**RESTRICTIVE DECLARATION**

**NEW YORK COUNTY**

**BLOCK 98, LOT 1**

**BLOCK 73, LOT 11, P/O LOTS 8 AND 10**

**RECORD AND RETURN TO:**

**Fried Frank Harris Shriver & Jacobson, LLP**

**One New York Plaza**

**New York, New York 10004**

**Attention: David Karnovsky, Esq.**

Matter double struck out is old, deleted by the City Council;

Matter double-underlined is new, added by the City Council.

RESTRICTIVE DECLARATION

**THIS RESTRICTIVE DECLARATION** (“**Declaration**”), made as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2021, by 250 Seaport District, LLC, a Delaware limited liability company having an address at c/o The Howard Hughes Corporation, One Galleria Tower, 13355 Noel Road, 22nd Floor, Dallas, Texas 75240 (the “**HHC Declarant**”), the City of New York, a municipal corporation of the State of New York, having an address at City Hall, New York, New York 10007 (the “**City Declarant**”) and South Street Seaport Limited Partnership, a Maryland limited partnership, with an address at 199 Water Street, 28th Floor, New York, New York 10038 (the “**SSSLP Declarant**”, and together with the HHC Declarant and the City Declarant, the “**Declarants**”).

**W I T N E S S E T H:**

**WHEREAS,** the HHC Declarant is fee owner of certain real property located in the Borough of Manhattan, City and State of New York, designated as Lot 1 of Block 98 (the “**Subject Property**”) on the Tax Map of the City of New York, which is more particularly described in **Exhibit A** attached hereto;

**WHEREAS**, the City Declarant is the fee owner of certain real property located in the South Street Seaport Area of the Borough of Manhattan, County of New York, City and State of New York, known as Block 73, Lot 11, and parts of Lots 8 and 10 on the Tax Map for said borough, and part of the adjacent marginal street, which real property is more particularly described as **Exhibit B** annexed hereto and made a part hereof (together, the “**Pier 17 Property**”);

**WHEREAS**, the SSSLP Declarant and the City Declarant entered into that certain amended and restated lease, dated as of June 27, 2013 with regard to the leasing of certain land an improvements in the South Street Seaport area of Manhattan, including the Pier 17 Property;

**WHEREAS**, the New York City Planning Commission (“**CPC**” or the “**Commission**”) adopted resolutions on February 6, 2013, under Calendar Numbers 7-14, approving certain applications by Declarants with the New York City Department of City Planning (“**DCP**”) pursuant to Application Numbers 130052 ZMM, 130053 ZSM, 130054 ZSM, 130055 ZSM, 130056 ZAM, 130057 ZAM, 130058 ZCM, 130059 PPM, 130080 ZRM; and the New York City Council adopted resolutions approving the decision of CPC on March 20, 2013, under Resolution Numbers 1692-2013 (L.U. No. 766), 1693-2013 (L.U. No. 767), 1694-2013 (L.U. No. 768), 1695-2013 (L.U. No. 769), 1696-2013 (L.U. No. 770), 1697-2013 (L.U. No. 771), 1698-2013 (L.U. No. 772) (such resolutions of the CPC and New York City Council, the “**2013 Land Use Approvals**”);

**WHEREAS**, the HHC Declarant and SSSLP Declarant executed a restrictive declaration dated June 27, 2013, recorded on July 18, 2013 at CRFN 2013000283409 (the “**2013 Restrictive Declaration**”), which set forth certain obligations for the development of the Pier 17 portion of the Subject Property pursuant to the 2013 Land Use Approvals;

**WHEREAS**, the Chairperson of the CPC and the CPC adopted resolutions on October 19, 2016, under Calendar Numbers 1-4, approving certain applications filed with DCP pursuant to Application Numbers M130053A ZSM, M130054A ZSM, M130055A ZSM, N170054 ZAM, N170055 ZCM (the “**2016 Modification**”);

**WHEREAS**, the HHC Declarant and SSSLP Declarant executed an amendment to the 2013 Restrictive Declaration dated January 11, 2017, recorded on January 27, 2017 at CRFN 2017000036236 (the “**First Amended and Restated Declaration**”), which set forth certain obligations for the development of the Pier 17 portion of the Subject Property pursuant the 2016 Modification;

**WHEREAS**, the City Declarant is the fee owner of the demapped portions of Fulton Street between South Street and Water Street, Water Street between Fulton Street and Beekman Street, and Front Street between John Street and Beekman Street (which includes a portion of Block 74, Lot 20), (the “**Demapped Property**”; together with the Subject Property and Pier 17 Property, the “**Covered Property**”);

**WHEREAS,** the HHC Declarant filed applications with DCP for approval by the Commission of (a) a zoning text amendments to the Zoning Resolution of the City of New York (the “**Zoning Resolution**” or “**ZR**”) to the South Street Seaport regulations; (b) modifications to the boundaries of and site plan for the South Street Seaport / Pier 17 Large-Scale General Development to update the previously approved large-scale general development site plan and zoning calculations and to include two additional zoning lots (the Subject Property and the Demapped Property); (c) modifications to the First Amended and Restated Declaration recorded against the Pier 17 Property; (d) a special permit by the Commission pursuant to ZR Section 74-743 to allow the distribution of floor area without regard for zoning lot lines or district boundaries and the location of buildings without regard to applicable height, setback, or street wall regulations; (e) an authorization by the Commission pursuant to ZR Section 13-441 to modify ZR Section 13-241(c) to locate a curb cut accessing an off-street parking facility on a wide street; (f) an authorization by the Commission pursuant to ZR Section 62-822(b) to modify the requirements within the Pier 17 Waterfront Public Access Area to allow for security bollards to be located within the upland connection of the waterfront public access area and treated as permitted obstructions within the required pedestrian circulation path; (g) a certification by the Chairperson of the Commission pursuant to ZR Section 62-12(c) that the proposed design changes to the waterfront public access area would not increase the degree of non-compliance with the waterfront zoning regulations, as modified by several authorizations (collectively, the “**Land Use Approvals**”);

