-powered equipment would be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable.

L. Noise barriers constructed from plywood or other materials would be utilized to provide shielding (e.g., the construction sites would have a minimum 8-foot barrier); and

M. Where logistics allow, truck deliveries would take place behind the noise barriers

ARTICLE 119 Mitigation Measures. Declarant shall, in accordance with the FEIS, undertake the Mitigation Measures set forth therein when triggered, as follows:

(a) Community Facilities

i. Public Elementary Schools: The Declarant is required to coordinate with the School Construction Authority ("**SCA**") at the time permits are filed with the DOB to obtain a building permit for the 909th residential unit, and provide funding for school improvements or enhancements in the amount of $6,150,000 (based on the number of public elementary school seats that would be required to mitigate the impact at a rate of approximately $75,000 per seat). This fund

will go to a to-be-determined project(s) in existing and/or future elementary schools within Community School District 30, Sub District 3. The SCA will certify proof of funding to the DOB prior to the DOB's issuance of a new building permit that includes the 909th unit and the Declarant shall not accept that building permit until proof is provided to the DOB.

ii. Early Childhood Programs: Programming for 27 students is needed to mitigate this impact. Declarant will coordinate with the New York City Department of Education (DOE) to develop possible mitigation measures which may include provision of suitable space on-site for a publicly funded early childhood program facility (subject to provision of a suitable location off-site and within a reasonable distance (at a rate affordable to DOE providers)), or funding in the amount up to $1,600,000 (based on the number of publicly funded early childhood program slots that would be required to fully mitigate the impact) to support additional capacity. Declarant shall notify the SCA sixty (60) days prior to Declarant's intent to apply to DOB for a building permit which would result in the 33rd Affordable Housing Unit. At such time, Declarant shall consult with DOE to determine which mitigation measure is acceptable based on, among other things: (i) the space available on-site; (ii) a rate that is reasonably affordable to a DOE provider if provided off-site; and (iii) the size and shape requirements needed to accommodate programing for 27 students. DOE shall have 30 days to make this determination and certify to DOB that the mitigation plan is acceptable, or notify the Declarant if the plan is not acceptable. Declarant shall not accept a building permit until DOE certifies as such to DOB.

(b) Open Space.

(i) The FEIS has identified a significant adverse impact to open space that will occur when 388 or more residential units are occupied in the Subject Property and further sets forth that, in order to partially mitigate such impact, the Declarant shall replace a playground and sitting area (approximately 35,000 sf area), including but not limited to: removals, excavation, drainage, concrete, paving, fencing, landscaping, water, new play equipment, spray showers, new seating & safety surfaces; includes sidewalk restoration bordering or adjacent to playground and sitting area; reconfigure existing storm water management systems; restore existing pavement in the playground and sitting area; and install eight security lights at the Triborough Bridge Playground B (collectively the "Triborough Playground Improvements"), as set forth below and in consultation with DPR.

(ii) Declarant shall, in coordination with DPR, (a) conduct a community input meeting to obtain feedback from the community on the Triborough

Playground Improvements prior to directing its consultants to prepare preliminary design plans for the Triborough Playground Improvements and (b) present the preliminary plan of the playground to Queens Community Board 1 after receiving DPR's approval of the preliminary plan and before submitting the preliminary design plans to the New York City Public Design Commission ("PDC"). Declarant shall make a good faith effort to incorporate Queens Community Board 1 comments into the preliminary design plans for the Triborough Playground Improvements upon consultation with DPR,

(iii) Declarant shall engage a landscape architect familiar with DPR standards and procedures to prepare the preliminary and final plans for the Triborough Playground Improvements. Declarant shall submit to DPR for review preliminary design plans for the Triborough Playground Improvements that substantially comply with the scope of Section 5(b)(i) above. Within thirty (30) days of such review, DPR shall either (A) approve the preliminary design plans or (B) notify Declarant in writing of any deficiency, in which case Declarant shall submit revised plans that address such defects. Within twenty (20) days of such revised submission, DPR will either (A) approve the preliminary design plans or (B) notify Declarant in writing of any deficiency with the preliminary design plans, in which case Declarant shall submit revised plans that address such defects. If DPR has not reasonably approved the preliminary design plans after the second round of review, this process shall repeat with twenty (20) -day review periods until DPR has approved the preliminary design plans. Upon issuance of DPR's approval of the preliminary design plans, as well as review by Queens Community Board 1 and issuance of approval by PDC, the plans shall be deemed design plans to be developed into a final design for the Triborough Playground Improvements. Notwithstanding the foregoing, in the event that DPR has failed to respond in writing to Declarant within thirty (30) days of receipt of the initial submission of the preliminary design plans or within ten (10) days of receipt of revised preliminary design plans incorporating DPR's comments, as applicable, Declarant shall send a reminder notice to DPR.

(iv) Declarant understands that all designs, plans, and drawings for the Triborough Playground Improvements shall be subject to DPR's then-current review process and that DPR may request designs, plans, drawings, and additional information on the Triborough Playground Improvements, including but not limited to costs, maintenance, and specifications. DPR anticipates that the design of the Triborough Playground Improvements will require submission, review, and approval, of a conceptual plan, 30% construction drawings, 50% construction drawings, 80% construction drawings, and 100% construction drawings. Declarant will not be permitted to begin any work in Triborough Playground B to implement the Triborough Playground Improvements until DPR has approved all requested designs and drawings pertaining to the Triborough Playground Improvements.

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(v) Declarant shall manage and coordinate the review of the Triborough Playground Improvements design submissions to PDC; and manage and coordinate any review of the Triborough Playground Improvements that may be required by any agencies and utilities of the City of New York, including but not limited to the New York City Department of Environmental Protection, the New York City Department of Transportation, the Metropolitan Transportation Authority, and Con Edison.

(vi) Except as otherwise provided in this Section 5(b), Declarant shall not accept and DOB shall not issue a Temporary Certificate of Occupancy ("TCO") for a building on the Subject Property that would result in occupancy of 388 or more new residential units, until DPR has certified to DOB that the Triborough Playground Improvements have been substantially completed (hereinafter, a "Certificate of Substantial Completion"). "Substantial completion" or "substantially complete" shall mean completion of construction substantially in accordance with the final design plans, in the reasonable determination of Parks, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

(vii) Declarant shall not accept and DOB shall not issue a Permanent Certificate of Occupancy ("PCO") for a building on the Subject Property that would result in occupancy of 388 or more new residential units, until DPR has certified to DOB that the Triborough Playground Improvements have been finally completed (hereinafter, a "Certificate of Final Completion).

(viii) Declarant shall coordinate with DPR, as necessary, regarding the Triborough Playground Improvements. DPR shall (i) consult with Declarant on the community input meeting and presentation of the preliminary design of the Triborough Playground Improvements to Queens Community Board 1; and (ii) cooperate with Declarant to diligently review and approve all drawings and specifications submitted by Declarant that are required to obtain all necessary approvals to implement the Triborough Playground Improvements in a timely manner.

(ix) After Declarant has received approval for its design from DPR, PDC, and any other necessary agencies and utilities, Declarant must begin construction on the Triborough Playground Improvements within one year. Before performing any work on DPR property, including but not limited to exploratory work, staging, storage of materials, excavation, demotion, or construction, Declarant must apply for and receive a DPR Construction Permit.

(x) Notwithstanding anything provided in this Section 5(b), if the Chair of DCP (the "Chair"), in consultation with DPR reasonably determines that, due to

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any Force Majeure Event, Declarant are unable to implement Triborough Playground Improvements, the Chair shall grant Declarant appropriate relief, which may include notifying DOB that a TCO or PCO may be issued for the Subject Property, or portions thereof, as reasonably determined by the Chair, and Declarant may be entitled to obtain such TCO or PCO notwithstanding that the Triborough Playground Improvements have not obtained a Certificate of Substantial Completion or Certificate of Final Completion, as the case may be. In the event an Force Majeure Event has occurred and Declarant proceed under the preceding sentence, the Chair may require that Declarant post a reasonable bond, letter of credit, or other reasonable security in a form reasonably acceptable to the City in order to ensure that (i) the Triborough Playground Improvements will be completed in accordance with the provisions of this Declaration, and (ii) upon cessation of the Force Majeure Event, Declarant shall recommence work on the Triborough Playground Improvements in accordance with the provisions of this Declaration.

(xi) Alternative Open Space Mitigation. If, at any time before Declarant begins initial schematic or other drawings of its design for the Triborough Playground Improvements, DPR provides notice that the Triborough Playground Improvements should not be implemented because they would conflict with other design or construction plans actively in progress, then within twenty (20) business days of such notice DCP and DPR shall in writing (1) propose alternative open space mitigation measures (consistent with the cost of the scope set forth in 6.2(b)(i) above and to perform) to be constructed at another park or public open space within the FEIS study area; and (2) provide a detailed scope of work for such alternative open space mitigation measures ("Alternative Open Space Mitigation Scope").

a. Declarant shall provide Parks with 90 days' written notice before it begins initial schematic or other drawings of the Triborough Playground Improvements, and ask DPR whether it will request an Alternative Open Space Mitigation Scope or any changes to the Triborough Playground Improvements .

b. Within thirty (30) days of receiving an Alternative Open Space Mitigation Scope, if Declarant determines that such Alternative Open Space Scope or requested changes to the Triborough Playground Improvements is not consistent with the cost of the scope set forth in 6.2(b)(i) above, then Declarant shall notify DPR and DCP, and DPR and Declarant shall work in good faith to resolve the discrepancy.

(c) Transportation

(i) Shuttle Buses. Declarant shall provide shuttle bus service for the residents of the development during the AM and PM commuter peak

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periods (7:00AM to 10:00AM and 4:00PM to 7:00PM). The proposed shuttle service will consist of three passenger buses and have two bus stops, one located at the intersection of 26th Avenue and 3rd Street, and another located at the northside of 30th Avenue at 31st Street at an existing New York City Transit bus stop. The shuttle service will make 13 roundtrips per hour during the AM peak hour and 11 roundtrips per hour during the PM peak hour. Declarant shall not apply for and shall not accept a TCO for Development Phase 1 until NYCT has informed DCP and DCP has certified to DOB that the shuttle bus service would be operational at the same time as occupancy of that Phase. Prior to building occupancy, final details of the shuttle service, including location of shuttle stops and the shuttle route, shall be subject to coordination with the DOT.

