

DECLARATION

**ESTABLISHING THE ERY FACILITY AIRSPACE PARCEL OWNERS'
ASSOCIATION AND OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

**RELATING TO PREMISES KNOWN AS
EASTERN RAIL YARD SECTION of the JOHN D. CAEMMERER WEST SIDE YARD**

NEW YORK, NEW YORK

Declarant: **METROPOLITAN
TRANSPORTATION AUTHORITY
347 Madison Avenue
New York, New York 10017**

Date of Declaration: **As of April 10, 2013**

**Facility Airspace Parcel Terra Firma and Airspace Above a Limiting Plane
Eastern Rail Yard Section of the John D. Caemmerer West Side Yard
West 30th-33rd Streets, 10th-11th Avenues,
Manhattan Block 702, Lots 4, 10 and 9110
(Portion of Lots f/k/a Block 702, Lots 1 and 50, and Block 704, Lots 1, 5 and 6,
and former West 32nd Street between 10th and 11th Avenues)
New York, New York**

Prepared by: **Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Jonathan H. Canter, Esq.**

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EXHIBITS AND SCHEDULES

- Exhibit A - Legal Description ERY
- Exhibit B-1 - Legal Description – Lower Limiting Plane
- Exhibit B-2 - Legal Description – Facility Airspace Parcel
- Exhibit B-3 - Legal Description – Facility Airspace Parcel
- Exhibit C - Certificate of Formation
- Exhibit D - LLC Agreement of ERY Facility Airspace Parcel Owners’ Association
- Exhibit E - Definitions
- Exhibit F - Rules and Regulations
- Exhibit G - Legal Description of FAS Parcel C
- Exhibit H - Legal Description of FAS Parcel D
- Exhibit I - Annex re Site Specific Easements

DECLARATION

**ESTABLISHING THE ERY FACILITY AIRSPACE PARCEL OWNERS’
ASSOCIATION
AND OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

**COVERING FACILITY AIRSPACE PARCEL TERRA FIRMA
AND AIRSPACE ABOVE A LIMITING PLANE**

**RELATING TO PREMISES KNOWN AS EASTERN RAIL YARD SECTION
OF THE JOHN D. CAEMMERER WEST SIDE YARD**

NEW YORK, NEW YORK

DECLARATION made as of this 10th day of April 2013 by Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017 (“Declarant” or the “MTA”).

Statement of Facts

Declarant is the owner in fee simple of that certain parcel of land known as the Eastern Rail Yard Section of the John D. Caemmerer West Side Yard (the “WSY”), located between West 30th and 33rd Streets and between 10th and 11th Avenues in Manhattan, as more particularly described in its entirety in Exhibit A attached hereto (the “ERY”).

In order to facilitate development at the ERY, Declarant entered into that certain Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard), dated as of May 26, 2010 and recorded on June 10, 2010 as CRFN 2010041501079004 (the “Master Declaration”) in the Office of the Register of the City of New York, New York County (the “Clerk’s Office”), pursuant to which Declarant, *inter alia*, subdivided its fee interest in the ERY into two (2) separate and distinct fee parcels, known respectively as (i) the “Yards Parcel,” title to and possession of which was (and is intended to be) retained by Declarant, and (ii) the “Facility Airspace Parcel,” which, as of the recordation of this Declaration, is owned by Declarant in fee simple but which is intended hereafter to be initially ground leased to Parcel C Tenant, with respect to FAS Parcel C, and to Balance Lease Tenant, with respect to the Balance Parcel (as more fully described below), and intended to be further subdivided, leased and/or acquired by, and conveyed in fee to, one or more Persons for the purpose of development therein of commercial space, residential space, community facility space, open space, and/or other uses (the “ERY Project”) (the Yards Parcel and the Facility Airspace Parcel both being more particularly described herein and in the Master Declaration). The Master Declaration also established certain rights and easements between the Yards Parcel and the Facility Airspace Parcel to provide for, among other things, the development, construction, operation, maintenance, repair and replacement of the Facility Airspace Improvements by the Facility Airspace Parcel Owner, and the continuous and uninterrupted Yards Parcel Operations by the Yards Parcel Owner.

The “Yards Parcel,” as described on Exhibit B-1 attached hereto, consists of (i) those portions of the ERY located below the lower limiting planes described and depicted on Exhibit B-1 (the “Lower Limiting Plane”), (ii) certain easement areas with respect to, upon or through the Facility Airspace Parcel, as more particularly set forth in the Master Declaration, and (iii) the Yards Parcel Transferable Floor Area, subject to the terms and conditions set forth in the Master Declaration.

The “Facility Airspace Parcel,” as described on Exhibit B-2 attached hereto, consists of (i) those portions of the ERY described on Exhibit B-3 (the “Facility Airspace Parcel Terra Firma”), (ii) all airspace at and above the Lower Limiting Plane over the Yards Parcel, (iii) certain easement rights with respect to, upon or through the Yards Parcel, as more particularly set forth in the Master Declaration, and (iv) the Included Floor Area, subject to the terms and conditions set forth in the Master Declaration and herein with respect to the use thereof.

In accordance with the terms of the Master Declaration and the other ERY Project Documents, the MTA has agreed to ground lease that portion of the Facility Airspace Parcel constituting FAS Parcel C to Parcel C Tenant and the Balance Parcel to Balance Lease Tenant for the purpose of the design, construction and completion of the ERY Project utilizing up to the Included Floor Area, which ERY Project consists of the following ERY Project Components: (i) commercial, residential, community facility and accessory space; (ii) the Parking Component (which will be located in the Parking Garage (to be located in FAS Parcel C); (iii) the Open Space Component; (iv) subject to and in accordance with the terms of the Master Declaration, the High Line Component; (v) subject to and in accordance with the terms of the Master Declaration, the Cultural Facility Component; and (vi) the ERY Roof Component subject to and in accordance with the ERY Construction Agreement as described in the Master Declaration.

Pursuant to the terms of the Master Declaration, Balance Lease Tenant has the right to subdivide the Balance Parcel into severed parcels and severed sub-parcels as more particularly described and/or depicted on the Approved Severed Parcel Plan from time to time (each such severed parcel or sub-parcel, including FAS Parcel C, a “Severed Parcel”; each such subdivision of the Facility Airspace Parcel and corresponding severance of the Balance Lease (including the initial ground lease of FAS Parcel C to Parcel C Tenant) or Severed Parcel Lease, as applicable, a “Severance”; the severed lease for each such Severed Parcel, as the same may be modified, amended or replaced from time to time, a “Severed Parcel Lease”; the balance, if any, of the Facility Airspace Parcel at any such time which is not included in a Severed Parcel, the “Balance Parcel”; and the lease for such Balance Parcel, as the same may be modified, amended or replaced from time to time, the “Balance Lease”), for purposes of the development, construction, operation, maintenance, repair and replacement of the Facility Airspace Improvement(s), together with the Associated FASP Improvements and Associated Portion of the LIRR Roof and Facilities (if any), on the applicable FAS Parcel by the applicable Severed Parcel Owner or Balance Parcel Owner.