**WHEREAS,** the HHC Declarant intends to develop the Subject Property pursuant to the Land Use Approvals with a new building utilizing approximately 547,000 square feet of zoning floor area, containing a mix of residential, community facility, and commercial uses as set forth in the Approved Drawings (defined below) (the “**Proposed** **Development**”);

**WHEREAS,** the Commission conducted an environmental review of the Land Use Approvals 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 October 10, 2021;

**WHEREAS,** to ensure that construction 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 the implementation of 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 significant adverse construction impacts (the PCREs and Mitigation Measures collectively, the “**Environmental Obligations**”), HHC Declarant has agreed to restrict the construction the Subject Property in certain respects, which restrictions are set forth in this Declaration;

**WHEREAS,** HHCDeclarant desires to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated now and in the future;

**WHEREAS,** pursuant to the certificate(s) annexed hereto as **Exhibit C** (**“Certification of Parties-in-Interest**”), [Title Company] has certified that as of [date], the parties listed on **Exhibit C** are the sole “parties-in-interest”] (as defined in subdivision (c) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution) (each, a **“Party-in-Interest”;** multiple being “**Parties-in-Interest**”), to the Covered Property;

**WHEREAS,** all Parties-in-Interest have executed this Declaration or waived their right to execute and subordinated their interest in the Covered Property to the Declaration pursuant to the instruments annexed here to as **Exhibit D**;

**WHEREAS,** Declarants represent and warrant that, except with respect to mortgages or other instruments specified herein, the holders of which have given their consent or waived their respective rights to object hereto, there are no restrictions of record on the development or use of the Covered Property, nor any existing lien, obligation covenant, easement, limitation or encumbrance of any kind that shall preclude the enforcement of the obligations and restrictions as set forth herein.

**NOW, THEREFORE,** Declarants do hereby declare and agree that the Covered Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Covered Property and which shall be binding on Declarants, their successors and assigns.

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# CERTAIN DEFINITIONS

## **Definitions.**

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

 **“Alternative Environmental Measures”** shall have the meaning set forth in Section 3.04(a) of this Declaration.

 **Approved Drawings”** shall have the meaning set forth in Section 2.02 of this Declaration.

 **“As-of-Right Development”** shall mean any building that can be developed and constructed on the Subject Property without utilizing the Land Use Approvals.

 **“Building Permit”** shall mean shall mean a work permit under a “New Building” application authorizing construction of above-grade portions of the Proposed Development.

 **“Business Days”** means any day other than a Saturday, Sunday or other day on which banks in the State of New York are not open for business.

 **“CEQR”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Certification of Parties-in-Interest”** shall have the meaning set forth in the Recitals of this Declaration.

 **“City Council”** shall mean the New York City Council.

 **“Chair”** shall mean the Chairperson of the City Planning Commission.

 **“Commission”** shall have the meaning set forth in the Recitals of this Declaration.

 **“CO Notice”** shall have the meaning set forth in Section 4.03 of this Declaration.

 **“Construction Commencement”** shall mean the issuance of the first Building Permit by DOB to HHC Declarant for the commencement of work to develop the Subject Property, in whole or in part, with the Proposed Development, or any portion thereof.

 **“Core and Shell TCO”** shall mean a temporary certificate of occupancy issued by DOB for the core and shell of the Proposed Development. A Core and Shell TCO shall not include any certificate of occupancy that permits occupancy of the building or portions thereof for office, retail, eating and drinking establishment, amenity or other tenant uses.

 **“Council Member”** shall mean the elected member of the City Council for the Councilmanic District in which the Subject Property is located, from time to time or at the applicable time.

 **“Covered Property”** shall have the meaning set forth in the Recitals of this Declaration.

 **“CPP”** shall have the meaning set forth in Section 3.01(e) of this Declaration.

 **“DCP”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Declarants”** shall have the meaning set forth in the Preamble hereof.

 **“Declaration”** shall have the meaning set forth in the Preamble hereof.

 **“Default Notice”** shall have the meaning set forth in Section 6.01(a) of this Declaration.

 **“Delay Notice”** shall have the meaning set forth in Section 6.04(a) of this Declaration.

 **“Demapped Property”** shall have the meaning set forth in the Recitals of this Declaration.

 “**DOB”** shall mean the New York City Department of Buildings.

 **“Elimination or Modification of FEIS Obligation”** shall have the meaning set forth in Section 3.04(b).

 **“Environmental Obligations”** shall have the meaning set forth in the Recitals of this Declaration.

**“FEIS”** shall have the meaning set forth in the Recitals of this Declaration.

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

**“Final Approval”** shall mean approval or approval with modifications of the Land Use Approvals by the City Council, or (b) if the City Council disapproves the decision of the Commission and the Mayor of the City of New York (the “**Mayor**”) files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197‑d(e), and the City Council does not override the Mayor’s disapproval, in which event “Final Approval” shall mean the Mayor’s written disapproval of the City Council’s action pursuant to such New York City Charter Section 197‑d(e).

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

 **“Land Use Approvals”** shall have the meaning as set forth in the Recitals of this Declaration.

 **“LPC”** shall mean the New York City Landmarks Preservation Commission.

 **“Mitigation Measures”** shall have the meaning set forth in the Recitals of this Declaration.

 “**Mortgage**” shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property.