(ii) Transportation Monitoring Program (TMP). The Declarant will commit to conducting the TMP study to better estimate the actual transportation planning factors, modal splits, subway station/line usage, bus route usage, the full build demand generated by the Proposed Actions, and any future demand from No-Action developments. The TMP may include but not be limited to new data collection, modal split and origin-destination surveys, and trip generation associated with the Proposed Actions and No-Action developments. The TMP would survey a reasonable sample of occupants of the first two towers of the occupied development (809 residential units) to determine their mode and route of transportation to work, including subway stations, lines, buses, and bus stops. The surveys would also inquire about and study travel patterns, temporal distributions, directional splits, travel preferences, vehicle ownership, and work-from-home frequency. The TMP would revise analyses where necessary based on findings of these surveys and new data. The TMP and supporting documentation will be reviewed by applicable agencies, including DOT and NYCT, as appropriate. At the time of the TMP, if reviewing agencies determine that alternate mitigation measures would more adequately address the transportation conditions and impacts, the Declarant will work with DOT and alternate mitigation measures may be instated. The Declarant would be responsible for costs associated with the TMP, including any subsequent design and implementation of reduced mitigation measures determined in the TMP. The scope of the TMP must be reviewed and accepted by DOT and DCP prior to Declarant's application for or acceptance of a TCO for Development Phase 1, and the completed TMP must be submitted to DOT and DCP prior to Declarant's application for or acceptance of a TCO for Development Phase 3. If the scope acknowledges unforeseen impacts to the site as a result of the development of Phase 3 then an updated TMP must be submitted to DOT and DCP prior to the acceptance by the Declarant of a PCO for that Development Phase. The scope of the TMP must include the timing and implementation of the Mitigation Measures and PCREs, and may, at the discretion of DCP and DOT, require additional data collection and analyses as deemed appropriate prior to applying for or accepting a Temporary Certificate of Occupancy, at the

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discretion of DCP and DOT, for the fully completed project. The scope of the TMP shall include as mitigation measures, unless determined by the reviewing agencies to be infeasible or unnecessary or that other alternative measures would more adequately address the transportation conditions and impacts, the mitigation measures described in Chapter 18: Mitigation of the FEIS.

d. Noise

(i) At its expense, Declarant shall provide but not install window air conditioning units for noise sensitive uses located in 3-04-3-06 26th Avenue, 3-08-3-10 26th Avenue, 26-38 3rd Street, 26-24 3rd Street, 26-19 3rd Street, 26-15 3rd Street, and 26-11 3rd Street that do not have an alternate means of ventilation. Declarant shall not accept a new building permit for the construction of the 853rd residential unit unless and until DCP in consultation with the Monitor certifies to DOB that (i) such window treatment and alternative ventilation has been offered by mail to those noise sensitive uses listed above and a period for acceptance of not less than 20 days has elapsed, and (ii) where such offer has been accepted within the specified period, Declarant has installed or funded the installation of such window treatment and/or alternative ventilation measures at those locations where the owner or resident has made the residence or community facility space available for installation within 60 days of request therefore.

ARTICLE 120 Force Majeure Events 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 IV by reason of the occurrence of a Force Majeure Event, Declarant shall not be excused from performing such obligation unless the failure to implement the obligation during the period of Force Majeure Event, or that implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS or any subsequent Technical Memorandum.

ARTICLE 121 Innovation; Alternatives; Modifications Based on Further Assessments.

ARTICLE 122 Innovation and Alternatives. In complying with any obligation set forth in this Article 6, Declarant may, at its election, 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 Subject Property, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant obligation than those set forth in this Declaration (such measures, "**Alternative Environmental Measures**"), in each case subject to approval by DCP.

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ARTICLE 123 Modifications Based on Further Assessments. In the event that Declarant believes, in good faith, based on changed conditions, that an obligation under this Article VI should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the obligation, it shall set forth the basis for such belief in an analysis submitted to DCP (the "Section 6.4(b) Request). Following delivery of a Section 6.4(b) request Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on such request and accompanying materials and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 6.4(b) request. 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 without diminishment of the environmental standards which would be achieved by implementation of the obligation, Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination ("**Elimination or Modification of FEIS Obligation**") provided that Declarant records a notice of such change against the Subject Property in the Registers Office for the of the borough of Queens.

ARTICLE 124 If Declarant implements any Alternative Environmental Measures Obligation or an Elimination or Modification of FEIS Obligation, a notice indicating of such change may be recorded against the Subject Property in the Register's Office, in lieu of modification to this Declaration.

ARTICLE 125 Appointment and Role of Independent Monitor.

ARTICLE 126 Declarant shall, with the consent of DCP, retain an independent third party (the "**Monitor**") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs and mitigations required under Section 6 of this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. DCP shall advise Declarant of its approval or rejection of the Monitor, as proposed, within fifteen (15) business days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.

ARTICLE 127 The "Scope of Services" described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "**Monitor Agreement**") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such Monitor Agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor

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Agreement, following a fifteen (15)-day notice period by DCP to Declarant and the failure of Monitor to correct or remedy the unsatisfactory activity; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within twenty (30) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property until issuance of the first TCO for any portion of the Subject Property, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 6.6. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

ARTICLE 128 The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement; (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the CMMs. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. If the Monitor has provided DCP with such notice of a determination and supporting documentation that a CMM has not been implemented, the Monitor shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to both the CMM alleged not to have been implemented and the applicable portion of the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the

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Subject Property by the occupants of and visitors; and (r) conducted in a manner that will minimize any interference with the Subject Property. The Monitor Agreement shall provide that Declarant shall have the right to require the Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities. Nothing in this Declaration, including without limitation the provisions of this Section 6.5, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

ARTICLE 129 Subject to compliance with all generally applicable site safety requirements or the construction manager's safety 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 the Subject Property, and (ii) conducted in a manner that will minimize any interference with, delay construction of, or create any safety hazard at, the Subject Property. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency). Notwithstanding the foregoing, Declarant shall not be obligated to provide DCP or any other City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarant (such as individual condominium units).

ARTICLE 130 Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 6.5(b) in accordance with the terms of the Monitoring Agreement.

ARTICLE 131 If DCP determines, based on information provided by the Monitor and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a CMM, DCP may thereupon give Declarant written notice of such alleged violation (each, a "**CMM Default Notice**"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 14. Notwithstanding any provisions to the contrary contained in Section 12.4 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within fifteen (15) business days; (ii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice that a cure period greater than fifteen (15) business days would not be harmful to the environment or that the required cure cannot be accomplished within fifteen (15) business days (such longer cure period, a "**Proposed Cure Period**"). If DCP accepts within two (2) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the "**New Cure Period**"), provided that if DCP does not act with respect to

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a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the fifteen (15) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation, subject to the cure provisions of Section 12.4 hereof (as modified for the cure periods set forth in this Section 6.5(f). Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

ARTICLE 132 INSURANCE AND INDEMNIFICATION

ARTICLE 133 Insurance. Declarant shall, at all times, maintain insurance for the WPAA pursuant to the terms of Article VIII of the WPAA Maintenance Agreement, as such terms may be updated and revised as necessary, by DPR, and shall, at all times, maintain insurance for the PAA substantially in accordance with such terms.

ARTICLE 134 Indemnification by the City.

ARTICLE 135 Upon issuance of the Notice of Substantial Completion of the WPAA in a given Waterfront Phase, and subject to Declarant's compliance with the requirements set forth in Section 7.2(b) directly below, in accordance with Section 62-72 (Performance and Maintenance Requirements) of the Zoning Resolution with respect to the WPAA, the City shall indemnify and hold harmless Declarant, its officers, agents, employees, successors, and assigns, for any judgment or settlement arising out of a claim for injury to persons who are members of the public (i.e., not agents or employees of Declarant while acting within their agency or employment) as a result of any defect or otherwise dangerous condition in, or on the WPAA or PAA within such Waterfront Phase to the extent not covered by the insurance required under this Article 7, provided that the City's obligation to indemnify and hold harmless hereunder shall not arise: (i) if Declarant has not fully complied with the design and maintenance obligations set forth in this Declaration and, with respect to such portion of the WPAA, the WPAA Maintenance Agreement; or (ii) if the injury is determined by a court of competent jurisdiction in a final judgment not subject to appeal to have resulted from intentional wrongdoing or recklessness on the part of the Declarant or its employees.

ARTICLE 136 The City's obligation under Section 7.2(a) with respect to the WPAA is conditioned upon: (1) Declarant's compliance with the insurance provisions of Section 7.1 hereof and the WPAA Maintenance Agreement and with the requirements of all insurance

policies; (2) Declarant's delivery of a copy of any summons, complaint, process, notice, demand or other pleading initiating an action or proceeding, together with any other correspondence with an insurance company relating to the incident, within ten (10) business days after Declarant's receipt thereof of documents, to the Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007; (3) Declarant's adherence to the notice requirement under its insurance policies concerning the occurrence and claim at issue in (2) above, together with such pleading or other document; (4) Declarant's full cooperation with DPR and the New York City Law Department, including the provision of such information and documentation as either may reasonably require, including without limitation, that which relates to (a) the incident or claim at issue, (b) Declarant's compliance with the insurance requirements of this Article or any insurance policy, and (c) Declarant's compliance with its design and maintenance obligations set forth in the Declaration and the WPAA Maintenance Agreement; and (5) Declarant's prompt notification to the Insurance Claims Specialist, Affirmative Litigation Division of any settlement demand that may not be covered by insurance.