The Master Declaration further provides that, immediately upon the first Severance, an owners’ association with membership comprised of at least the Balance Parcel Owner and each and every Severed Parcel Owner (each, a “FASP Owner” and, collectively, the “FASP Owners”) shall be formed, and that such owners’ association shall, among other things, be vested with

certain rights, and be obligated to perform certain obligations, of the Facility Airspace Parcel Owner, on behalf of the FASP Owners.

Pursuant to the terms of each Severed Parcel Lease, upon Substantial Completion of the applicable Facility Airspace Improvements on a Severed Parcel and the satisfaction of certain other conditions as set forth in the applicable Severed Parcel Lease, each Severed Parcel Owner has the right to purchase the fee interest in such Severed Parcel from the lessor thereunder (a "Fee Conversion"), at which time such Severed Parcel Owner shall become the fee owner of the Severed Parcel, but such Severed Parcel and the applicable Severed Parcel Owner shall remain subject in all respects to this Declaration following such Fee Conversion, notwithstanding the termination of the applicable Severed Parcel Lease.

The ERY Facility Airspace Parcel Owners' Association LLC (hereinafter called the "Association"), a limited liability company formed under the Delaware Limited Liability Company Act, has been formed and will also acquire and maintain fee and/or leasehold ownership of a portion of the Open Space Component, in accordance with the Zoning Resolution (subject, however, to certain FASP Owners retaining ownership and/or control, and responsibility for construction and maintenance of, other portions of the Open Space Component, pursuant to a restrictive declaration made by Balance Lease Tenant pursuant to Zoning Resolution Section 93-70 (the "93-70 Declaration"), any agreements with the City of New York and the ERY Project Documents, together with any and all other property designated as property to be acquired (and/or leased) and maintained by the Association (collectively, the "Association Property").

In furtherance of the foregoing, Declarant intends for the entire Facility Airspace Parcel, including each and every Severed Parcel(s) and the Balance Parcel as constituted from time to time, as applicable, and/or following a Fee Conversion (each, a "FAS Parcel," and collectively, the "FAS Parcels"), and each of the FASP Owners to be subject to the Association, this Declaration and the LLC Agreement. A copy of the Certificate of Formation of the Association is annexed hereto as Exhibit C. In addition, Declarant intends to record this Declaration against the Facility Airspace Parcel. Further, each FASP Owner shall be a member of the Association (each, a "Member") and bound by the terms of the LLC Agreement.

In order to comply with the terms of the Master Declaration and provide for the efficient operation, maintenance and administration of the ERY Project, the FAS Parcels and the Association Property (including, without limitation, the Common Facilities), Declarant now desires to:

1. subject the entire Facility Airspace Parcel, including each and every FAS Parcel, the Association Property and all Common Facilities to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth;
2. grant to the Association and vest it with the duties and powers necessary to carry out its duties, obligations and requirements under the Master Declaration with respect to the Association Matters, the Horizontal Association Matters and the other rights of the Association under this Declaration and/or the LLC Agreement, as set forth more specifically herein; and

3. grant to the FASP Owners certain rights with respect to Individual Parcel Matters, as set forth more specifically herein.

NOW, THEREFORE, in order to provide for the congenial development, operation, use and occupancy of the Facility Airspace Parcel and the ERY Project, the protection of the value of the Facility Airspace Parcel and all portions of the same and the efficient operation, maintenance and administration of the portions of the Facility Airspace Parcel to be used in common by the respective FASP Owners and all Occupants and to comply with the terms of the Master Declaration, Declarant hereby declares, for itself, as well as for its successors and assigns as the owner(s) and/or lessee(s) of all or any portion of the Facility Airspace Parcel, that the Facility Airspace Parcel, including each and every FAS Parcel, the Association Property and the Common Facilities is, and at all times hereafter shall be, held, transferred, sold, conveyed, used, enjoyed and occupied subject to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth:

ARTICLE 1

GENERAL

Section 1.1 Association LLC Agreement. Annexed to this Declaration as Exhibit D and made a part hereof is a copy of the Limited Liability Company Agreement of the Association which sets forth detailed provisions governing the operation and management of the Association (said limited liability company agreement, as the same may be amended from time to time in accordance with the provisions hereof and thereof, the “LLC Agreement”). Every Person who or which becomes a FASP Owner and/or the Balance Parcel Owner from time to time shall, upon acceptance of a deed or other instrument of conveyance of, or the succeeding of title to, or acquiring a leasehold interest under a Severed Parcel Lease or the Balance Lease in, the entirety of a FAS Parcel, become a member of the Association and each such Person acknowledges and agrees that it shall be bound by the terms of the LLC Agreement as a Member of the Association thereunder (and, in connection therewith, such Person agrees to deliver to the Association a Joinder Agreement (as defined in the LLC Agreement) as required under Section 7.1 of the LLC Agreement). In the event of a conflict between the provisions of the LLC Agreement, on the one hand, and the express provisions of this Declaration, on the other hand, then the provisions of this Declaration, shall control.

Section 1.2 Definitions. All capitalized terms used in this Declaration that are not otherwise defined in the Articles hereof shall have the meanings set forth in Exhibit E annexed hereto, or in the Master Declaration. All capitalized terms used in this Declaration that are defined in any of the Articles hereof shall have the meanings ascribed to them in such Articles, unless the context in which the same are used shall otherwise require. Each of the said capitalized terms shall be applicable to singular and to plural nouns, as well as to verbs of any tense.

Section 1.3 Applicability of this Declaration. This Declaration, including, without limitation, the respective Exhibits annexed hereto, is applicable to the entire Facility Airspace Parcel (including, without limitation, to each of the FAS Parcels situated therein, the

Association Property and Common Facilities) and to the use, enjoyment and occupancy of each and every portion thereof.

Section 1.4 Declaration Binding on All FASP Owners and Other Persons. All present and future owners, tenants and occupants of all or any portion of the Facility Airspace Parcel, including, without limitation, any FAS Parcel, the Association Property and Common Facilities, shall be subject to and shall comply with the applicable provisions of this Declaration, as the same may be amended from time to time.

Section 1.5 Subordination to Master Declaration. This Declaration, and the rights and obligations of the Association and every FASP Owner hereunder, shall be subject and subordinate in all respects to the Master Declaration.

ARTICLE 2

USE OF THE FAS PARCELS AND ASSOCIATION PROPERTY

Section 2.1 General. Subject to the provisions of all applicable Legal Requirements, the Master Declaration, this Declaration, any Severed Parcel Lease applicable to a FAS Parcel or the Balance Lease (as applicable) and the other ERY Project Documents binding on a FASP Owner, each FASP Owner may use and occupy its respective FAS Parcel for any lawful purpose, subject to the Project Standards and the terms of the Association Documents and the Association may use the Association Property in accordance with the terms of the Association Documents.