 **“Mortgagee”** shall mean the holder of a Mortgage.

 **“Named Mortgagee”** shall have the meaning set forth in Section 7.01(d) of this Declaration.

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

 **“Notice”** shall have the meaning set forth in Section 7.01(a) of this Declaration.

 **“Notice of Final Completion”** shall have the meaning set forth in Section 4.02 of this Declaration.

 **“Notice of Substantial Completion”** shall have the meaning set forth in Section 4.01 of this Declaration.

 **“Parties-in-Interest”** shall have the meaning set forth in the Recitals of this Declaration.

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

 **“PCREs”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Pier 17 Property”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Proposed Development”** shall have the meaning set forth in the Recitals of this Declaration.

 **“SEQRA”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Subject Property”** shall have the meaning set forth in the Recitals of this Declaration.

 **“Substantial Completion”** or **“Substantially Complete”** shall mean that the Environmental Obligations set forth in Section 3.01 and Section 3.02(c) of this Declaration have been substantially completed. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed or (b) HHC Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally. A portion of the Public Realm Improvements shall be considered Substantially Complete where it has been certified as Substantially Complete by DCP.

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

 **“Uncontrollable Circumstances”** shall include the following elements: strike(s) or labor dispute(s); inability to obtain labor, equipment, supplies or materials or reasonable substitutes therefore in the open market; acts of God; governmental restrictions, regulations, omissions or controls; enemy or hostile government actions, war, hostilities, terrorism, explosion, invasion; civil commotion, riot, mob violence, malicious mischief, insurrection, revolution or sabotage; a lockout; a flood, earthquake,  or fire (destruction due to any of the foregoing events in this paragraph hereinafter referred to as “Casualty”); inclement weather or field conditions of such a nature as to make performance or completion of the Environmental Obligations not feasible; a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; governmental actions with respect to construction projects in the vicinity of the Environmental Obligations that directly delay performance or completion of the Environmental Obligations; disruptions in subway services that impact the timely delivery of materials for the Environmental Obligations; inability to perform work due to transit related accidents including property damage, repairs as a result thereof or criminal investigations; inability to access the work area; the pendency of litigation not initiated by HHC Declarant or similar proceeding which results in an injunction or restraining order or similar relief prohibiting or otherwise delaying the commencement or continuation of the obligations of HHC Declarant pursuant to this Declaration, provided such litigation or proceeding was not instituted, financed or supported by HHC Declarant or any of its affiliates; actual or threatened health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other health risk); or other conditions similar in character to the foregoing which are beyond the control of HHC Declarant. In addition, “Uncontrollable Circumstances” shall also include (i) material delays by the City, State or United States government, or any agency or instrumentality thereof, Metropolitan Transit Authority, or any utility company, in the performance of any work or processing or approval of any applications, or comment on architectural and engineering plans within a reasonable time period following receipt of such plans, unless due to any act or failure to act by HHC Declarant, and (ii) denial to HHC Declarant by any owner, ground lessee or franchisee of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State or any utility company having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property. No event shall constitute Uncontrollable Circumstances unless (i) the event is not due to an act or failure to act of HHC Declarant, (ii) HHC Declarant complies with the procedures set forth in Section 6.04 hereof, and (iii) the Chair has certified the existence of Uncontrollable Circumstances in accordance with the provisions of Section 6.04 hereof or has failed to respond.

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

# DEVELOPMENT OF THE SUBJECT PROPERTY

## **Designation of Large-Scale General Development**. Declarants hereby declare and agree that, following the Effective Date (as defined in Section 5.01 below), the Covered Property shall be treated as a large-scale general development and shall be developed or enlarged as a single unit. To the extent that the Covered Property is subject to this Declaration and the First Amended and Restated Declaration dated January 11, 2017, and recorded on January 27, 2017 at CRFN 2017000036236, as modified by the Modification to the First Amended and Restated Declaration, dated \_\_\_\_\_\_\_\_\_ and recorded at CRFN \_\_\_\_\_\_, and as further amended by the Second Modification to the First Amended and Restated Declaration, dated \_\_\_\_\_\_\_, and recorded at CRFN \_\_\_\_\_\_\_\_\_\_\_\_, this Declaration shall supersede (except that the First Amended and Restated Declaration, as modified, shall be applicable to acknowledge that the large-scale general development shall be treated as a single unit).

## The Proposed Development shall be constructed substantially in accordance with the locations, dimensions and specifications as indicated on the following drawings prepared by Skidmore, Owings & Merrill LLP, annexed hereto as **Exhibit E** (collectively, the “**Approved Drawings**”):

|  |  |  |
| --- | --- | --- |
| **DWG No.** | **Title** | **Revised Date** |
| VL-101 | ALTA / NSPS Land Title Survey | 5/18/19 |
| Z-001 | LSGD Zoning Analysis | 10/15/21 12/09/21 |
| Z-002 | LSGD Zoning Site Plan | 10/15/21 |
| Z-300 | Zoning Lot B - Site Plan | 10/15/21 |
| Z-400 | Zoning Lot A – Analysis | 10/15/21 12/09/21 |
| Z-401 | Zoning Lot A - Site Plan | 10/15/21 |
| Z-402 | Zoning Lot A - Waiver Plan | 10/15/21 |
| Z-403 | Zoning Lot A - Waiver Sections | 10/15/21 |
| Z-404 | Zoning Lot A - Waiver Sections | 10/15/21 |
| Z-405 | Zoning Lot A - Waiver Sections | 10/15/21 |
| Z-406 | Zoning Lot A - Waiver Sections | 10/15/21 |
| Z-407 | Zoning Lot A - Waiver Sections | 10/15/21 |
| Z-601 | Curb Cut Neighborhood Character | 10/15/21 |
| Z-701 | Zoning Lot A - Garage Plan | 10/15/21 |

* + 1. Notwithstanding the foregoing provisions of this Article II, HHC Declarant may develop an As-of-Right Development, in which case the provisions of Sections 2.02 and the provisions of Articles III through IV of this Declaration shall not apply to such development.