ARTICLE 137 Subject to Declarant's compliance with the above requirements, and after exhaustion of the underlying insurance required by this Article 7 and subject to Article VIII of the WPAA Maintenance Agreement, the City shall assume Declarant's defense with respect to the WPAA. Thereafter, Declarant shall not make or communicate to the claimant an offer of settlement nor shall Declarant or its counsel admit liability or waive any material right, including right to appeal, or otherwise prejudice the rights of Declarant or the City with regard to the claim. After assuming responsibility for defense of the claim(s), the City shall not enter into any settlement without obtaining a complete release of any further liability on the part of Declarant.

ARTICLE 138

TEMPORARY CERTIFICATES OF OCCUPANCY

ARTICLE 139 Temporary Certificates of Occupancy.

ARTICLE 140 Declarant shall not apply, upon the completion of any inspections, for the issuance of a TCO for any New Building on the Subject Property until the following conditions have been met with respect to construction of such New Building:

ARTICLE 141DPR has issued a Notice of Substantial Completion for the PAA in the applicable Waterfront Phase;

ARTICLE 142DPR and Declarant have executed the WPAA Maintenance Agreement;

ARTICLE 143 Declarant has provided to DPR the WPAA Maintenance Security pursuant to the terms of Section 62-72 of the Zoning Resolution and Section 3.06 of the WPAA Maintenance Agreement;

ARTICLE 144 Declarant has provided to DPR the Certificates of Insurance or certified copies required under Article 7 of this Declaration and under Article VIII of the WPAA Maintenance Agreement; and

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ARTICLE 145 Declarant has provided to the City the Completion Letter of Credit (as hereinafter defined).

(b) The TCO shall include an appropriate description of the WPAA.

ARTICLE 146 Within ten (10) calendar days after satisfaction of all of the conditions set forth in Section 8.1(a), the Commissioner shall certify in writing to the DOB commissioner that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and DOB may issue a TCO for the New Building.

ARTICLE 147 In the event that, due to a Force Majeure Event or pursuant to a DPR determination that Circumstances Beyond Control of Developer exist under the terms of the WPAA Maintenance Agreement, Declarant has obtained a TCO prior to completing the conditions set forth in Section 6.1(a), Declarant shall, as promptly as possible, satisfy the conditions of Section 6.1(a) upon cessation of the Force Majeure Event and/or the Circumstances Beyond Control of Developer, as applicable.

ARTICLE 148 Notice of Substantial Completion. Declarant shall notify DPR at such time as it reasonably believes that construction of the applicable Waterfront Phase is Substantially Complete and shall request that DPR issue a certificate, in the form of **Exhibit G** (a "**Notice of Substantial Completion**") to Declarant certifying Substantial Completion of such Waterfront Phase. Not 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 the reasons why construction is not Substantially Complete and the items which need to be completed. If DPR notifies Declarant that construction has not been Substantially Completed in accordance with the approved Final Plans and Specifications/100% Construction Drawings,, 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 ("**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion in Section 1.1, 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. Not later than twenty (20) 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 respond to any such request within the time period set forth in this Section, then DPR shall be deemed to have issued a Notice of Substantial Completion.

ARTICLE 149 Security for Final Completion. Upon issuance of the Notice of Substantial Completion, Declarant shall deliver 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 being 150% of the cost of Finally Completing the PAA in the relevant Waterfront Phase (the "**Completion Letter of Credit**") Declarant shall notify the Commissioner as to the proposed amount of the Completion Letter of Credit and within ten (10) business days of receipt of such notification, the Commissioner shall approve or disapprove said amount, using his or her reasonable judgment. If the Commissioner disapproves such amount then the Commissioner shall state, in writing and with specificity, the reasons such estimate does not adequately reflect the required amount. The Declarant's architect or landscape architect may then submit a revised estimate to the Commissioner, who, exercising

reasonable judgment, shall within ten (10) business days of such submittal approve or disapprove such amount, provided that any disapproval shall include a writing as set forth above. In the event of further disapproval, Declarant's architect or landscape architect shall submit further revised security amounts and the Commissioner shall approve or disapprove such revisions, in the same manner set forth herein. If the Commissioner fails to approve or disapprove any amount within the time periods set forth in this Section, then Owner shall re-submit such request for approval or disapproval, and if the Commissioner fails to respond to such resubmission within ten (10) business days, then the Commissioner shall be deemed to have approved the amount of the Completion Letter of Credit.

ARTICLE 150 Force Majeure. In the event that Declarant is unable to Substantially Complete construction of a Waterfront Phase by the time the associated New Building is eligible to obtain a TCO, as a result of a Force Majeure Event, then Declarant shall so notify DPR and DCP as soon as Declarant learns of such circumstances. Declarant's written notice (the "**Delay Notice**") shall include a description of the condition or event, its cause and probable duration (if known to Declarant), and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the item of work. The Chairperson, in consultation with the Commissioner, shall, within ten (10) calendar days of its receipt of the Delay Notice, (i) certify in writing that a Force Majeure Event has occurred, or (ii) notify Declarant that it does not reasonably believe a Force Majeure Event has occurred, in which case the Chairperson shall state with particularity the reasons it believes Force Majeure has not occurred. Such certification or notice shall constitute a final determination. Upon a determination that a Force Majeure Event has occurred, the Chairperson shall grant Declarant appropriate relief for such delay, including certifying in writing to the DOB that the Chairperson has no objection to the issuance of a TCO for all or part of the building(s) in the Subject Property. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event is continuing. Upon cessation of the events causing such delay, the Declarant shall promptly recommence construction of such Waterfront Phase. As a condition of granting such relief, the Chairperson may require that Declarant post a bond or other security in a form and amount reasonably acceptable to the Chairperson in order to ensure that such Waterfront Phase is Substantially Completed and that all other requirements of Section 6.1 or 7.1, as applicable, are satisfied. Such security shall be in a sum equal to 150% of the cost of the remaining work in order to Finally Complete such Waterfront Phase within the applicable Development Phase. Such estimated cost is subject to the reasonable approval of DPR. Declarant shall be obligated to Substantially Complete or Finally Complete construction within the period of time specified in the Delay Notice, or such lesser period of time as Chairperson reasonably determined in the Delay Notice; 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 Chairperson, Chairperson may grant additional time for Substantial Completion or Final Completion, as the case may be.

ARTICLE 151

PERMANENT CERTIFICATES OF OCCUPANCY

ARTICLE 152PCO. Subject to Force Majeure, Declarant shall not apply, upon the completion of any inspections, for the issuance of a PCO for any New Building in a Development Phase until the following conditions have been met:

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ARTICLE 153DPR has certified that Declarant has complied with all conditions required in connection with issuance of a PCO for the New Building in accordance with the provisions of the WPAA Maintenance Agreement; and

ARTICLE 154DPR has issued a Notice of Final Completion for the PAA in the applicable Waterfront Phase in accordance with Section 9.2 of this Declaration.

ARTICLE 155 Notice of Final Completion. Declarant shall notify DPR and DCP when it believes construction of a Waterfront Phase is Finally Complete and shall request that DCP issue a certificate in the form of **Exhibit H** annexed hereto (a "**Notice of Final Completion**") to Declarant certifying Final Completion. Not later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Final Completion or deliver to Declarant a notice setting forth the reasons construction is not Finally Complete. Such notice shall include a Punch List of items remaining to be completed or unsatisfactorily performed. 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) calendar 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. 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 Final Completion. The issuance of a Notice of Final Completion or DPR's inaction, in accordance with the provisions of this Section 9.2, shall be conclusive evidence with respect to Declarant that the Waterfront Phases has been constructed in accordance with the design and construction specifications approved by DPR, including the Final Plans and Specifications/100% Construction Drawings.

9.3. Failure to Perform.

(a) Subject to Force Majeure, Declarant shall within three (3) months after issuance of a Notice of Substantial Completion, Finally Complete construction, unless certified by an independent third-party engineer holding a professional or engineering degree and with significant experience in the design, construction and inspection of marine structures (each an "Inspector", and, collectively, the "Inspectors") in writing, that it will take longer than three (3) months to Finally Complete; provided that if Final Completion requires planting or other tasks that may be required to occur seasonally and the Notice of Substantial Completion is issued after October 1st, then Declarant shall have until June 1st to Finally Complete. In the event that Declarant fails to Finally Complete construction within such time period, then DPR may, at its option, upon not less than thirty (30) days written notice to Declarant, (i) Finally Complete construction in accordance with the Final Plans and Specifications/100% Construction Drawings; (ii) cause Declarant to remove all of its equipment and any other items impeding DPR's completion of construction; and (iii) draw upon the Completion Letter of Credit for so much of the proceeds as is necessary to pay for the reasonable costs and expenses incurred in performing the uncompleted construction, and, if necessary, removing such equipment and impediments. If the full amount of the Completion Letter of Credit is not drawn upon, then DPR shall return the balance of the proceeds of the Completion Letter of Credit to Declarant within thirty (30) calendar days after Final Completion.

(b) Declarant hereby grants the City and its contractors, agents, employees, sub-contractors a license to enter upon the Waterfront Public Access Area portion of the Subject

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Property for the purposes of exercising its rights under Section 9.3(a) as may be necessary to Finally Complete construction.

9.4. Pursuant to Section 62-74 of the Zoning Resolution, as a condition of the issuance of a PCO for any building, such PCO shall reflect the amount of the Waterfront Public Access Area to be provided in relation to such building.

ARTICLE 156

PUBLIC ACCESS EASEMENT

ARTICLE 157 Public Access Easement. Declarant agrees that it shall grant the City and the general public shall have a perpetual and non-exclusive public access easement over the WPAA and PAA, for each completed Development Phase, unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Drawings or as are otherwise permitted by the City) from the ground surface up to the sky (a "**Public Access Easement**"), subject to the terms and conditions set forth in this Article 10. Declarant further agrees that liens, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, shall be subject to and subordinate to the rights, claims, entitlements, interests and priorities created by the easements granted herein.