Section 2.2 No Unlawful Use. No FASP Owner shall use or occupy its FAS Parcel (or any Association Property or Common Facilities), nor permit or suffer its FAS Parcel or any part thereof (or any Association Property or Common Facilities) to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of the Facility Airspace Parcel (including, without limitation, the ability of a FASP Owner to develop, use and maintain its FAS Parcel and to obtain permits and/or authorizations from any Governmental Authority in connection therewith) or the Association Property or Common Facilities, or for any purpose or in any way in violation of any Certificate of Occupancy, the Master Declaration or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to such FAS Parcel (including any FAS Parcel Roof Component or Common Facilities located therein) or the Facility Airspace Improvements thereon or any ERY Roof Component, or any Association Property or Common Facilities. The Association (and its members and all Occupants of the FAS Parcels and any other party subject to this Declaration) shall not use or occupy the Association Property or any Common Facility, nor permit or suffer the Association Property or any Common Facility or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of the Facility Airspace Parcel, or for any purpose or in any way in violation of any Certificate of Occupancy or of any Legal Requirements, or which may make void or voidable any insurance then in force with respect to the Association Property or any Common Facility (including the ERY Roof Component). Immediately upon the discovery or

receipt of any notice of any such unpermitted, unlawful, illegal or extra-hazardous use, the applicable FASP Owner, if in possession of its FAS Parcel, or the Association, with respect to the Association Property, shall immediately discontinue such use or, if the applicable FASP Owner is not in possession of its FAS Parcel, such FASP Owner shall take all necessary actions, legal and equitable, to compel the discontinuance of such use by the applicable Occupant or other party as applicable. No use of the Facility Airspace Parcel or practice thereon shall be allowed that is an unreasonable source of annoyance to the residents or occupants of the same or that unreasonably interferes with the peaceful possession or proper use of the Facility Airspace Parcel for its intended purposes. No waste shall be committed on, or with respect to, any FAS Parcel or the Association Property or Common Facilities.

Section 2.3 No Adverse Possession. No FASP Owner shall knowingly suffer or permit its respective FAS Parcel or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to such FAS Parcel or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of such FAS Parcel or any portion thereof. The Association shall not knowingly suffer or permit the Association Property or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Association Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Association Property or any portion thereof.

Section 2.4 Rules and Regulations. Each FASP Owner and each Occupant of any FAS Parcel or any portion thereof comprising part of the Facility Airspace Parcel shall observe and comply with the Rules and Regulations of the Association. The Association shall have the right to adopt, amend, modify, add to, or delete any of the Rules and Regulations from time to time (subject to compliance with the provisions of the Master Declaration and the other ERY Project Documents), provided, however, that:

(A) copies of the text of any amendments, modifications, additions, or deletions to the Rules and Regulations shall be furnished to each FASP Owner not less than thirty (30) days prior to the effective date thereof;

(B) no such amendment, modification, addition, or deletion shall be made that would abrogate or otherwise materially and adversely affect the rights, benefits, or exemptions of any FASP Owner without the consent of such FASP Owner; and

(C) all Rules and Regulations and any such amendment, modification, addition, or deletion thereto shall be applied against all FASP Owners on a non-discriminatory basis.

In the event of a conflict between the Rules and Regulations, on the one hand, and either the provisions of this Declaration or the provisions of the LLC Agreement, on the other hand, then the provisions of this Declaration or the provisions of the LLC Agreement, as the case may be, shall control.

ARTICLE 3

ASSOCIATION MATTERS

Section 3.1 Association Matters. Subject to and in accordance with the Master Declaration, the Association shall exclusively (unless otherwise specified herein, including, without limitation Article 24 with respect to FAS Parcel Roof Components), without being required to obtain the consent of any individual FASP Owner(s) or any other Occupant or Person (and without being required to obtain the consent of Declarant, except as otherwise set forth in the Master Declaration or herein), exercise (or cause to be exercised) the following rights and perform (or cause to be performed) the following obligations (collectively, “Association Matters”):

- (a) Exercise all rights and perform all obligations of the Facility Airspace Parcel Owner under the Master Declaration with respect to the ERY Roof Component following initial construction thereof including without limitation the following rights and obligations:
 - (i) To fund the ERY Roof Maintenance Reserve Fund;
 - (ii) To maintain, repair, restore and replace the ERY Roof Component, or any portion thereof;
 - (iii) To make ERY Roof Component Capital Improvements; and
 - (iv) To obtain and maintain insurance with respect to the ERY Roof Component in accordance with Section 11.2 of this Declaration.
- (b) Subject to and in accordance with the Master Declaration, to determine (and initially allocate and reallocate) the Association Shares in accordance with Article 12 hereof and to impose and collect Association Charges against and from the FASP Owners for the same;
- (c) To pay for the restoration, landscaping and other maintenance of the High Line Component in accordance with the Zoning Resolution and any applicable agreement with the City (or its designee);
- (d) To maintain the insurance required by Article VIII of the Master Declaration, to the extent applicable to the Association or any Association Property (together with any Common Facilities which are Association Property) thereunder, as set forth more specifically in Article XI;
- (e) To be responsible for pursuing or defending indemnification claims (of or against the Association) relating to any Association Matters, including without limitation, defending or prosecuting claims and settling and payment of claims;
- (f) To request and deliver any and all consents and approvals and give notices related solely to Association Matters;

(g) To exercise rights to perform self-help or to enforce obligations of the Yards Parcel Owner under the Master Declaration relating to Association Matters; and

(h) To perform any and all other matters at any time following the date hereof deemed or constituting "Association Matters" pursuant to the LLC Agreement and the Master Declaration, subject to the Association's right to delegate any such matters to individual FASP Owner(s) as set forth in (and subject to the terms of) this Declaration.

Section 3.2 Horizontal Association Matters. In accordance with this Declaration and the LLC Agreement, the Association shall exclusively (unless otherwise specified herein), without obtaining the consent of Declarant, any individual FASP Owner(s) or any other Occupant or Person, exercise the following rights and perform the following obligations (collectively, "Horizontal Association Matters"):

(a) To acquire or lease Association Property in its own name or in the name of any nominee(s), designee(s) or affiliated entity(ies);

(b) To sell, transfer, convey, lease or otherwise dispose of any Association Property;

(c) To upkeep and maintain (collectively, "Maintain") and to make repairs, restorations and replacements (collectively, "Repairs"), and to make alterations, additions and improvements to, and to operate, the Association Property;

(d) To Maintain and Repair and make alterations, additions and improvements to and operate all Common Facilities;

(e) To obtain and maintain insurance with respect to the Association Property and Common Facilities;

(f) To prepare and adopt budgets for the Association in accordance with the terms of the LLC Agreement;

(g) To present, produce and/or sponsor any entertainment or special events within the Association Property and to enter into leases, licenses, concession agreements, or other similar arrangements in connection with the same;

(h) To establish, fund and maintain a fund(s) or reserve(s) to pay for project-wide advertising, marketing and other promotional activities of the ERY Project as a whole (as opposed to individual FAS Parcels);

(i) To grant any easements or other rights or licenses in or to the Association Property and any Common Facilities to the extent the same solely burdens the Association Property or Common Facilities or the ERY Roof Component but not any other FASP Owner's FAS Parcel or FASP Improvements or any areas below the ERY Roof Component (including the Yards Parcel) other than any Common Facilities located in or on, or crossing over or through any FAS Parcel or FASP Improvements;

(j) To perform any and all other matters and activities as may be necessary or appropriate in order to provide for the management, operation, maintenance and administration of the Association Property and the Common Facilities, subject to the Master Declaration, and otherwise as may be necessary or appropriate for the Association to perform and exercise its rights, duties and obligations under this Declaration and the other Association Documents; and

(k) To perform any and all other matters at any time following the date hereof deemed “Horizontal Association Matters” pursuant to the terms hereof or of the LLC Agreement.