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# PROJECT COMPONENTS RELATING TO THE ENVIRONMENT AND MITIGATION MEASURES

## **Project Components Related to the Environment.** HHC Declarant shall implement as part of its construction of the Proposed Development, as appropriate, the following PCREs:

* + 1. **Construction Air Emissions Reduction Measures.** HHC Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including excavation) during the development of the Subject Property:
			1. on-site vehicle idle time would be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or are otherwise required for the proper operation of the engine;
			2. ULSD fuel would be used exclusively for all diesel engines throughout the Subject Property;
			3. electrically powered equipment would be preferred over diesel-powered and gasoline-powered versions of that equipment to the extent practicable;
			4. equipment that would use grid power in lieu of diesel engines includes, but may not be limited to, hoists and small equipment (such as welders);
			5. to the extent practicable, all diesel-powered non-road construction equipment 50 horsepower (hp) or greater would meet at least the EPA Tier 3 emissions standard;
			6. non-road diesel engines with a power rating of 50 hp or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks would utilize the best available tailpipe (BAT) technology for reducing diesel particulate matter (DPM) emissions; and
			7. construction contracts would specify that all diesel non-road engines rated at 50 hp or greater and controlled truck fleets would utilize Diesel Particulate Filters (DPF), either installed by the original equipment manufacturer or retrofitted, to the extent practicable and feasible. Retrofitted DPFs must be verified by EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used.
		2. **Fugitive Dust Control Plan.** HHC Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities during development of the Proposed Development (the “**Fugitive Dust Control Plan**”), which Fugitive Dust Control Plan shall contain the following measures:
			1. all trucks hauling loose material would be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Subject Property;
			2. water sprays would be used for all demolition, excavation, and transfer of soils;
			3. stockpiled soils or debris would be watered, stabilized with a chemical suppressing agent, or covered;
			4. stabilized truck exit areas would be established for washing off the wheels of all trucks where feasible;
			5. truck routes within the Subject Property would be either watered as needed or, in cases where such route would remain in the same place for an extended duration, the routes would be stabilized, covered with gravel, or temporarily paved to avoid the resuspension of dust; and
			6. all measures required by DEP’s *Construction Dust Rules* regulating construction-related dust emissions would be implemented.
		3. **Construction Noise Reduction Measures.** HHC Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including excavation) related to the development of the Proposed Development:
			1. HHC Declarant shall develop and implement a plan for minimization of construction noise (the “**Noise Reduction Plan**”). The Noise Reduction Plan shall contain both path control and source control measures, including the following:
				1. equipment that meets the sound level standards specified in Subchapter 5 of the *New York City Noise Control Code* would be utilized from the start of construction;
				2. 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. Where electrical equipment cannot be used, diesel or gas-powered generators and pumps would be located within buildings to the extent feasible and practicable;
				3. where feasible and practicable, construction sites would be configured to minimize back-up alarm noise;
				4. all trucks would not be allowed to idle more than 3 minutes at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code;
				5. contractors and subcontractors would be required to properly maintain their equipment and mufflers;
				6. 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;
				7. Noise barriers at least 8 feet tall with a cantilever toward the work area would be erected around the Subject Property to provide shielding;
				8. noise barriers would be erected around the Museum Site (as defined in the FEIS) to provide shielding, which would be 12 feet tall along the edge of the site facing the Imagination Playground, and 8 feet tall along the remaining perimeter;
				9. noise barriers would be constructed from plywood or other materials consistent with the noise barrier requirements set forth in the New York City Department of Environmental Protection (DEP)’s “Rules for Citywide Construction Noise Mitigation”;
				10. concrete trucks would be required to be located inside site-perimeter noise barriers while pouring or being washed out; and
				11. additional path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) may be required for certain dominant noise equipment to the extent feasible and practical based on the results of the construction noise calculations.

### **Archeological Protocols**. HHC Declarant shall perform certain archeological investigations within and/or around the Subject Property as follows: Archeological monitoring, and where possible, testing shall occur during excavation beneath a depth of 8 feet below the ground surface. HHC Declarant shall develop, with its contractor, archeological consultant and LPC a strategy to determine where archeological testing and monitoring can be safely completed. This strategy will be summarized in a Work Plan that will be submitted to LPC before the commencement of any archaeological work, remediation, or subsurface construction efforts. If archaeological monitoring or testing is to occur during any remediation work or within soils that have been identified as contaminated, work, such work would have to be completed in consultation with the hazardous materials specialists completing that work, including the preparation of a comprehensive Health and Safety Plan (HASP) tailored to the specific contaminants that may be encountered on the site and that would any specialized training that the archaeological team may need (e.g., 40-hour HAZWOPER training). Furthermore, the Work Plan prepared for any archaeological monitoring or testing on Block 98, Lot 1 should include a discussion about alternative methods for documenting artifacts or features that may not be accessible via traditional archaeological analytical methods as a result of their associated with contaminated soils.

### **Historic and Cultural Resources**. Prior to Construction Commencement, a Construction Protection Plan (“**CPP**) for historic structures shall be developed to avoid any inadvertent demolition and/or construction-related damage from ground-borne construction period vibrations, falling debris, collapse, etc. The CPP shall be developed in coordination with LPC and implemented in consultation with a licensed professional engineer. The CPP shall be prepared in compliance with the procedures included in DOB’s TPPN #10/88 and LPC’s Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings.