ARTICLE 158 Closing of Public Access Easement. Notwithstanding anything contained in herein, and subject to Section IV of the WPAA Maintenance Agreement, Declarant may close all or any portion of the Public Access Easement (i) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under the WPAA and/or PAA, or for the repair of the WPAA and/or PAA, (ii) as may be approved by DOB or DOT in connection with work on any of the buildings in the Development Property, or (iii) in the event of an emergency or hazardous condition; provided that Declarant will close or permit to be closed only those portions of the WPAA and/or PAA which must or should reasonably be closed to effect the repairs or remediation in a safe and expeditious manner, 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. Except in cases of emergency, Declarant shall provide seven (7) days advance notice to the public and DPR of any temporary closure of the WPAA (or portions thereof), 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 and DCP 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.

ARTICLE 159 Preservation of Ownership Interest. Declarant shall have the right to close all or any portions of the WPAA to the City and the general public one (1) calendar day, other than a Saturday, Sunday or legal holiday, in each year to preserve its ownership interest therein.

ARTICLE 160

ADMINISTRATION

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ARTICLE 161 Hours of Operation of Waterfront Public Access Area.

ARTICLE 162 Declarant acknowledges that the hours of operations of the Waterfront Public Access Area shall be determined by the City and, subject to its rights under Sections 10.2 and 10.3 hereof, Declarant covenants not to impede or interfere with public access over the Public Access Easement during the hours of operation of the Waterfront Public Access Areas

ARTICLE 163 Declarant acknowledges that the Substantially Completed area(s) of the WPAA shall be open to the public from 6 a.m. to 1 a.m. every day of week, all year, and subject to the terms of Section 4.01 of the WPAA Maintenance Agreement. Notwithstanding the foregoing, Declarant and the owners, tenants, residents, employees and invitees of the private development on the Subject Property shall have the right to use the WPAA at all times in connection with the egress and ingress to buildings located on the Subject Property.

ARTICLE 164 Maintenance of WPAA by Declarant. Upon Substantial Completion of any Waterfront Phase, Declarant shall be solely responsible for the maintenance of and capital repairs to the PAA in such Waterfront Phase (the "**Maintenance Obligation**"). The Maintenance Obligation requires that Declarant maintain the PAA in accordance with the provisions of this Declaration and the WPAA Maintenance Agreement.

ARTICLE 165 Use of the WPAA. Use of the WPAA shall be governed by and consistent with the WPAA Maintenance Agreement.

ARTICLE 166

ENFORCEMENT

ARTICLE 167 Enforcement by the City.

ARTICLE 168 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

ARTICLE 169 No person or entity other than the Declarant, its successors and assigns, or the City shall have any right to enforce the provisions of this Declaration. Nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any Exhibit hereto, including any claim by any public or private landowner to be the beneficiary of an easement appurtenant to lands adjoining the Subject Property which could or might be affected by the enforcement of the provisions of this Declaration with respect to the Subject Property.

ARTICLE 170 Additional Remedies. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other remedies not specifically set forth herein.

ARTICLE 171 Enforcement by Declarant. Declarant shall have the right to pursue any

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remedy available to Declarant, both administrative and judicial and at law and equity, to enforce its rights under this Declaration.

ARTICLE 172 Notice and Cure.

ARTICLE 173 Before any agency, department, commission or other subdivision of the City institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration with respect to an alleged violation, it shall give Declarant notice pursuant to the terms of Section 5.04 of the WPAA Maintenance Agreement.

ARTICLE 174 Notwithstanding the foregoing, if DPR has reason to believe that the use and enjoyment of the Waterfront Public Access Area and/or Public Access Area 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 Easement was in violation of the provisions of this Declaration and the WPAA Maintenance Agreement, the City shall have, after notice to Declarant and 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.

ARTICLE 175 If after due notice as set forth in this Section, Declarant or Mortgagee fails to cure a violation, 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 a material obligation under this Declaration.

ARTICLE 176 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 pursuant to this Declaration, the City may immediately exercise any and all of its rights hereunder, including but not limited to the issuance of violations and seeking a mandatory injunction; in such an event, the notice and cure provisions of this Section 12.4 shall not apply.

ARTICLE 177

MISCELLANEOUS

177.1. Filing and Recording.

ARTICLE 178 This Declaration shall become effective at the Effective Date. Within ten (10) days of the Effective Date, Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against all the tax lots that comprise the Subject Property. Declarant shall promptly deliver to DCP and DPR and two (2) duplicate executed originals and, following recordation, three (3) copies of this Declaration as recorded. Upon receipt of the recorded, original Declaration, DCP will notify Declarant's counsel via email of such receipt. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

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ARTICLE 179 Notwithstanding the provisions of Section 13.1(a), in the event the Subject Property is subdivided or otherwise arranged so as to include any tax lot not listed within the first recital of this Declaration, Declarant, its heirs, successors, legal representatives, or assigns, shall cause a Notice of Restriction to be recorded against said tax lot, which specifies such tax lot is subject to the terms and conditions of this Declaration and provides the CRFN assigned to this Declaration as well as any subsequent amendments. In the event that the subdivided lot is subject to a condominium declaration, such notice of restriction shall only have to be recorded against the subdivided lot once and referenced in the condominium declaration, as provided in Section 16.1, and shall not have to be recorded against each unit of the condominium.

ARTICLE 180 Binding Nature; Successors and Assigns.

ARTICLE 181 The provisions of this Declaration shall be covenants running with the land and shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of Declarant to the Subject Property, including Mortgagee (provided Mortgagee shall have no performance or payment obligations unless and until any 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, subject to the further provisions of this Section 13.2. 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.

ARTICLE 182 Notwithstanding anything to the contrary contained in this Declaration, in the event that any building or building segment on the Subject Property is converted to condominium or cooperative corporation forms of ownership, the Coop/Condominium (as hereinafter defined) and any Unit Interested Party shall not have any obligations under this Declaration to construct the WPAA except and unless the Coop/Condominium has expressly assumed such obligations in writing or if the initial Declarant or Successor Declarant (as defined herein) is also a Unit Interested Party, in which case Declarant or the Successor Declarant shall remain obligated to construct the WPAA.

ARTICLE 183 Notwithstanding the provisions of Section 14.2(b), in the event that a temporary or permanent certificate of occupancy has been issued for any portion of the Subject Property prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure, the Declarant that developed such portion of the Subject Property allowed to proceed due to the Force Majeure event shall remain obligated as Declarant hereunder until a Notice of Final Completion has been issued.

ARTICLE 184 Limitation of Liability. The restrictions, covenants and agreements set forth in this Declaration shall be binding upon the Declarant and any successor in interest only for the period during which Declarant 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 such person or entity a Party in Interest. It is hereby acknowledged that Declarant shall have the absolute right to convey all or any portion of the Subject Property owned by Declarant from time to time and at any time to one or more parties as Declarant sees fit in its sole discretion. Except as set forth in Sections 14.2(c) and Article 16 of this Declaration, at such time as the named

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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 hereunder to the extent of such successor in interest's interest.

ARTICLE 185 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 186 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.

ARTICLE 187 Modifications.

ARTICLE 188 This Declaration may be amended, modified or canceled only with the express written approval of the Commission, except that with respect to amendments or modifications that the Chairperson determines to be minor or administrative in nature or in connection with replacement Certification, only the express written approval of the Chairperson shall be required. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

ARTICLE 189INTENTIONALLY OMITTED

ARTICLE 190 Changes to the Drawings that the Chair deems to be minor may be amended or modified administratively by the Chair and no other approval or consent (including modifications to the Special Permits or Authorizations) shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

ARTICLE 191 This Declaration shall not be modified so as to make any Affordable Housing Unit subject to the Maintenance Obligation or to any assessment attendant hereto during the term of any agreement entered into between the Declarant and the City, acting through the New York City Department of Housing Preservation and Development, if applicable.

ARTICLE 192 In the event that development on the Subject Property shall become a Coop/Condominium, as that term is defined in Section 12.1(a) herein, then until the Coop/Condominium shall be deemed to be the sole Declarant and Party in Interest as contemplated in 16.1(b), any Unit Interested Party and any Board, as such terms are defined in Section 15.1(a), 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

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that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

ARTICLE 193 Notwithstanding any other provision herein, this Declaration shall automatically and without any further public or private action be canceled, and the restrictions, covenants, obligations, liens and agreements hereof shall be of no further force and effect if, prior to the issuance by the DOB of a building permit for the Subject Property, Declarant delivers to the Chairperson and records with the City Register's Office, a document duly executed and acknowledged in which the Declarant discharges this Declaration of record and surrenders its rights to develop the Subject Property.

ARTICLE 194 Declarant may cancel the Declaration, subsequent to the issuance by the DOB of a building permit for the Subject Property, if Declarant demonstrates to the Chairperson that no construction pursuant to the building permit has commenced. In such event, Declarant acknowledges that the future development of the Subject Property will be subject to a new certification pursuant to the Zoning Resolution Section 62-811.

ARTICLE 195 Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 10.6(a) and provide an executed and certified true copy thereof to DCP and DPR and, upon Declarant's failure to so record, permit its recording by DCP at the cost and expense of Declarant.

ARTICLE 196 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. 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.

ARTICLE 197 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.

ARTICLE 198 Acknowledgement of Covenants. Nothing contained in the Declaration shall confer on any party not contemplated herein any right to enforce the provisions of this Declaration, the sole parties having such right being the Declarant, its successors and assigns and the City as provided in Article 10 of this Declaration.

ARTICLE 199 Representations. Declarant represents and warrants that Declarant is aware of 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, which would prevent or preclude, presently or

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potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

ARTICLE 200 Estoppel Certificates. Whenever requested by a party, any other party and/or the City 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 (or if there have been modifications, that the Declaration is in full force and effect as modified and identifying the modifications), 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 exits, the nature of such default.