Section 3.3 Delegation by Association. When an obligation is stated under this Declaration to be an Association Matter or a Horizontal Association Matter, such obligation may be delegated by the Association to and performed by a Managing Agent or any one or more FASP Owner(s) or Occupant(s); provided; that no such delegation shall relieve the Association of liability for the performance of such obligation hereunder, nor grant to any FASP Owner or Occupant any greater rights in and to the Facility Airspace Parcel than is otherwise granted by the deed, lease or sublease or license creating the estate or interest of the applicable FASP Owner or Occupant.

ARTICLE 4

INDIVIDUAL PARCEL MATTERS

Section 4.1 General. Subject to and in accordance with the Master Declaration, each and every FASP Owner shall exclusively (unless otherwise specified herein), without being required to obtain the consent of the Balance Parcel Owner, the Association or any other FASP Owner or Occupant or Person (and without being required to obtain the consent of Declarant, except as otherwise set forth in the Master Declaration or herein) in each case except as provided for herein, exercise the following rights and perform the following obligations (collectively, “Individual Parcel Matters”):

(a) To exercise any right or perform any obligation of the Facility Airspace Parcel Owner under the Master Declaration or any other ERY Project Document relating solely to such FASP Owner’s FAS Parcel, including any Facility Airspace Improvements within the exclusive control of an individual FASP Owner and/or its Occupants or located solely within such FASP Owner’s FAS Parcel (i.e., the construction, operation, use, occupancy, repair or restoration of, and maintenance of insurance with respect to, the FAS Parcel and such Facility Airspace Improvements, but excluding all matters which are Association Matters, subject however to Article 24 hereof); provided, however, any such action of a FASP Owner which creates any liability for the Facility Airspace Parcel Owner under the Master Declaration shall be solely the liability of the applicable FASP Owner hereunder;

(b) The exercise or burden of any easement granted herein or in the Master Declaration (including without limitation the exercise of those easements granted in

Article V of the Master Declaration and compliance with each of the terms thereof) to the extent it affects the applicable FASP Owner's FAS Parcel;

(c) The right to grant any easement against its FAS Parcel to the extent it solely burdens the applicable FASP Owner's FAS Parcel but not any other FAS Parcel, the ERY Roof Component or any areas below the ERY Roof Component (including the Yards Parcel);

(d) The obligation to maintain insurance for the FAS Parcel and FASP Improvements as provided for herein;

(e) The obligation to maintain any other insurance required by Article VIII of the Master Declaration, to the extent applicable to a FASP Owner or its FAS Parcel thereunder, as set forth more specifically in Article XI;

(f) The obligation to comply with, and perform all obligations under, Article VI of the Master Declaration with respect to its FAS Parcel as if such FASP Owner is the "Facility Airspace Parcel Owner" thereunder;

(g) The right to restore such FASP Owner's FASP Improvements, subject to the terms of Article X hereof;

(h) The right to request and deliver consents and approvals and give notices related solely to Individual Parcel Matters in respect of its FAS Parcel or FASP Improvements;

(i) With respect to FAS Parcel C and the FAS Parcel C Owner (only), the obligation to at all times provide for the use of 39 parking spaces for automobiles for use by the Yards Parcel Owner in connection with Yards Parcel Operations (and subject to the easements described herein) as more particularly provided in the Annex re Site Specific Easements attached to this Declaration as Exhibit 1 (it being understood that the provisions of this Section 4.1(i) shall in no event be amended or modified without the consent of the Association and the Yards Parcel Owner, which consent may be granted or withheld in the sole discretion of the Association and the Yards Parcel Owner, as applicable); and

(j) The obligation to construct and maintain any portion(s) and/or element(s) of the Open Space Component as may be associated with or applicable to such FAS Parcel in accordance with the 93-70 Declaration (until such time as the same is completed and conveyed or leased to the Association, at which time, such maintenance obligation shall be an Association Matter).

Section 4.2 Multiple Parcels Affected. To the extent any matter which would otherwise be deemed an Individual Parcel Matter hereunder affects more than one but fewer than all of the FAS Parcels, then such matter shall be deemed an Individual Parcel Matter with respect to each of the affected FASP Owners hereunder.

Section 4.3 Certain Master Declaration Provisions Treated as Association Matters or Individual Parcel Matters. For the avoidance of doubt, (w) the rights of the “Facility Airspace Parcel Owner” under Article XIV of the Master Declaration including with respect to the initial construction of any Facility Airspace Improvements thereon shall accrue to the FASP Owners as Individual Parcel Matters in the manner set forth in the Master Declaration but subject to this Declaration and the LLC Agreement, (x) all indemnities in favor of the “Facility Airspace Parcel Owner” under the Master Declaration shall be deemed to run in favor of all FASP Owners and the Association, as their interests may appear, (y) any indemnification claim by YP Indemnified Parties against the “Facility Airspace Parcel Owner” under the Master Declaration shall be deemed an Association Matter to the extent to which the underlying duty or obligation with respect to which the action or failure to act occurred was an Association Matter, and an Individual Parcel Matter to the extent to which the underlying duty or obligation with respect to which the action or failure to act occurred was an Individual Parcel Matter (however, as among FASP Owners and the Association, the foregoing shall not limit any further allocation of responsibility for or indemnification in respect of same as set forth herein), and (z) the Yards Parcel Owner shall not be obligated to accept any purported exercise of rights nor (except as expressly set forth herein with respect to funding of a FASP Owner’s Association Share, or subject to Article 24 below) shall the Yards Parcel Owner look for performance of any obligations under the Master Declaration which constitute Association Matters from any Person other than the Association, or which constitute Individual Parcel Matters from any Person other than the responsible FASP Owner(s). In furtherance of the foregoing, notwithstanding anything in Article 3 or Section 4.1 to the contrary, in the event that any obligation under the Master Declaration arising out of or relating to the ERY Roof Component, including, without limitation, repair, restoration, insurance, indemnity, or other liability in connection therewith could be construed to constitute either an Association Matter or an Individual Parcel Matter, such obligation shall be deemed for all purposes of this Declaration to constitute an Association Matter (without limiting the provisions of Article 24 as among the Association and the FASP Owners).

Section 4.4 Delegation to Occupants. When an obligation is stated under this Declaration to be that of a FASP Owner, such obligation may be delegated by a FASP Owner to and performed by an Occupant of such FAS Parcel or another Person; provided, that no such delegation shall relieve a FASP Owner of liability for the performance of such obligation hereunder, nor grant to the Occupant or such other Person any greater rights in and to the FAS Parcel than is otherwise granted by the lease, sublease or license creating the estate of the Occupant or such other Person.