## **Mitigation Measures**.

### Shadows. Upon the acceptance of a TCO for any portion of the Proposed Development to be developed on the Subject Property, HHC Declarant shall commence a program to annually monitor the trees and vegetation within the Southbridge Towers open spaces for a period of five (5) years. If, based on the monitoring program, it is determined that trees or vegetation within the Southbridge Towers open spaces require replacement with shade tolerant plantings, HHC Declarant shall (i) contact the Board ofthe Southbridge Towers and offer to replace the impacted trees and vegetation within the open spaces with shade tolerant plantings, and (ii) have caused such replacement trees and vegetation to be installed at locations within the plaza where the Board has accepted the offer.

### Transportation:

### Within six (6) months of the issuance of a final TCO for the Proposed Development, if the Theater Option (as defined in the FEIS) is advanced as the Proposed Development is developed, HHC Declarant shall undertake a traffic monitoring plan. Prior to undertaking any monitoring, a scope of work shall be submitted to DCP and DOT for review and approval. The traffic monitoring plan shall include original travel demand surveys for the theater use, new data collection, and analyses to study the impacts associated with this alternative for both weekdays and weekends. If necessary, new or different improvement measures shall be identified for consideration to address these specific effects. HHC Applicant shall be responsible for all costs associated with the post-approval monitoring plan, analyses and the design and construction of any recommended improvement measures.

* + - 1. Prior to the issuance of a TCO for any portion of the Proposed Development, HHC Declarant shall coordinate with CitiBike and DOT, following the procedures and outreach guidance provided by DOT, regarding the relocation of the existing CitiBike station from the east sidewalk of Pearl Street between Peck Slip and Beekman Street.
			2. The HHC Declarant shall notify DOT in writing six (6) months before the completion and full occupancy of the Proposed Development and request that DOT determine the feasibility or necessity of implementing the transportation mitigation measures described in Chapter 19 of the FEIS. DOT shall advise HHC Declarant of its determination of the feasibility and necessity in writing after the project is fully occupied. HHC Declarant shall have no obligations with respect to those mitigation measures that DOT determines are not feasible or necessary.
			3. With respect to those mitigation measures requiring physical changes, HHC Declarant shall submit to DOT for review and approval all required drawings/designs as per AASHTO and DOT specifications. HHC Declarant shall either implement such measures as directed by DOT, or if directed by DOT, pay DOT/City of New York the ordinary and customary costs for DOT to implement such mitigation measures.

### Construction Noise:

### At its expense, HHC Declarant shall offer to replace monolithic (i.e., non-insulated) glass windows with storm windows for the facades of the residential units identified in FEIS Figure 17-7 as having a “Predicted Construction Noise Impact”.

### At its expense, HHC Declarant shall offer well-sealed window air conditioning units for:

###  any classroom located at 1 Peck Slip that does not have air conditioning;

###  living rooms or bedrooms that do not have air conditioning located along the facades of the residential units identified in FEIS Figure 17-7 as having a “Predicted Construction Noise Impact”.

## HHC Declarant shall not accept a new building permit unless and until (i) such window treatment and alternative ventilation has been offered by mail to those residences 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, HHC 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.

## **Uncontrollable Circumstances 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 III by reason of the occurrence of Uncontrollable Circumstances, HHC Declarant shall not be excused from performing such obligation unless the failure to implement the obligation during the period of Uncontrollable Circumstances, or that implementing an alternative proposed by HHC Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

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

(a) **Innovation and Alternatives.** In complying with any obligation set forth in this Article III, HHC 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 Proposed Development, provided that HHC 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.

(b) **Modifications Based on Further Assessments.** In the event that HHC Declarant believes, in good faith, based on changed conditions, that an obligation under this Article III 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. 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, HHC Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination (**“Elimination or Modification of FEIS Obligation”**).

(c) If HHS 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.

#

# CERTIFICATES OF OCCUPANCY

## **Temporary Certificate of Occupancy.** HHCDeclarant shall not accept a TCO for any portion of the Proposed Development prior to acceptance of the CO Notice by DCP in accordance with Section 4.03. In the event that DCP has not accepted the CO Notice in accordance with Section 4.03 as a result of a determination by the Chair of the existence of Uncontrollable Circumstances in accordance with Section 6.04 hereof, the Chair may, in his or her sole discretion (a) authorize HHC Declarant to accept a TCO for the Proposed Development as the Chair determines to be warranted; (b) in authorizing such occupancy of the Proposed Development, the Chair may take into account commitments to tenants relating to the occupancy of such space; (c) require such additional security as the Chair determines is sufficient to assure the performance of HHC Declarant’s obligations; and (d) specify a date whereby performance of HHC Declarant’s obligations shall be completed. Notwithstanding the foregoing, HHC Declarant may apply for and accept a Core and Shell TCO prior to DCP’s acceptance of the CO Notice in accordance with Section 4.03.

## **Permanent Certificates of Occupancy.** HHC Declarant shall not accept a PCO for any portion of the Proposed Development prior to acceptance of the CO Notice by DCP in accordance with Section 4.03. In the event that DCP has not accepted the CO Notice in accordance with Section 4.03 as a result of Uncontrollable Circumstances, the Chair may (a) authorize HHC Declarant to apply for and accept a PCO for the Proposed Development, and (b) require such additional security as the Chair determines is sufficient to assure the performance of HHC Declarant’s obligations.