ARTICLE 201 Parties in Interest. As of the date hereof, the Title Company has determined that there has been no change in the certification attached as **Exhibit C** and Declarant represents and warrants that the Parties in Interest listed in **Exhibit C** are the only known Parties in Interest in the Subject Property as of the date hereof.

ARTICLE 202 Counterparts. This Declaration 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 203

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 intended for Declarant, to:

Astoria Owners LLC
43 West 47th Street, Suite 203
New York, New York 10036

Astoria Owners LLC
One State Street, Floor 29
New York, New York 10004

With a copy to:

Herrick, Feinstein LLP
2 Park Avenue, 14th Floor
New York, New York 10016
ATTN: Mitchell Korbey, Esq.

If intended for DCP, to:

Chairperson
City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

With a copy to:

Office of the General Counsel
Department of City Planning

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120 Broadway 31st Floor
New York, New York 10271

If intended for DPR, to: Commissioner
Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065

With a copy to: Deputy Commissioner for Environment and Planning
Department of Parks & Recreation

The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065

and to: Office of the General Counsel
Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10065

From and after the Condominium Obligation Date, a copy of all notices to Declarant shall include a copy to the Condominium, and the Condominium shall give notice to DCP and DPR of its address for notice.

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 204

CONDOMINIUMS AND COOPERATIVE CORPORATIONS

204.1. Filing Requirements.

(a) In the event that any part of the Proposed Development shall be subject to a condominium declaration, or if any part of the Proposed Development shall be owned or otherwise held by a cooperative corporation in accordance with the provisions of the laws of the State of New York (in either instance, referred to herein as the "**Coop/Condominium**," and such term shall refer to either organizational form), from and after the date the declaration of condominium has been recorded in the Office of the City Register, or the date that the Proposed Development (or some portion thereof) shall be in title to the cooperative corporation (the "**Coop/Condominium Obligation Date**"), under the directorship of a duly elected or appointed Board of Directors or Board of Managers, as the case may be (the "**Board**"), the Coop/Condominium shall thereafter be deemed to be a Declarant under this Declaration. The

owners of the shares of stock of the cooperative corporation, the holder of a lien encumbering any such shares, the holder of a proprietary lease or of any other right to occupancy or other interest therein, the owner of any residential or commercial unit in the condominium, or the holder of a lien encumbering any such condominium unit and the holder of any lease, right of occupancy or any other interest in such condominium unit, or the holder of any Affordable Housing Unit (each of the foregoing, hereinafter, a "**Unit Interested Party**") shall not be deemed to be a Declarant or a Party in Interest, except to the extent that such Unit Interested Party was a Declarant hereunder and retains the right under Applicable Law to control the Board. In the event that a Declarant becomes a Unit Interested Party and the WPAA is not Finally Complete, such party shall continue to be deemed a Declarant irrespective of Board control.

(b) The initial Declarant (or any successor entity to the balance and entirety of Declarant's fee interest in the Subject Property (the "**Successor Declarant**")), together with the Coop/Condominium, shall be considered Declarants until the WPAA are Finally Complete. At such time as Declarant or the Successor Declarant no longer holds a fee interest in the Subject Property (unless such interest is solely that of a Unit Interested Party and Declarant no longer retains the right to control the Board) and provided that the WPAA is Finally Complete, the initial Declarant or the Successor Declarant shall no longer be deemed a Declarant, and the Coop/Condominium shall be deemed to be the sole Declarant and Party in Interest under this Declaration, subject to the provisions of Article 15. In such event, the Board of the Coop/Condominium shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, subject to the provisions of Article 17.

(c) Each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Board; (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 Board 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 and Exhibits hereto.

ARTICLE 205 From and after the Association Obligation Date (hereinafter defined): (i) the Board of any Coop/Condominium shall be responsible for satisfying its obligations as an Association Member (hereinafter defined), and (ii) any Coop/Condominium shall continue to be considered a Declarant, provided that: (x) prior to Final Completion of the WPAA, any party that constitutes a Declarant under this Article 15 shall be jointly and severally responsible for the construction and Final Completion of the WPAA, and (y) upon Final Completion of the WPAA, the liability of any Coop/Condominium that is a Declarant shall be limited to the extent of its proportionate share of the Maintenance Obligation assessed by the Association pursuant to Section 16.5.

205.1. Offering Plans. Upon the marketing and sale of securities appurtenant to units in a Coop/Condominium constructed or otherwise included in the Proposed Development as is contemplated in this Article, a summary of the terms of this Declaration shall be included in any offering plan or "red herring" issued in connection therewith (the "**Offering Plan**"). Such Offering Plan shall clearly identify the rights and obligations of the unit owners or the owners of shares of

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stock in the cooperative corporation, as the case may be, under this Declaration, as well as the obligations of the Association Members (hereafter defined) with respect to the assessment of maintenance fees for the ongoing operation and maintenance of the WPAA. The cost of maintenance of the Waterfront Public Access Area and the obligations of the Coop/Condominium 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, shall be described in any Offering Plan and copies of the Declaration and WPAA Maintenance Agreement shall be provided as exhibits thereto.

205.2. Common Elements. Any condominium declaration shall, upon filing, contain provisions describing the shore public walkway and all areas covered in the WPAA as "common elements," as that term is constructed under RPL 339-I, or, alternatively, as elements owned jointly by multiple Coops/Condominiums on the zoning lot in their capacity as members of a property owners' association, for which Unit Interested Parties are obligated to pay assessments, as provided in Article 17.

205.3. Affordable Housing and Common Expenses. No Affordable Housing Unit which may be constructed in the Proposed Development shall have any obligation for the Maintenance Obligation, WPAA Maintenance Security, or other costs to the Coop/Condominium attendant to this Declaration, and the calculation of any rents, common charges or maintenance on an Affordable Housing Unit shall not include any Pro Rata contribution thereto.

205.4. Estoppel. Declarant shall certify in writing to the Chairperson and the Commissioner, or any individual succeeding to their jurisdiction, that all governing documents of the Coop/Condominium are in full compliance with the requirements of this Declaration and shall provide the Chairperson with copies of such governing documents within ten (10) days of the AG's acceptance for filing of the Offering Plan for such Coop/Condominium. If Declarant fails to comply with the provisions of this Section 15.5, the City may proceed with any available enforcement measures.

ARTICLE 206

PROPERTY OWNERS' ASSOCIATION

206.1. Declarant shall cause a property owner's association to be organized, pursuant to the provisions of 13 NYCRR Article 22 (the "**Association**") or join a previously created Association, created for the purposes set forth in Section 16.2 herein, if the Subject Property is subdivided and conveyed to multiple fee owners and/or ground lessees. The obligations of the Association under this Declaration shall commence on the date that a Declaration of Covenants, Restrictions, and Easements establishing the Association is recorded in the Register's Office (the "**DCRE**") (the "**Association Obligation Date**"), at which time the Association shall be deemed a Declarant. There may be only one Association for the Subject Property.

206.2. Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant's performance of the Maintenance Obligation as set forth in this Declaration. The initial Declarant or any Successor Declarant, along with the Association and any party that constitutes a Declarant under Article 15 or this Article 16, shall be jointly and severally responsible for the construction and Final Completion of the WPAA.

ARTICLE 207 Members. The members of the Association (the "**Association Members**") shall consist of (a) the fee owners and/or ground lessees of any portion of the Subject Property that has not been developed as or converted to a Coop/Condominium, and (b) the Boards of any portion of the Subject Property which is developed as or converted to a Coop/Condominium.

ARTICLE 208 Each Association Member hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration, relating to the WPAA, 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 and Exhibits hereto relating to the WPAA.

ARTICLE 209 Each Association Member, by acceptance of a deed or lease for a portion of the Subject Property shall, whether or not the covenant is expressed in such deed or lease (or, if the Association Member is the Board of a Coop/Condominium, in the declaration, bylaws and/or proprietary leases of such Coop/Condominium) be deemed to have consented to pay all assessments which may be imposed by the Association on the parcel owned or leased by such Association Member, as set forth herein.

ARTICLE 210 Powers. Declarant shall cause the Association to be established with the power and authority to:

ARTICLE 211 Maintain, repair, and operate the WPAA to the extent required by this Declaration, the WPAA Maintenance Agreement and the terms of any license, easement or other agreement that may hereafter be executed between or among DPR, DCP, DOT and Declarant with respect to the Waterfront Public Access Area;

ARTICLE 212impose fees or assessments against the Association Members, for the purpose of collecting funds necessary to satisfy the obligations of the Association pursuant to this Declaration;

ARTICLE 213collect, receive, administer, protect, invest and dispose of funds;

ARTICLE 214bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article 13;

ARTICLE 215exercise any of its duties or obligations pursuant to this Declaration without seeking the consent of any Unit Interested Parties; and

ARTICLE 216exercise 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 or New York State Business Corporation Law, or the rules and regulations promulgated by the Department of Law for the regulation of homeowners' (property owner's) associations, as the case may be.

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ARTICLE 217 Assessments; Association Member Obligations.

ARTICLE 218 The Association shall assess real property constituting each Coop/Condominium or fee parcel within the Subject Property (the "**Assessment Property**") for its proportionate share of the Maintenance Obligation as provided in the DCRE, in order to obtain funds for the performance of the obligations of Declarant pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as initially determined by Declarant, in compliance with Applicable Law. For Association Members who are Boards, a reasonable basis for such proration shall be conclusively established if the AG accepts for filing an offering plan for the sale of interests in such Association and the Coop/Condominium, as applicable, which plan describes such proration. The Boards of each Coop/Condominium shall collect such assessments from the owners of individual residential or commercial units, other than the Affordable Housing Units, for delivery to the Association in accordance with the DCRE and the governing documents of each Coop/Condominium.

ARTICLE 219 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.

ARTICLE 220 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 a Board, 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 for unpaid maintenance or common charges. The periodic assessments charged to an Association Member which is a Board 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 Subject Property, thereby agrees to the provisions of this Section 16.5. Any unit owner may eliminate the Association's lien described above on his or her unit by payment to the Condominium 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 may waive or otherwise escape liability for the assessments provided for herein by non-use of the Waterfront Public Access Area or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that an Association Member's liability with respect to future assessments shall end upon the valid sale or transfer of such Association Member's interest in the Subject Property.