ARTICLE 5

COMMON FACILITIES

Section 5.1 General. The “Common Facilities” consist of the following components or systems servicing the Facility Airspace Parcel, each of which is or may be part of a FAS Parcel or Association Property, but each of which, to the extent not already part of the Association Property, is subject to a perpetual easement in favor of the Association, the FASP Owners and Occupants as set forth in Article 7 hereof for the use, operation and maintenance thereof:

(a) the electrical systems (including any and all risers, feeders, lines, meters, equipment transformers, main switchgears, distribution panelboards, circuit breakers, conduits and wires) bringing electrical power into the Facility Airspace Parcel and distributing such electrical power throughout the Facility Airspace Parcel to and including any panelboard which exclusively serves all or any portion of any FAS Parcel and including the circuit breaker within any such panelboard (but excluding any subsidiary circuits (and equipment) fed from such circuit breaker or panelboard and any subsidiary systems distributing electrical power exclusively within any FAS Parcel);

(b) the plumbing systems of the Facility Airspace Parcel (including all plumbing fixtures, risers, water heaters and chillers, pumps, valves, pressure reducers and meters; the “Plumbing Equipment”); however, excluding the Plumbing Equipment from and after the valve at the first point of entry to all or any portion of a FAS Parcel and serving only that FAS Parcel;

(c) the sanitary systems of the Facility Airspace Parcel carrying sewage out of the Facility Airspace Parcel (including all sewer pipes, risers, pumps, drains, catches and valves; the “Sewer Equipment”); however, excluding the Sewer Equipment from and after (but not including) the trap removing sewage from any particular FAS Parcel;

(d) the central and appurtenant installations and systems bringing natural gas into the Facility Airspace Parcel and distributing the same throughout the Facility Airspace Parcel (including all pipes, risers, ducts, chutes, wires, vents, shafts, lines, cables and connections used in connection therewith; the “Gas Equipment”); however, excluding the Gas Equipment from and after (but not including) the cutoff valve at the first point of entry to all or any portion of a FAS Parcel and serving only that FAS Parcel;

(e) the central and appurtenant installations and systems for other Facility Airspace Parcel services such as telephone, television, communication, cable, data and other technologies (including all conduits, pipes, ducts, chutes, wires, vents, shafts, lines, cables and connections used in connection therewith, but excluding any of the foregoing equipment owned by the service providers or other third parties, the “Services Equipment”); however, excluding all Services Equipment from and after the point of entry to a FAS Parcel and serving only that FAS Parcel;

(f) the sprinkler/hydrant systems for the Facility Airspace Parcel (including all risers, pumps, suction tanks, fixtures and valves; the “Sprinkler/Hydrant Equipment”) from the central water supply to but not including any sprinkler rig connected thereto (and any Sprinkler/Hydrant Equipment thereafter) within all or any portion of any FAS Parcel and serving only that FAS Parcel;

(g) the central fire command equipment (including any applicable panelboards, cables, conduits and wires) interfacing between or among the separate fire command stations and monitoring systems exclusively serving a FAS Parcel (but excluding any equipment or elements constituting part of such separate stations and systems);

(h) the central security protection systems for the Facility Airspace Parcel; however, excluding such systems from and after the point of entry to a FAS Parcel and serving only such FAS Parcel;

(i) the emergency generator systems, if any, for the Facility Airspace Parcel overall (including any and all risers, feeders, lines, meters, equipment transformers, main switchgears, distribution panelboards, circuit breakers, conduits and wires) distributing emergency electrical power throughout the Facility Airspace Parcel; and

(j) all other apparatus, installations, systems and equipment existing in the Facility Airspace Parcel the common use of which serves or benefits or is necessary or convenient for the existence, operation, maintenance or safety of the Facility Airspace Parcel as a whole, to the extent the same is not identified as being or located entirely within all or any portion of a FAS Parcel and serving only that FAS Parcel.

ARTICLE 6

FACILITY AIRSPACE IMPROVEMENTS

Section 6.1 Work. Notwithstanding anything to the contrary herein, each FASP Owner and the Association shall have the right, without the consent of the Association (with respect to a FASP Owner) or any other FASP Owner or Person, as applicable, but subject in each case to the terms of this Declaration, the LLC Agreement, the ERY Project Documents and all applicable Legal Requirements and any other agreement with the Developer applicable to the initial construction or development of the applicable Facility Airspace Parcel Improvements, to perform (which term, for the purposes of this Section, shall also include permit, cause and suffer) the development, design, construction and making of all installations, finishes, alterations, additions and improvements in or to, and equipping and fitting-out of, its respective Facility Airspace Parcel Improvements (including, without limitation, performing structural or non-structural, interior or exterior, ordinary or extraordinary work) (all of such work, the scope of which may be modified from time to time in accordance with the applicable documents, hereinafter the “Work”). All Work performed shall be subject to the documents and matters described in this Section and in accordance with the Work Rules.

ARTICLE 7

EASEMENTS

Section 7.1 Declaration of Easements; General Condition of Easements to Facility Airspace Parcel Owner. Declarant hereby declares the following easements on, in, through and over the Facility Airspace Parcel as set forth below, each of which is intended to be binding upon and, except as specified below, inure to the benefit of the Association, the respective FASP Owners and all Persons claiming by, through and under the Association and/or the respective FASP Owners, including all Occupants, any Personnel and invitees of the FASP Owners, the Association and any other Persons specified in this Section 7.1, to run with the Facility Airspace Parcel for the duration specified below; provided that if no duration is specified, such easement shall run in perpetuity:

(a) Easement for Construction of and Certain Alterations and Repairs to Facility Airspace Improvements. A right and easement, solely for the duration set forth herein, for the benefit of the Association and each FASP Owner to enter in, upon, through and across each FAS Parcel and Association Property in connection with and to the extent necessary for: (i) the Work, (ii) any permitted alteration or Repair made thereto in compliance with applicable Legal Requirements and in accordance with the Association Documents, (iii) any alteration or repair after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any of the same made thereto in compliance with applicable Legal Requirements and in accordance with the Association Documents, and (iv) the staging of construction materials and equipment in connection with the matters described in the foregoing clauses (i), (ii) and (iii) (such easement, the “Facility Airspace Improvements Construction Easement”), in such locations, and upon such terms and conditions, as shall be set forth in the plans and specifications submitted in accordance with and subject to the Work Rules and the Access Conduct Standards and otherwise in accordance with and subject to the terms of the ERY Project Documents and any other agreements binding upon the applicable FASP Owner and/or the Association with respect to the Work. In addition to any requirements set forth herein, the Facility Airspace Improvements Construction Easement may be exercised only in accordance with the provisions of the Master Declaration, including without limitation Articles IV and VI and Exhibit D thereof.