## **DCP Review.** Prior to accepting a TCO or PCO from DOB, HHC Declarant shall submit a notice to DCP (the **“CO Notice”**) certifying that that the Environmental Obligations set forth in Section 3.01 and Section 3.02(c) of this Declaration (or in the case of a PCO, Finally Complete), or if not Substantially Complete or Finally Complete due to Uncontrollable Circumstances, certifying the reasons therefor. If DCP notifies HHC Declarant that it has failed to Substantially Complete or Finally Complete the Environmental Obligations set forth in Section 3.01 and Section 3.02(c) of this Declaration, HHC Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and HHC Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, HHC Declarant shall be entitled to obtain the TCO or PCO as the case may be. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to HHC Declarant within twenty (20) business days of receipt of the CO Notice, (y) meet with HHC Declarant within ten (10) business days of receipt of the CO Notice, or (z) respond in writing to HHC Declarant within ten (10) business days of receipt of any additional materials provided to DCP under this Section, then DCP shall be deemed to have accepted the CO Notice and any subsequent materials related thereto as demonstrating compliance with the requirements for the issuance of the TCO or PCO and HHC Declarant shall be entitled to apply for and accept the TCOs or PCOs.

# EFFECTIVE DATE; AMENDMENTSAND MODIFICATIONS TO ANDCANCELLATION OF THIS DECLARATION

## **Effective Date; Lapse; Cancellation.**

### This Declaration and the provisions and covenants hereof shall become effective upon Final Approval of the Land Use Approvals, but HHC Declarant’s obligations hereunder shall be postponed until: (A) the latest to occur of the following dates: (i) the date on which the right to seek judicial review of the Land Use Approvals has expired; (ii) the date on which the time to appeal from an order of any court of competent jurisdiction upholding or affirming the Land Use Approvals has expired; and (iii) the date on which a final order upholding or affirming the Land Use Approvals is entered pursuant to a decision by a court of competent jurisdiction from which no appeal can be taken; or (B) at any time prior to the latest to occur of the dates set forth in (A) above, such earlier date upon which HHC Declarant proceeds to develop the Proposed Development in accordance with the Land Use Approvals. For avoidance of doubt, demolition of improvements presently on the Subject Property shall not be deemed development for purposes of the foregoing sentence.

### Promptly, after execution by the City and no later than ten (10) days after Final Approval of the Land Use Approvals, HHC Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties‑in‑Interest that are required to be recorded in public records, in the Office of the City Register, indexing them against the entire Covered Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. HHC Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Office of the City Register, promptly upon receipt of such documents from the Office of the City Register. If HHC Declarant fails to so record such documents within ten (10) days after Final Approval of the Land Use Approvals, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by HHC Declarant or by the City, shall be borne by HHC Declarant.

### Notwithstanding anything to the contrary contained in this Declaration, if any of the Land Use Approvals are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of an instrument discharging this Declaration, HHC Declarant shall notify the Chair of HHC Declarant’s intent to cancel and terminate this Declaration and request the Chair’s approval, which approval shall be limited to insuring that such cancellation and termination is in proper form. The Chair shall respond to such notice and request within thirty (30) days of receipt by the Chair of such notice, and shall at HHC Declarant’s request execute an instrument in recordable form consenting to the discharge of HHC Declarant’s obligations hereunder. The failure of the Chair to respond within such thirty (30) day period shall be deemed an approval by the Chair of the cancellation of the Declaration. Upon recordation of such instrument, HHC Declarant shall provide a copy thereof to the Commission so certified by the Office of the City Register.

## **Modification and Amendment.**

### Except as otherwise provided in Sections 5.01, 5.02(b), or 5.02(c) hereof, this Declaration may be amended, modified or cancelled only with the express written approval of the Commission. 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 HHC Declarant.

### Changes to the Approved Drawings that the Chair deems to be minor may be amended or modified administratively by the and no other approval or consent (including modifications to the Land Use Approvals) 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 HHC Declarant.

### Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. HHC Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 5.02(a) and provide an executed and certified true copy thereof to DCP and, upon HHC Declarant’s failure to so record, permit its recording by DCP at the cost and expense of HHC Declarant.

# COMPLIANCE; DEFAULTS; REMEDIES

## **Default.**

### The City shall give written notice (each, a “**Default Notice**”) of any alleged breach of the provisions of this Declaration to HHC Declarant. Upon receipt of a Default Notice, HHC Declarant shall effect a cure within forty-five (45) days thereof. Alternatively, if the violation is not capable of cure within such forty-five (45) day period, HHC Declarant shall promptly initiate and diligently pursue any steps required to cure such breach and, if HHC Declarant thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty-five (45) day period shall be deemed extended for so long as HHC Declarant continues to proceed diligently with the effectuation of such cure. HHC Declarant shall have the right, in its sole discretion, to determine the manner in which a breach of this Declaration will be cured, provided such cure is in compliance with this Declaration. The forty-five (45) day period for curing any breach of this Declaration by HHC Declarant (as such may be extended in accordance with this Section 6.01) shall be subject to further extension for Uncontrollable Circumstances, provided that HHC Declarant shall have taken the steps required by Section 6.04 hereof.

### The City retains all remedies at law and in equity and via administrative enforcement to enforce this Declaration.

### The City retains the right to resolve any dispute regarding the provisions of this Declaration by an alternate dispute resolution acceptable to HHC Declarant, before resorting to litigation or administrative enforcement.

### In the case of an alleged breach of, or other dispute regarding the provisions of this Declaration, both HHC Declarant and the City may (but shall not be obligated to) agree that the same shall be resolved by arbitration in a manner to be agreed upon, provided that nothing herein shall be construed to limit the provisions of Section 6.01(b) of this Declaration.

### A Named Mortgagee shall have the right to cure a breach on behalf of HHC Declarant within the applicable notice and cure period provided in this Article V.

## **Enforcement of Declaration.**

### The obligations of HHC Declarant under this Declaration shall be enforceable solely by the City. No person or entity other than the City shall be entitled to enforce, or assert any claim arising out of or in connection with, this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than the City.

### Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the fee estate and interest of HHC Declarant in the Subject Property, on an in rem basis only, for the collection of any money judgment recovered against HHC Declarant, and no other property of HHC Declarant shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and HHC Declarant shall have no personal liability under this Declaration. For the purposes of this Section 6.02, “HHC Declarant” shall mean “HHC Declarant” as defined in the Preamble of this Declaration, as well as any principals, disclosed or undisclosed, partners, affiliates, officers, employees, shareholders or directors of HHC Declarant.