ARTICLE 221 Association Members who may be assessed for the Maintenance Obligation shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any parcel or portion thereof,

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or (iii) any single building to be built on the Subject Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Subject 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 a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under Applicable Law 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 14 until the mortgagee or lien holder succeeds to such Possessory Interest.

ARTICLE 222 Upon acceptance for filing of an Offering Plan by the AG allowing the sale or transfer of membership interests in the Association, the Association shall certify in writing to the Chairperson and the Commission, or to any individual succeeding to their positions, that all governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chairperson with a copy of such governing documents. If Declarant fails to comply with the provisions of this Section 16.5, the City may proceed with any available enforcement measures.

ARTICLE 223 Association Members shall be considered Declarants. Notwithstanding the foregoing, upon Final Completion of the WPAA, the liability of any Association Member shall be limited to such Association Member's proportionate share of the Maintenance Obligation assessed by the Association pursuant to Section 16.5(a). In the event of a default by the Association, the City shall, prior to enforcing any rights against any Association Members, seek enforcement against the Association and, if applicable, the initial Declarant or a Successor Declarant, pursuant to the notice and cure provisions of Section 12.4.

ARTICLE 224 Deed References. Every deed conveying title to, or a partial interest in, all or a portion of the Subject Property, every lease of all or any portion of the Subject Property, each condominium declaration, and/or any bylaws relating to any portion of the Subject Property shall contain a recital or other provision that (a) the Association Member is liable for its pro rata share of the assessment by the Association and the obligation to make such payments is binding on such Association Member, and (b) the construction and maintenance of the WPAA and all other obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Subject Property, including the CRFN of this Declaration and any subsequent recorded amendments thereto or notices thereof, including the Notice of Restrictions required to be recorded against any newly subdivided tax lot in the Subject Property as per Section 11.1(b) of this Declaration.

[Signature page follows]

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IN WITNESS WHEREOF, this Declaration has been duly executed by the Declarant as of the date first written above.

DECLARANT

ASTORIA OWNERS LLC

By:_____
Name:
Title:

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

On the ____ day of _____ 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

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EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B

DESCRIPTION OF DEMAPPED PROPERTY

EXHIBIT C

CERTIFICATION OF PARTIES IN INTEREST

EXHIBIT D

WAIVERS

EXHIBIT E

DRAWINGS

EXHIBIT F

WPAA MAINTENANCE AGREEMENT

WPAA MAINTENANCE AGREEMENT

WPAA MAINTENANCE AGREEMENT (this "**Agreement**"), made as of _____, 2022 by and between Astoria Owners LLC, a New York limited liability company, having an address at 43 West 47th Street, Suite 203, New York, NY 10036 ("**Owner**"), and the City of New York (the "**City**"), acting by and through the New York City Department of Parks & Recreation, having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065.

W I T N E S S E T H:

WHEREAS, Owner is the holder in fee simple of certain real property located in the Borough and County of Queens, City and State of New York, which property is designated as Block 911, Lot 1 on the tax map of the City of New York, Borough of Queens (the "**Subject Property**") as more particularly described in **Schedule A** annexed hereto; and

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; and

WHEREAS, Owner intends to develop the Subject Property by constructing a mixed-use building comprised of up to three building segments and public open space (the "**Proposed Development**") in connection with the Application (hereinafter defined); and

WHEREAS, Owner has submitted application No. N 220199 ZCQ, to the Department of City Planning ("**DCP**") requesting that the Chairperson of the City Planning Commission (the "**Chairperson**") certify that the drawings (the "**Drawings**") submitted with such application comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution (the "**Application**"); and

WHEREAS, in connection with the approval by the Chairperson of the Application, Owner or its predecessor in interest executed, delivered and recorded a Restrictive Declaration dated July 25, 2022 governing the development of the Subject Property (the "**Declaration**"); and

WHEREAS, as of the date hereof, Owner has executed the Declaration, and subject to the terms therein, this Agreement shall be incorporated by reference and made an enforceable part thereof; and

WHEREAS, Owner or its successor in interest intends to construct the Waterfront Public Access Area (as such term is defined in the Declaration) in such phases set forth in the Declaration in connection with the conduct of the Proposed Development;

WHEREAS, pursuant to the terms of the Declaration, Owner has agreed to maintain and operate the Waterfront Public Access Area and to execute this Maintenance Agreement; and

WHEREAS, Owner and the City wish to provide for their respective rights and obligations in connection with the maintenance and operation of the Waterfront Public Access Area.

NOW, THEREFORE, in consideration of the foregoing, Owner and the City agree as follows:

I. DEFINITIONS

Any word which is defined in the Declaration shall have the meaning set forth therein, unless otherwise defined herein.

a. "**Commissioner**" shall mean the Commissioner of the New York City Department of Parks & Recreation or any successor to the jurisdiction thereof.

b. "**CPI**" shall 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, NY-NJ-CT area, All Items (1982-1984=100) or any successor index thereto, appropriately adjusted, or such other index upon which the Parks Department and Owner may reasonably agree. If the Consumer Price Index ceases to be published, and there is no successor thereto, DPR and Owner shall agree upon another index, each acting reasonably, and such index, as appropriately adjusted, shall be substituted for the Consumer Price Index. If the Consumer Price Index ceases to use 1982-1984=100 as the basis of calculation, the Consumer Price Index shall be adjusted accordingly.

c. "**Daily Damage Rate**" shall have the meaning set forth in Section 5.05(b) of this Agreement.

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

e. "**Parks Inspection Program**" shall mean the performance measurement system used by DPR or any successor program.

f. "**Promenade Activities**" shall have the meaning set forth in Sections 4.02(a) and 4.02(b) of this Agreement.

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

h. "**Waterfront Public Access Area**" shall have the meaning set forth in the Declaration, provided that it shall refer only to such portion of the WPAA that have been Substantially Completed in accordance with the phasing of the Proposed Development as contemplated in the Declaration.

Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed thereto in the Declaration.

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 Waterfront Public Access Area in accordance with the provisions of this Agreement and to the reasonable satisfaction of the Commissioner. Such services shall include keeping and maintaining the Waterfront Public Access Area in good condition and making replacements, if needed, in accordance with the terms of this Agreement and Section 62-72 of the Zoning Resolution.

III. MAINTENANCE AND REPAIR

3.01 In General. Owner shall be responsible for the ordinary maintenance and repair of the Waterfront Public Access Area in accordance with the standards set forth in this Article III and consistent with an "Acceptable" rating under the Parks Inspection Program. All such maintenance shall be performed in a good and workmanlike manner.

3.02 Cleaning.

a. Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Waterfront Public Access Area in a clean, neat and good condition.

b. All walkways, sidewalks, lighting and all other improvements and facilities installed in the Waterfront Public Access Area 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 three (3) days 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. However, in the event of any injury or death resulting from such branch or tree damaged or felled, no removal may take place without the prior written approval of DPR and only at the direction of DPR, except such branch or tree damaged or felled may be moved to the extent necessary to allow for the removal or ensure the immediate safety of any person.

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 in accordance with the New York City Administrative Code § 16-123, as amended.

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 Waterfront Public Access Area 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.

(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 all facilities within the Waterfront Public Access Area, 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 the Declaration, as applicable, and in completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be consistent with the Final Plans and Specifications/100% Construction Drawings. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Waterfront Public Access Area:

a. Benches, Bleachers or Other Seating. Maintenance, including replacement of any broken or missing slats and any 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 if different than the previously installed signage.

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 in any year, 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 Waterfront Public Access Area 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. Marine Structures and Engineered Shoreline Edges. Declarant shall construct all new and or improved marine structures and engineered shoreline edges, , to the highest practicable standards to ensure a long durable useful life cycle as set forth in Section 4.3 of the Declaration, and shall perform capital repairs as necessary. Marine structures shall be inspected in accordance with the then-current schedule and standards established by New York City Economic Development Corporation Waterfront Facilities Maintenance Management System Inspection Guidelines Manual, the most recent version of which is attached hereto as **Schedule B**, with at least one "Routine Inspection" performed every three (3) years. All condition reports and recommendations shall be submitted to DPR upon its request.

i. Utilities. Owner shall be solely responsible for the maintenance and cost of all utilities required for the operation of the Waterfront Public Access Area.

j. Warranties and Replacement Parts. Declarant agrees, where possible, to obtain initial replacement parts on all products used in the Waterfront Public Access Area, as are customarily provided by manufacturers in connection with such products. Declarant agrees to obtain such warranties on all products used in the Waterfront Public Access Area, 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 (i) from its Construction Manager or 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 Waterfront Public Access Area for a period of one year from the date of Notice of Final Completion or (ii) such other security as may be accepted by the City in its reasonable discretion.

3.06 Public Access Maintenance and Access Security. To secure Owner's obligation to maintain the Waterfront Public Access Area and to cover any civil penalties imposed by the ECB pursuant to Section 5.08 hereof, as a condition precedent to the issuance or acceptance of a TCO for any building on the Subject Property, Owner shall either (i) post or cause the posting with DPR of a performance bond for the benefit of the City, in a form reasonably satisfactory to the Commissioner and issued by a surety company licensed to do business in the State of New York, (ii) deposit with DPR one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (iii) deliver to Parks other security reasonably acceptable to the City (any such security being hereinafter referred to as the "**WPAA Maintenance and Access Security**"). The WPAA Maintenance and Access Security shall be calculated by multiplying the number of square feet in the Waterfront Public Access Area by $3.02, adjusted to reflect changes in the CPI from the date of this Agreement to July 1 for the current fiscal year (the "**Annual WPAA Maintenance Calculation**"), which amount shall be sufficient to cover 125 percent of the annual cost of the maintaining the Waterfront Public Access Area plus $10,000 to cover damages in the event that civil penalties are imposed by the ECB pursuant to Section 5.08 hereof with respect to a finding of access denial (the "**Access Cost**"). The WPAA Maintenance and Access Security shall be for a five (5) year term and shall be renewed prior to the expiration thereof. If the WPAA Maintenance and Access Security is not renewed at least thirty (30) calendar days prior to the expiration date of such WPAA Maintenance and Access Security, or if the City is informed in any way that the instrument of the WPAA Maintenance and Access Security will be cancelled or will not be renewed, the City shall be entitled to draw down on the full amount of the WPAA Maintenance and Access Security for

the purpose of maintaining the Waterfront Public Access Area, or to cover any civil penalties imposed by the ECB, in accordance with this Agreement. Owner shall promptly replenish any sums drawn down and used by the City for the maintenance of the Waterfront Public Access Area so that the available WPAA Maintenance and Access Security remains at the amount set by the Commissioner pursuant to the provisions of this Section.