(b) Easement for Association Property and Common Facilities. A right and easement for the benefit of the Association to enter in, upon, through and across each FAS Parcel in connection with and to the extent necessary for the construction, Repair, Maintenance, alterations or Capital Improvements permitted to be performed by the Association with respect to the Association Property and Common Facilities, in such locations, and upon such terms and conditions, as shall be set forth in the plans and specifications submitted in accordance with and subject to the Work Rules and Access Conduct Standards and otherwise in accordance with and subject to the terms of the ERY Project Documents and any other agreements binding upon the Association with respect to the construction, Repair, Maintenance, alterations or Capital Improvements of or to the Association Property or Common Facilities.

(c) Easements for Inspection, Repair, Maintenance, Restoration and Capital Improvements. A perpetual right and easement for the benefit of the Association or any FASP Owner to have its Personnel enter in, upon, through and across any FAS Parcel and the Association Property in connection with and to the extent necessary to perform (x) any inspection, Repairs, Maintenance, alterations or Capital Improvements required or permitted to be performed by the Association or such FASP Owner pursuant to the terms of this Declaration and the easements provided for herein, including any inspection, Repair or Maintenance of any portions of the ERY Roof Component required to be performed by the Association (or, of any FASP Owner Roof Repairs) and (y) for inspections of the LIRR Roof and Facilities, the Support Facilities, the Facility Airspace Improvements and any Capital Improvements during and after construction thereof (such easement, the “Ancillary Construction Easement”), subject in all instances to the Work Rules and the Access Conduct Standards and otherwise in accordance with and subject to

the terms of the ERY Project Documents and any other agreements binding upon the Association or a FASP Owner with respect to the matters set forth herein.

(d) Access Easements. A perpetual right and easement for the benefit of each FASP Owner to enter upon and use the Association Property, if, as and when constructed, to the extent reasonably necessary to provide such FASP Owner a means of ingress and egress to and from its FAS Parcel and the Facility Airspace Improvements located therein and an approach to and from the public streets in connection with the exercise of its easement rights hereunder which involve entrance on the other FAS Parcels. Notwithstanding the foregoing, the Association, as applicable, shall have the right, upon reasonable advance notice, to close each such sidewalk, driveway, ramp, stairway and exit one day each calendar year (which day shall be a Sunday or a legal holiday), one section at a time so as not to completely prevent access to the public way, for the purpose of preventing any public easement over and through each such sidewalk, driveway, ramp, stairway or exit from arising.

(e) Easement for Encroachments of Facility Airspace Improvements. A perpetual reciprocal easement for the benefit of each FAS Parcel and the Association Property for the encroachment of any portion of the Facility Airspace Improvements or other Association Property (or Common Facilities) onto the other FAS Parcels or Association Property, as a result of: (i) settling or shifting of the applicable Facility Airspace Improvements; (ii) any permitted alteration or repair made thereto in compliance with applicable Legal Requirements and in accordance with the Association Documents; or (iii) any alteration or repair of the Facility Airspace Improvements (or any portion thereof) after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any of the same that is, in any such case in this clause “(iii)”, made in accordance with applicable Legal Requirements and in accordance with the Association Documents and any ERY Project Documents, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the improvements shall stand (or is rebuilt or restored, as provided in the Association Documents, following any such fire, other casualty, taking or eminent domain proceeding); provided that, in the case of any such encroachment described in clauses “(ii)” or “(iii)” above, (A) such encroachment does not have a material adverse effect on the use and occupancy of the FAS Parcel or Association Property encroached upon; (B) the Person performing the Work has used commercially reasonable efforts to perform the Work in such a manner so as to minimize the possibility of encroachment to the extent practicable; and (C) either (x) such encroachment was described in connection with a request for approval of the applicable alteration by the Association or the affected FASP Owner if required under the Association Documents or by applicable Legal Requirements and such request was approved, or (y) no approval was required (taking into account such encroachment) for the applicable alteration.

(f) Common Facilities. The Association and each FASP Owner shall have, in common with all other FASP Owners, a non-exclusive easement to use the Common Facilities serving its respective FAS Parcel (or Association Property) located anywhere on the Facility Airspace Parcel in accordance with their respective intended uses, without

hindering the exercise by the other FASP Owners (including the Association with respect to Association Property) of, or encroaching upon the rights of such other FASP Owners or the Association with respect to, such easement. The Association is hereby granted a perpetual right and easement to enter upon each FAS Parcel in order to use, operate, Maintain, Repair and make alterations to, the Common Facilities, as provided herein or in any other Association Document, subject to the Work Rules and Access Conduct Standards but otherwise without the consent of the FAS Parcel Owner(s) or Occupant(s) or any other Person.

(g) Association Property. Each FASP Owner shall have, in common with all other FASP Owners, a non-exclusive easement to use the Association Property in accordance with its respective intended uses and subject to terms hereof (including, without limitation, Sections 3.2 and 7.1(d) hereof) and the Rules and Regulations, without hindering the exercise by the other FASP Owners of, or encroaching upon the rights of such other FASP Owners with respect to, such easement.

(h) Loading Docks. The FAS Parcel C Owner (or the owner or lessee of the condominium unit in FAS Parcel C containing the Loading Dock) shall either convey the Loading Dock (which will be owned in fee (as a separate individual condominium unit) or by lease or sublease, as applicable), to the Association (as elected by the Association), and the Association shall thereafter operate the Loading Dock as a loading dock(s) in accordance with the Loading Dock Guidelines for the benefit of FAS Parcel C, FAS Parcel D and the Destination Retail (as defined in the Annex re Site Specific Easements) (collectively, the "Loading Dock Beneficiaries"). The Loading Dock Beneficiaries shall have a perpetual easement for access to and use of certain portions of the Loading Dock as a loading dock, as more particularly set forth in the Annex re Site Specific Easements. The Association shall charge the Loading Dock Beneficiaries for such access and use of the Loading Dock on a usage basis in accordance with rates therefor as shall be determined by the Association Board from time to time (it being understood that the foregoing shall not be deemed to (x) prohibit any Loading Dock Beneficiary from (as an internal governance matter of the applicable Loading Dock Beneficiary) allocating among (or limiting to any of) its respective Unit Owners, Occupants and/or other constituents, as applicable, the charges for such access and use as so determined and assessed by the Association, or (y) grant to the Association any right to interfere with any allocation or limitation made by any Loading Dock Beneficiary as provided in clause (x) herein above). As of the recording of this Declaration, the location of the Loading Dock and the easements with respect thereto remain subject to change based on final as-built conditions. The "Loading Dock Guidelines" means those certain guidelines concerning the operation of the Loading Dock that will be developed by the Association subject to the reasonable approval of the FAS Parcel C Owner. Following the initial promulgation of the approved Loading Dock Guidelines pursuant to the preceding sentence, any amendment thereof (other than solely as pertains to security measures) may not be entered into by the Association without the consent of the FAS Parcel C Owner, which consent, however, shall not be unreasonably withheld or delayed.

(i) Signage. Each FASP Owner, shall, to the extent permitted by and in accordance with all applicable Legal Requirements, have an easement to erect, affix,

maintain, repair, replace, from time to time, one or more signs on or within the Facility Airspace Parcel, all in the areas as may be shown in such signage guidelines as may be adopted by the Association and subsequently amended from time to time in accordance with such guidelines, the “Signage Guidelines”, and in each case in accordance with the applicable terms and provisions of such Signage Guidelines, the Access Conduct Standards, Project Standards, applicable Legal Requirements and the Rules and Regulations.