### The restrictions, covenants and agreements set forth in this Declaration shall be binding upon HHC Declarant only for the period during which such party 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 party a Party-in-Interest. At such time as HHC Declarant or any successor-in-interest thereto has no further fee interest in the Subject Property or portion thereof, and is no longer a Party-in-Interest of the Subject Property, or portion thereof, such party’s obligations and liability with respect to this Declaration shall wholly cease and terminate as to the portion conveyed from and after the conveyance of such party’s interest and such party’s successor-in-interest in the Subject Property, or portion thereof, by acceptance of such conveyance automatically shall be deemed to assume such party’s obligations and liabilities hereunder to the extent of such successor-in-interest’s interest.

### Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent any of the City’s governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City under any laws, statutes, codes or ordinances.

## **Certain Remedies.**

### HHC Declarant hereby agrees that failure to comply with conditions or restrictions in this Declaration shall constitute a violation of the Zoning Resolution, and such failure to comply may constitute the basis for denial or revocation of Building Permit(s) or certificate(s) of occupancy.

### In any application for an amendment or modification of this Declaration, HHC Declarant shall verify that it has complied with each of the material conditions of the Declaration applicable at the time of such application.

### In the event that HHC Declarant has not complied with the material conditions of this Declaration, such non-compliance may constitute grounds for the Commission and/or the City Council, as applicable, to disapprove any application for amendment or modification of the Declaration.

### For purposes of this Section 6.03, HHC Declarant shall not be deemed to have failed to comply under any of paragraphs (a), (b) or (c) unless and until HHC Declarant or a Named Mortgagee, as the case may be, has failed to remedy or cure the event or occurrence which is the basis of any allegation of a failure to comply in accordance with the procedure as set forth in Section 6.01 of this Declaration with respect to alleged default(s), including all applicable notice and cure periods afforded HHC Declarant and Named Mortgagee(s) therein.

## **Uncontrollable Circumstances.**

### In the event that, as the result of Uncontrollable Circumstances, HHC Declarant is or believes it will be unable to perform or complete any obligation required to be performed hereunder prior to accepting a Building Permit, TCO or PCO, HHC Declarant shall promptly after it has actual knowledge of such Uncontrollable Circumstances so notify the Chair in writing (such notice, the “**Delay Notice**”), who shall certify the existence of such Uncontrollable Circumstances. Any Delay Notice shall include a description of the Uncontrollable Circumstances, and, if known to HHC Declarant, their cause and estimated impact on performance of the obligation in question. The Chair shall thereafter determine whether the Uncontrollable Circumstances exist, and upon notice to HHC Declarant no later than ten (10) days after its receipt of the Delay Notice, certify whether the Uncontrollable Circumstances exist. Failure to certify within ten (10) days after receipt of the Delay Notice shall be deemed a finding of Uncontrollable Circumstances by the Chair. If the Chair certifies that Uncontrollable Circumstances do not exist, the Chair shall set forth with specificity in the certification the reasons therefor. If the Chair certifies that Uncontrollable Circumstances exist, the Chair shall, either concurrently with such certification or no later than ten (10) days thereafter, grant HHC Declarant appropriate relief, including notifying DOB that a Building Permit, or TCO for the Proposed Development (as applicable) may be issued.

### Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, HHC Declarant shall promptly recommence the work or implement the measure needed to complete the obligation, in accordance with any applicable directive of the Chair, unless an alternative is specified and agreed to by the Chair. The Chair may also require that HHC Declarant post a letter of credit (“Completion Letter of Credit”) or similar security if acceptable to the Chair, in a form reasonably acceptable to the Chair and naming the City as beneficiary, as appropriate, to secure HHC Declarant’s obligation to complete construction of the Proposed Development in accordance with the Approved Drawings or the Environmental Obligations upon cessation of the Uncontrollable Circumstances. Such Completion Letter of Credit or similar security shall be in a sum of no more than 120% of the estimated cost of completing such work, based upon an estimate provided by HHC Declarant and accepted by the City to complete construction of the Proposed Development in accordance with the Approved Drawings or the Environmental Obligations. If HHC Declarant fails to resume performance of such work upon cessation of the Uncontrollable Circumstances, the City may undertake the performance of such work. Upon completion of the construction of the Proposed Development in accordance with the Approved Drawings or the Environmental Obligations, whether by HHC Declarant or the City, the City shall promptly return the aforesaid security (or the undrawn balance thereof) to HHC Declarant.

## **Representation.** HHC Declarant hereby represents and warrants that (a) there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the enforcement of the obligations and restrictions as set forth herein; and (b) the Parties-in-Interest listed in the Certification of Party-in-Interest are the only known Parties-in-Interest in the Subject Property as of the date hereof.

# MISCELLANEOUS

## **Notices.**

* + 1. All notices, demands, requests, consents, approvals, or other communications (each of which is hereinafter referred to as **“Notice”**) which may be or are permitted, desirable or required to be given, served or sent hereunder shall be effective only if in writing and (i) mailed to the party for which it is intended by certified or registered mail, return receipt requested, (ii) sent via nationally recognized overnight courier service, or (iii) personally delivered, addressed as follows:

If to HHC Declarant:

250 Seaport District, LLC

c/o The Howard Hughes Corporation

One Galleria Tower

13355 Noel Road, 22nd Floor

Dallas, Texas 75240

Attention: General Counsel

with a copy to:

 Adam Meister

 The Howard Hughes Corporation

 199 Water Street

 28th Floor

 New York, New York 10038

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP

One New York Plaza

New York, New York 10004

Attention: David Karnovsky, Esq.