3.07 No Obligation For Additional Capital Improvements. Notwithstanding anything to the contrary contained in this Agreement, Owner shall have no obligation to make or provide capital improvements, including no obligation to provide any payments or financing for, any additional capital improvements to all or any portion of the Waterfront Public Access Area, after completion of the Waterfront Public Access Area as set forth in the Declaration, as evidenced by the issuance by DPR of the Notice of Final Completion. Nothing herein shall be construed to relieve Owner of any obligation to perform necessary ordinary or capital maintenance or repairs to the Waterfront Public Access Area, including the marine structures and engineered shoreline edges, or to replace any loss or damage in the Waterfront Public Access Area, pursuant to the requirements of this Agreement.

IV. OPERATION AND ACCESS

4.01 Hours of Operation.

a. The hours of operation of the Waterfront Public Access Area shall be from 6 a.m. to 1 a.m. every day of the week, all year.

b. Notwithstanding the provisions of this Agreement or the Declaration, DPR and Owner may, by written agreement, temporarily vary such hours for all or a portion of the Waterfront Public Access Area. At such times as the Waterfront Public Access Area or any portion thereof is closed in accordance with this Agreement, it shall be closed to all, except as set forth in Section 4.01(c), below.

c. Owner shall have the right to close to the public the Waterfront Public Access Area for one day in each calendar year (excluding holidays or weekends) to preserve its ownership interest in the Waterfront Public Access Area in accordance with and subject to the terms of the Declaration.

d. Owner shall have the right to perform any of its obligations herein at times of its choosing, including during the hours of 9am and 5pm, Monday through Friday, excluding holidays (the "**Standard Hours**"). Owner shall have no obligation to perform any of its obligations herein at times outside of the Standard Hours.

4.02 General Use of the Waterfront Public Access Area.

a. The Waterfront Public Access Area may be used by all members of the public for activities appropriate to Waterfront Public Access Areas of similar design and size in New York City ("**Promenade Activities**") 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 Waterfront Public Access Area, no member of the public shall use the Waterfront Public Access Area 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;

(v) gathering in small groups;

(vi) consumption of food and non-alcoholic beverages; and

(vii) use of public facilities for their intended purposes.

c.

d. 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 Owner following rules and regulations developed pursuant to Section 4.05.

e. Owner shall have the sole right to organize and hold or permit Special Events, subject to the prior written approval of DPR, in the Waterfront Public Access Area. 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, subject to the prior written approval of DPR for the purpose of insuring the security, clean-up and repair of the Waterfront Public Access Area 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 Waterfront Public Access Area (i) for the repair, restoration, rehabilitation, renovation or replacement of the Waterfront Public Access Area or pipes, utility lines or conduits or the equipment on or under the Waterfront Public Access Area, or (ii) 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 the repairs or remediation; and, wherever possible, shall perform such work in such a manner that the public will continue to have at least partial access to the Waterfront Public Access Area; and 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. Owner shall provide notice of any closure in the manner set forth in the Declaration.

4.04 Staffing. Upon any portion of the Waterfront Public Access Area 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 Waterfront Public Access Area, which rules and regulations shall not conflict with DPR rules and regulations (56 RCNY §1 01 et. seq.). Owner shall operate the Waterfront Public Access Area in conformity with the rules and regulations of DPR unless and until it promulgates rules and regulations of its own for use of the Waterfront Public Access Area.

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 in accordance with the notice provisions of this Agreement.

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, in the discretion of Owner, take effect. Notwithstanding the foregoing, if DPR subsequently reasonably objects to any such rule, regulation or modification of an existing rule as being inconsistent with the use of the Waterfront Public Access Area under DPR rules and regulations, it shall be immediately rescinded. Any such rule, regulation or modification of an existing rule shall be posted in the Waterfront Public Access Area in accordance with Section 4.07 hereof.

4.06 Illumination. During the hours in which the Waterfront Public Access Area 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 of the Zoning Resolution and the Drawings.

4.07 Signage. Upon the Waterfront Public Access Area 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 the Owner and the entity

responsible for maintenance shall be provided in accordance with the Zoning Resolution and as shown on the Drawings. Any signage not shown on the Drawings shall be approved in writing by Parks 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 Inspection. During the course of construction of the WPAA, the City, acting through DPR, upon one (1) business day's prior notice, shall have a right of inspection to determine whether the WPAA is being constructed in substantial conformance with the approved WPAA Drawings as set forth in the Declaration.

5.02 Right of Access. The City, acting through DPR, in addition to any rights or remedies contained in Article 10 of the Declaration, shall have a right of access to the WPAA at all times the WPAA is open and at other times upon reasonable notice, for the purpose of inspecting the WPAA and determining Owner's compliance or noncompliance with the terms of this Agreement or for any lawful purpose. As part of the training of any private security personnel employed by Owner, such personnel shall be informed of DPR's right of access to the WPAA pursuant to this Section 5.02, and such personnel shall be trained not to obstruct or interfere with the right of the general public to use and enjoy the WPAA in accordance with the terms and conditions of this Agreement.

5.03 Right of Access for Repairs. The 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 WPAA upon a Maintenance Default (hereinafter defined) to perform Owner's maintenance obligation set forth in the Declaration and this Agreement until such time as Owner resumes the performance of such obligations. A "**Maintenance Default**" shall occur if Owner has failed to perform any of its maintenance obligations under the Declaration or this Agreement after notice is given in accordance with this Agreement and neither Owner nor any Mortgagee has commenced and diligently prosecuted efforts to effect a cure as provided in Section 5.04 during any applicable cure periods. The provisions of this Section 5.03 shall not be deemed to limit the access granted to DPR to the WPAA pursuant to Section 5.02 hereof.

5.04 Notice and Cure.

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 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, 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 after due notice as set forth herein, Owner or mortgagee fails to cure a violation, the City may exercise any and all of its rights, including those delineated herein and may disapprove any amendment, modification, or cancellation of this Agreement on the sole grounds that the Owner is in default of a material obligation under this Agreement.

c. Notwithstanding anything contained in this Agreement to the contrary, including, without limitation, this Section 5.04(c), 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.

5.05 Default.

a. In the event that any alleged violation of this Agreement has not been cured within the grace period provided in Sections 5.04, DPR shall be entitled to draw down on the WPAA Maintenance and Access Security and to apply such monies to the performance of such obligation and, subject to Sections 5.04 and 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 WPAA Maintenance and Access Security as provided above, Owner shall within five (5) business days thereafter post a new WPAA Maintenance and Access Security replacing the WPAA Maintenance and Access 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 WPAA Maintenance and Access Security and then drawing down on the WPAA Maintenance and Access 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 WPAA Maintenance and Access Security if it is proceeding under this Section 5.05(a).

b. If, upon or after Substantial Completion of the Waterfront Public Access Area, Owner fails to timely post and/or maintain the WPAA Maintenance and Access Security and such failure has not been cured within the grace periods set forth in Section 5.04(a), then, in addition to any other remedy provided herein, Owner shall be liable to the City for liquidated damages in the cash amount of $1000 per day for every calendar day or part thereof that a failure to provide the WPAA Maintenance and Access Security continues (the "**Daily Damage Rate**"), it being acknowledged by Owner that (i) said cash amount is reasonable in proportion to the probable damages likely to be sustained by DPR if Owner fails to comply with the terms of this Agreement, (ii) the amount of actual damages to be sustained by DPR in the event of such failure is incapable of precise estimation, and (iii) such payment does not constitute a penalty or punitive damages for any purposes. The liquidated damages provision of this Section 5.05(b) shall survive the termination of this Agreement.

5.06 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.

5.07 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 or is incorporated as a cooperative housing corporation, the obligations hereunder shall be solely those of the condominium or corporation, and shall not be applied against individual unit owners or shareholders.

5.08 Denial of Access.

a. If DPR has reason to believe that the use and enjoyment of the Waterfront Public Access Area by any member of the public has, without reasonable cause, been denied by Owner and DPR determines that such denial of access was in violation of the obligations of Owner to provide the right of public access through the Waterfront Public Access Area or to the Waterfront Public Access Area, DPR shall, in addition to such other rights as may be available to it at law or equity and as are provided under this Agreement and the Declaration, have the right to seek civil penalties at the Environmental Control Board ("ECB") for a violation relating to privately owned public space, as such penalties may be adjusted from time to time by the Environmental Control Board. Owner and Mortgagee shall not have an opportunity to cure such finding of a denial of access under Section 5.04(a) and (b).

b. If Owner fails to pay any ECB penalty imposed pursuant to Section 5.08(a) above, then the City, acting through the Commissioner, shall be entitled to draw down on the WPAA Maintenance and Access Security in the amount of such penalty up to the Access Cost. The drawdown of the Maintenance and Access Security pursuant to this Section 5.08 does not waive any other remedies the City may have to enforce public access.

VI. INTENTIONALLY OMITTED

VII. MISCELLANEOUS

7.01 Amendments. This Agreement may not be modified or amended except by a written instrument executed by Owner and DPR after consultation with the Chairperson.