(j) [Intentionally Omitted.]

(k) General. A perpetual easement for the benefit of the Association and each FASP Owner, subject to the Access Conduct Standards and the Work Rules, as applicable, for reasonable access on, over, across and through any FAS Parcel and/or the Association Property (i) to perform any activities or obligations that are permitted or required to be performed by the Association or a FASP Owner benefitted by such easement hereunder, or under the Master Declaration and/or the ERY Construction Agreement or any Severed Parcel Lease or Balance Lease, (ii) to exercise the rights granted to the Association or any FASP Owner pursuant to this Declaration and the Master Declaration, and (iii) as reasonably necessary or desirable in order for the Association or any FASP Owner to comply with any applicable Legal Requirements affecting its FAS Parcel or Association Property, the applicable portion(s) of the ERY Roof Component, the Facility Airspace Improvements and/or the Common Facilities with which the Association or any such FASP Owner is obligated to comply pursuant to the terms and provisions of this Declaration, the Master Declaration and/or the ERY Construction Agreement. No advance notice shall be required for the Association or any FASP Owner to secure access across another FAS Parcel or the Association Property in order to inspect or to correct conditions imminently dangerous to persons or property.

(l) Site-Specific Easements and Non-Compete Covenants. The FASP Owners, Declarant and certain Occupants and certain individual Unit Owners shall have the benefit of, and be burdened by, the site-specific easements and covenants set forth in the Annex re Site Specific Easements annexed to this Declaration as Exhibit 1 (the “Annex re Site Specific Easements”).

(m) No Impairment. No FASP Owner shall, without the prior written consent of any other affected FASP Owner or the Association, as applicable, grant any easements or similar encumbrances that are likely to interfere materially with the beneficial use and enjoyment by such other FASP Owner of such other FASP Owner’s FAS Parcel (or the Association’s or any FASP Owner’s or its Occupants’ use and enjoyment of the Association Property or any Common Facilities), except for the easements expressly granted hereunder and in accordance with another written agreement between such FASP Owners and/or the Association, as the case may be. No FASP Owner shall, without the prior written consent of the Association, grant any easements or similar encumbrances that are likely to interfere materially with the exercise of any rights or performance of any duties by the Association as provided for herein, except for the easements expressly granted hereunder or in accordance with another written agreement between such FASP Owner(s) and the Association. Without limiting the generality of the foregoing: (a) no

FASP Owner shall, without the prior written consent of the other FASP Owner(s), grant or exercise any easements or other encumbrances that are likely to interfere with Legal Compliance affecting such FASP Owner's FAS Parcel; (b) no FASP Owner shall, without the prior written consent of the other FASP Owner(s) or the Association, as applicable, grant or exercise any easements or similar encumbrances that are likely to interfere with the installation (including any alteration, Repair, substitution or renewal) by the Association or applicable FASP Owner of Associated Portions of the LIRR Roof and Facilities in the locations shown on the Approved Facility Airspace Improvement Plans and Specifications and the Approved LIRR Work Project Plans and Specifications, subject to and in accordance with the provisions of the ERY Project Documents and this Declaration; and (c) no FASP Owner shall, without the prior written consent of the other FASP Owner(s) and the Association, grant or exercise any easements or other encumbrances that are likely to interfere with the use or operation of any Association Property or Common Facility.

(n) Easements of Subjacency, Support and Necessity. Each FAS Parcel, the Association Property and the Common Facilities shall have easements of subjacency, support and necessity with respect to, and the same shall be subject to such easements in favor of, all of the other FAS Parcels, Association Property and Common Facilities.

Section 7.2 Rights of Access in Favor of Utility Companies. All portions of the Facility Airspace Parcel shall be subject to an easement for access in favor of each utility company (and its officers, directors, partners, employees, contractors, subcontractors and agents) servicing the Facility Airspace Parcel or any portion thereof for the purposes of installing, operating, maintaining, repairing, modifying, altering, restoring and replacing any installations owned, used, or operated by such company in, over, under, through, adjacent to, or upon any portion of the Facility Airspace Parcel, subject in each case to reasonable coordination of such utility easements by and through the Association.

Section 7.3 Rights to Grant Additional Easements.

(a) Notwithstanding the foregoing, the Association and each FASP Owner (solely with respect to such FASP Owner's FAS Parcel and the FASP Improvements thereon) shall have the right to grant (and each FASP Owner shall be obligated to grant to the extent the Association deems necessary) such additional easements (including, without limitation, electric, gas, cable television, telephone, water, storm drainage, sewer and other utility easements and easements in connection with any overlapping facilities located on more than one FAS Parcel) in, and to relocate any such existing easements to, any portion of the Facility Airspace Parcel as the Association shall deem necessary, desirable, or appropriate for,

(i) the proper operation and maintenance of the Facility Airspace Parcel and/or FAS Parcels and/or Association Property or any portion thereof; or

(ii) the general health or welfare of the respective FASP Owners, Occupants and tenants;

provided, however, that the grant of such additional easements, or the relocation of existing easements, shall not (x) unreasonably interfere with the use or occupancy of any portion of any FAS Parcel (or Association Property, as applicable) for its permitted purposes or (y) increase (or create any new) (other than to a de minimis extent) obligations, liabilities or operating costs of the FAS Parcel (or Association Property, as applicable) burdened thereby (or any portion thereof) without the consent of the affected/burdened FASP Owner or of the Association, as applicable, with respect to (x) or (y).

(b) Nothing in this Declaration shall limit or be deemed to limit the rights of any one or more FASP Owner(s) and/or the Association to enter into additional easement agreements or other arrangements between such parties affecting such FASP Owners' FAS Parcels or, on the part of the Association, the Association Property and/or Common Facilities, and to modify such additional easement agreements or other arrangements from time to time, subject in each case to this Declaration and the Master Declaration, without the consent of the Association, any other FAS Parcel Owner (of an unaffected FAS Parcel) or Person.

Section 7.4 Access Conduct Standards.