If to SSSLP Declarant:

 South Street Seaport Limited Partnership

c/o The Howard Hughes Corporation

One Galleria Tower

13355 Noel Road, 22nd Floor

Dallas, Texas 75240

Attention: General Counsel

If to the City Declarant:

New York City Department of Small Business Services

1 Liberty Plaza

New York, New York 10038

Attention: Andrew Schwartz

If to the City:

New York City Department of City Planning

120 Broadway, 31st Floor

New York, New York 10271

Attention: General Counsel

* + 1. Any recipient of Notice may from time to time by Notice designate a new or additional related entity or person or address for receipt of Notices.
		2. Notice shall be deemed given five (5) days after mailing, two (2) Business Days after sending by nationally recognized overnight courier service, or upon personal delivery after receipt, except that a Notice providing for change of Notice name or address shall only be effective upon receipt.
		3. A copy of all Notices to HHC Declarant shall be simultaneously given to any mortgagee or ground lessor of all or a portion of the Subject Property of which the City has been given Notice (any such mortgagee or lessor, a **“Named Mortgagee”**).
		4. In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

## **Certificates.** The City will at any time and from time to time upon not less than fifteen (15) days’ prior notice by HHC Declarant or a Named Mortgagee execute, acknowledge and deliver to HHC Declarant or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate HHC Declarant is in default in the performance of any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as HHC Declarant or such Named Mortgagee may reasonably request.

## **Conveyance.** Nothing contained herein shall be construed as requiring the consent of the DCP, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property.

## **Successors of HHC Declarant.** References in this Declaration to “HHC Declarant” shall be deemed to include any successor to or assign of a HHC Declarant as fee owner of the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be HHC Declarant for any purpose, unless and until such holder obtains either a fee interest in the Subject Property or any portion thereof or a lessee’s estate in a ground lease of all or substantially all the Subject Property, and provided further that the holder of any such mortgage or lien shall not be liable for any obligations of HHC Declarant as the “HHC Declarant” hereunder unless such holder commences to develop the Subject Property in accordance or has acquired its interest from a party who has done so.

## **Parties‑in‑Interest.** HHC Declarant shall cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party‑in‑Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party‑in‑Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party‑in‑Interest.

## **Governing Law.**  This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

## **Severability.**  In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severed and the remainder of this Declaration shall continue to be of full force and effect.

## **Applications.** HHC Declarant shall include a copy of this Declaration as part of any application pertaining to the Subject Property submitted to the DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

## **Incorporation by Reference.**  Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

[SIGNATURE LINES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarants have executed this Declaration as of the date first above written.

**250 Seaport district, llc**By:
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF NEW YORK )

 ) ss.:

COUNTY OF ­­­­­­­­­NEW YORK )

 On the \_\_\_ day of \_\_\_\_\_\_\_\_ in the year 202\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 **SOUTH STREET SEAPORT LIMITED PARTNERSHIP**By:
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF NEW YORK )

 ) ss.:

COUNTY OF ­­­­­­­­­NEW YORK )

 On the \_\_\_ day of \_\_\_\_\_\_\_\_ in the year 202\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**THE CITY of new york**By:
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF NEW YORK )

 ) ss.:

COUNTY OF ­­­­­­­­­NEW YORK )

 On the \_\_\_ day of \_\_\_\_\_\_\_\_ in the year 202\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SCHEDULE OF EXHIBITS

**EXHIBIT A** Metes and Bounds Description of the Subject Property

**EXHIBIT B** Metes and Bounds Description of Pier 17 Property

**EXHIBIT C** Certification of Parties-in-Interest

**EXHIBIT D** Waivers and Subordinations

**EXHIBIT E** Approved Drawings

EXHIBIT A

Metes and Bounds Description of the Subject Property



**EXHIBIT B**Metes and Bounds Description of Pier 17 Property



**EXHIBIT C**

Certification of Parties-in-Interest

**EXHIBIT D**

Waivers and Subordinations

**FORM OF WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made [\_\_\_\_\_\_\_\_\_\_] [\_\_], [2021] by [\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] (“Mortgage”), having its principal place of business at [\_\_\_\_\_\_\_\_\_\_].

**WITNESSETH**:

WHEREAS, Mortgagee is the lawful holder of that certain mortgage, dated [\_\_\_\_\_\_\_\_\_\_] (the “Mortgage”) made by [\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] (“Mortgagor”), in favor of Mortgagee, in the original principal amount of $[\_\_\_\_\_\_\_\_\_\_\_\_], recorded in the Office of the City Register of the City of New York, Borough of Manhattan at [\_\_\_\_\_\_\_\_\_\_] on [\_\_\_\_\_\_\_\_\_\_]; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the “Premises”) known as Block [\_\_\_\_\_\_], Lot [\_\_\_\_] on the Tax Map of the City of New York, Borough of Manhattan, and more particularly described in Schedule A attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the “Subject Property”), which Subject Property is the subject of a Restrictive Declaration dated \_\_\_\_\_\_\_\_\_\_, 2021, (the “Declaration”), made [Mortgagor], and

WHEREAS, Mortgagee represents that the Mortgage is its sole interest in the Subject Property; and

WHEREAS, Mortgagee represents that it has received and read the Declaration; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, Mortgagee agrees, at the request of Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon Mortgagee and its heirs, legal representatives, successors and assigns.

**[Signature Page Follows]**

IN WITNESS WHEREOF, Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

**MORTGAGEE**:

**[MORTGAGEE]**,
a [\_\_\_\_\_\_\_\_\_\_]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to 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 capacities, and that by his/her/their signature(s) on the instruments, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**SCHEDULE A**

**EXHIBIT E**

Approved Drawings