7.02 Cancellation. This Agreement may not be canceled except by written instrument executed by Owner and DPR.

7.03 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:	Astoria Owners LLC 43 West 47th Street, Suite 203 New York, New York 10036
	Astoria Owners LLC One State Street, Floor 29 New York, New York 10004
With a copy to:	Herrick, Feinstein LLP 2 Park Avenue, 14th Floor New York, NY 10028 Attn: Mitchell Korbey Email: Mkorbey@herrick.com
If to DPR:	New York City Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, NY 10065 Attn: Office of the General Counsel
With a copy to:	New York City Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, NY 10065 Attn: Assistant Commissioner for Planning and Parkland

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.

7.04 Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York.

7.05 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.

7.06 Indemnity. Owner shall indemnify and hold harmless the City, DPR and their respective officers, employees and agents from 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, or the negligence or carelessness 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, which consent shall not be unreasonably withheld. In no event shall this provision be deemed to interfere with, replace, or supersede the City's obligation to indemnify Owner pursuant to Section 62-72(b) of the Zoning Resolution and Section 5.2 of the Declaration.

7.07 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.

7.08 Approvals. Wherever in this Agreement the certification, consent or approval of Owner, the Chairperson, 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 Chairperson 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.

7.09 Exhibits. The Exhibits attached hereto are incorporated into this Agreement.

7.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

VIII. INSURANCE

8.01 General Requirements. At all times after Substantial Completion of the WPAA, Owner shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein, in order to protect the City against claims for injury, death or property damage arising out of the public's use of the WPAA. Every five (5) years following Substantial Completion of the WPAA, and concurrent with the renewal of the WPAA Maintenance and Access Security as set forth in Section 3.06 hereof, the amount and type of insurance required to be carried by Owner may be adjusted by such amount as is reasonable and customary, considering the extent of Owner's obligations as set forth herein.

8.02 Commercial General Liability Insurance.

ARTICLE 225 Owner shall maintain Commercial General Liability Insurance in the amount of at least Five Million Dollars ($5,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the WPAA, and such per-location aggregate shall be at least Fifteen Million Dollars ($15,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement apart from those, if any, done exclusively by the City. Coverage shall be written on Insurance Services Office ("**ISO**") Form CG 0001 or its substantial equivalent, and shall be "occurrence" based rather than "claims-made."

ARTICLE 226 Such Commercial General Liability Insurance set forth in Section 8.02(a) shall name the City, together, with its officials and employees, as an additional insured with coverage as the most recent edition of the ISO Forms CG 2026 and 2037 or their equivalents.

8.03 Workers' Compensation, Employers Liability, and Disability Benefits Insurance. The Owner shall maintain Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance on behalf of, or with regard to, its employees involved in the Owner's operations under this Agreement, and such insurance shall comply with the laws of the State of New York. In the event the work is performed by others under contract with Owner, then Owner shall require its vendor or contractor to provide such insurance and the requisite proof thereof, as provided in Section 8.0 herein.

8.04 Business Automobile Liability Insurance.

(a) With regard to all construction, operations, and maintenance under this Agreement, Owner shall maintain or cause to maintained Business Automobile Liability Insurance in the amount of at least One Million Dollars ($1,000,000) for each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be as the latest edition of ISO Form CA000 l or its equivalent.

ARTICLE 227 If vehicles are used for transporting hazardous material, such Business Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90, or their equivalents, if available.

8.05 Flood Insurance.

(a) Owner shall maintain flood insurance through the National Flood Insurance Program (NFIP) for the WPAA, its contents and supporting structures, to the extent they are insurable assets through NFIP. Owner shall maintain the maximum limits available under the NFIP and assure that the City is listed as a loss payee on the NFIP insurance.

(b) In the event Owner purchases flood insurance excess to the limits available under the NFIP, Owner shall assure that the City is listed as a loss payee under all such policies.

8.06 General Requirements for Insurance Coverage and Policies.

(a) Policies of insurance under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least "A-" or a Standard and Poor's rating of at least "A", unless prior written approval is obtained from the Commissioner.

ARTICLE 228 Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

ARTICLE 229 There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Owner shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

ARTICLE 230 All required policies, except Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds named therein.

8.07 Proof of Insurance.

(a) Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to issuance of a Notice of Substantial Completion authorizing any public use of the WPAA. Owner may procure modifications of the policy(ies) to reflect its completion of construction after receiving a Notice of Final Completion and its ongoing responsibility for repair and maintenance only.

ARTICLE 231 For Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, Owner shall submit one of the following:

ARTICLE 232C-105.2 Certificate of Workers' Compensation Insurance;

ARTICLE 233U-26.3 – State Insurance Fund Certificate of Workers' Compensation Insurance;

ARTICLE 234 Request for WC/DB Exemption (Form CE-200);

ARTICLE 235 Equivalent or successor forms used by the New York State Workers' Compensation Board; or

ARTICLE 236 Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

ARTICLE 237 For all insurance required under this Article other than Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance,

Owner shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of all such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in Owner's policy(ies) (including its general liability policy) by which the City has been made an additional insured, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by the Commissioner.

ARTICLE 238 Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Declaration. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

ARTICLE 239 Acceptance or approval by the Commissioner of a Certificate of Insurance, policy, or any other matter does not waive Owner's obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Owner's liability for its failure to do so.

ARTICLE 240 Owner shall provide the City with a complete, certified copy of any liability insurance policy required under this Article, upon request by the Commissioner or the New York City Law Department, at any time in the course of a dispute with its insurance carrier as to whether the City is entitled to coverage under such policy. Upon the Owner's receipt of the request by the Commissioner or the New York City Law Department hereunder, the Owner may delay the provision of such policy for up to forty-five (45) days after receipt thereof in order to facilitate the resolution of such dispute with its insurance carrier to the City's satisfaction. The foregoing shall not affect a party's rights under law or court order with respect to the disclosure of such policy during the course of litigation.

8.08 Miscellaneous.

(a) Owner may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, and through the use of blanket insurance programs, so long as all policies provide the scope of coverage required herein.

ARTICLE 241 Owner shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

ARTICLE 242 Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Owner shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to Owner's own employees), apart from those, if any, done exclusively by the City, as soon as practical. For any policy where the City is an additional insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." To the extent possible, such notice shall

also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Owner shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

ARTICLE 243 Owner's failure to secure and maintain insurance in complete conformity with this Article or to comply with any of the requirements of this Article shall constitute a material breach of this Agreement and the Declaration.

ARTICLE 244 Insurance coverage in the minimum amounts provided for in this Article shall not relieve Owner of any liability under this Agreement and the Declaration, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it pursuant to any other provisions of this Agreement or the Declaration or under law.

ARTICLE 245 In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, Owner shall at all times fully cooperate with the City with regard to such potential or actual claim.

ARTICLE 246 Unless caused by the negligence or willful misconduct of the City, Owner waives all rights against the City, including its officials and employees, for any damages or losses that would be or are covered by the insurance required to be obtained under this Agreement (whether or not such insurance is actually procured) or any other insurance applicable to the operations of Owner and/or its employees, agents, or servants of its contractors or subcontractors on account of the damage or loss in question.

ARTICLE 247 In the event Owner requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement or the Declaration and requires such entity to name Owner as an additional insured under such insurance, Owner shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage as ISO Forms CG 2026 and 2037 or their equivalents.

ARTICLE 248 In the event Owner receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Owner shall immediately forward a copy of such notice to both the Commissioner at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York, 10065 and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, Owner shall ensure that there is no interruption in any of the insurance coverage required under this Article.

IX. CLAIMS AND ACTIONS THEREON

9.01 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 without compensation any and all assistance which DPR and/or the City may reasonably require of Owner, but such assistance shall not include payment

of attorney's fees or settlement or any recovery unless Owner is obligated for such payment pursuant to other provisions in this Agreement or the Declaration.

9.02 Owner shall report to DPR and the New York City Department of Law, Chief, Torts Division in writing within ten (10) business days of the initiation by Owner, or ten (10) business days after the receipt by Owner of the summons or complaint filed against Owner, of any legal action or proceeding in connection with or relating to this Agreement.

9.03 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.

9.04 If Owner is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement or any judgment is obtained against Owner from a court of competent jurisdiction in connection with this Agreement and such finding or judgment is upheld on final appeal, or the time for further review of such finding or judgment on appeal or by other proceeding has lapsed, Owner shall indemnify and hold harmless the City, DPR and DCP from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Owner's obligations under this Agreement or the enforcement of said judgment.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

NEW YORK CITY DEPARTMENT OF PARKS & RECREATION

By:_____
Name:
Title:

ASTORIA OWNERS LLC

By:_____
Name:
Title:

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

On the ____ day of _____ 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

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

On the ____ day of _____ 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

Schedule A

METES AND BOUNDS DESCRIPTION

Schedule B

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION WATERFRONT FACILITIES MAINTENANCE MANAGEMENT SYSTEM INSPECTION GUIDELINES MANUAL

EXHIBIT G

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

[Letterhead of the Chairperson of the New York City Planning Commission]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

DECLARANT CONTACT

Re: Block [____], Lot [__]
[_____], New York

Dear [_____]:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 6.2 of the Restrictive Declaration by DECLARANT_____ dated as of _____, _____ (the "**Declaration**").

Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

_____
Chairperson

New York City Planning Commission[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE
TO THE CERTIFICATION BEING ISSUED]

EXHIBIT H

FORM OF NOTICE OF FINAL COMPLETION

[Letterhead of the Chairperson of the New York City Planning Commission]

[Date]

NOTICE OF FINAL COMPLETION

OWNER CONTACT

Re: Block [____], Lot [__]
[_____], New York

Dear [_____]:

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section 7.2 of the Restrictive Declaration by DECLARANT---------- dated as of _____, _____ (the "**Declaration**").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that the Waterfront Public Access Area has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration. Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

_____
Chairperson

New York City Planning Commission[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE
TO THE CERTIFICATION BEING ISSUED]