(a) Any easement or right of access to Association Property, or in favor of the Association to any FAS Parcel, granted pursuant to any provisions of the Association Documents which expressly require compliance with the "Access Conduct Standards", i.e., the standards set forth in this Section 7.4, shall be exercised:

(i) during hours which are reasonable in relation to the use of the areas being entered;

(ii) (A) in the case of any exercise which does not involve the performance of work (e.g., visual inspections, meter and similar readings, and similar entries), upon at least three (3) days prior written notice, (B) in the case of any exercise which involves the performance of work, the delayed performance of which would result in the imposition of more than de minimis additional cost upon the FASP Owner or the Association, as applicable, seeking to exercise such right of access, or potentially expose such FASP Owner or the Association, as applicable, to the assessment of fines or penalties resulting from a violation of applicable Legal Requirements, upon at least ten (10) days prior written notice, and (C) in all other cases, upon at least thirty days' prior written notice to the burdened FASP Owner or the Association, as applicable, which notice, in each case under clauses (i), (ii) or (iii), shall specify, in reasonable detail, the purpose and contemplated extent, location and duration of such entry and, in each case under clauses (ii) and (iii), shall include a copy of the plans and specifications for the work being performed in connection with such right of access, if any;

(iii) to the extent reasonably possible, in such a manner as will not unreasonably interfere with: (i) the conduct of business of the Occupants of the FASP Parcels or the Association; or (ii) the use of the FAS Parcels for their intended purposes;

(iv) subject to such other specific reasonable limitations (e.g., with respect to special high security areas) as may be imposed from time to time: (i) by a FASP Owner to prevent any unreasonable interference with the use and occupancy of its FASP Parcel for its intended purposes; (ii) by the Association to prevent any unreasonable interference with the use and occupancy of the Association Property for its intended purposes; and (iii) by the Association to prevent any unreasonable interference with the use and occupancy of the Common Facilities for their intended purposes; provided in each of the foregoing cases, however, that any such limitations shall not preclude, unreasonably restrict or interfere with the enjoyment or exercise of any such right of access or easement and the Person imposing such additional limitations shall have given reasonable advance written notice of such limitations to the applicable FASP Owner or the Association, as the case may be;

(v) subject to the requirement that, to the extent such easement is being exercised in connection with the performance of any work as contemplated herein, the burdened FASP Owner and/or the Association, as applicable, shall have been furnished with (i) certificates of insurance, in such form, amount and from an insurance carrier or carriers reasonably satisfactory to such FASP Owner or the Association, indicating that the insurance coverage then required by the Association to be carried with respect to such work is in effect and (ii) all necessary permits, authorizations, approvals and certificates required for the commencement of such work;

(vi) subject to the requirement that the Person exercising such right of access or easement shall be liable for any and all physical damage and personal injury caused thereby and shall indemnify and hold the affected FASP Owner or Association (as the case may be), their respective managing agents and Occupants (as the case may be) harmless from and against all costs resulting from, arising out of, or in any way connected to such exercise; and

(vii) in compliance with the Association Documents (including, without limitation, the provisions hereof and thereof regarding the removal of mechanics' liens and violations), the ERY Project Documents (to the extent applicable), and all Legal Requirements (including, without limitation, those regarding the licensing of contractors).

(b) Notwithstanding anything to the contrary in Section 14.2 or any other requirement in the Association Documents with respect to compliance with Access Conduct Standards, in the case of an Emergency, the right of access or easement in question shall require only such notice, if any, as may be practicable under the circumstances prior to exercising such right of access or easement, and the same may be exercised whether or not the Association, a FASP Owner or any other Occupant or Person is present.

(c) In connection with any access by the Association or a FAS Parcel Owner to another FAS Parcel or the Association Property pursuant to an access right or easement

granted hereunder, each of the Association and FAS Parcel Owners (and their Occupants) (the “Releasing Party”) hereby releases and waives for itself, and each Person claiming by, through or under it, each other FAS Parcel Owner and the Association (and their respective Occupants) (the “Released Party”) from any liability for any loss or damage to all property of such Releasing Party located upon the FAS Parcel or Association Property or personal injury, which loss or damage is of the type covered by property insurance or liability policies required to be carried under the Master Declaration or the Association Documents, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible. The Releasing Party agrees to obtain, if needed, appropriate language in its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release and waiver, and, without limitation, shall obtain waivers of subrogation in its policies of property insurance consistent with such release and waiver.

ARTICLE 8

OPERATIONAL REQUIREMENTS

Section 8.1 Operational Requirements of FASP Owners for Benefit of the Yards Parcel. It is a general condition to the grant to the FASP Owners and the Association of each and every right and easement granted to it herein, that such rights and easements be exercised, and all work performed pursuant thereto be conducted, in accordance with the provisions of Section 6.1 and any other applicable provisions of the Master Declaration.

Section 8.2 Liens. No FASP Owner shall cause any lien to attach to any portion of another FAS Parcel or the Association Property without the express written consent of the FASP Owner on whose FAS Parcel the lien is being placed or the Association, as applicable (such Owner, the “Encumbered Owner”). If the FASP Owner who impermissibly causes any such lien (the “Encumbering Owner”) shall fail to satisfy such unpermitted lien or otherwise cause its discharge (by bonding or otherwise) within sixty (60) days after the receipt by such Encumbering Owner of written notice and request for discharge of such lien from the Encumbered Owner, the Encumbered Owner may take all necessary and appropriate steps to discharge the lien and charge the Encumbering Owner for all expenses incurred by the Encumbered Owner in connection therewith, including, without limitation reasonable attorneys’ fees, disbursements and court costs. Any contractors performing work in any FAS Parcel or the Association Property are hereby put on notice that no liens may be filed against any portion of the Yards Parcel, or any portion of the Facility Airspace Parcel other than the applicable FAS Parcel and the interest of such FASP Owner therein or the Association Property, as applicable.

Section 8.3 Compliance with Legal Requirements. Each FASP Owner shall give prompt notice to the Association and to each other affected FASP Owner of any written notice it receives of any violation of any Legal Requirement affecting its FAS Parcel, its FAS Parcel Roof Component or the related FASP Improvements; provided, that such violation would be reasonably likely to have a material adverse effect on the use or operation of the other affected FAS Parcel(s), the ERY Roof Component, the Yards Parcel, the Association Property, the Common Facilities or the Facility Airspace Parcel as a whole (it being understood that any

violation of any Legal Requirement that would have the effect of (x) delaying, hindering or otherwise preventing (aa) the issuance or maintenance of a building permit or any other permit required by any Legal Requirement or a Governmental Authority to alter, repair, maintain, build, restore, rebuild or occupy (including the issuance of any certificate of occupancy) and FAS Parcel or portion thereof or any Association Property or Common Facilities, (bb) the sale or conveyance of any FAS Parcel or portion thereof or (cc) any financing or refinancing of any FAS Parcel or portion thereof, or (y) with respect to the Yards Parcel or ERY Roof Component, that would have more than a de minimis adverse effect on Public Safety, Service Reliability, or Legal Compliance, shall be deemed to have a material adverse effect on the use or operation of another FAS Parcel, the ERY Roof Component, the Yards Parcel, the Association Property, the Common Facilities and/or the Facility Airspace Parcel) (any such violation, a “Material Violation”). Subject to the right to contest Legal Requirements pursuant to Section 22.26 hereof, the applicable FASP Owner shall promptly comply, at its sole cost and expense, with all Legal Requirements with respect to its FAS Parcel, the related Facility Airspace or the use and occupancy thereof, provided, in all cases, that no FASP Owner shall have any liability to the Association or any other FASP Owner in respect of such obligations (and neither the Association nor any other FASP Owner shall have any right to enforce such obligation) unless the failure to comply with such Legal Requirements would be reasonably likely to result in a Material Violation or if the non-compliance is a result of the gross negligence or willful misconduct of the Association or other FASP Owner, in which event, compliance shall be at the cost and expense of the Association or other FASP Owner. Subject to the right to contest Legal Requirements pursuant to Section 22.26 hereof, the Association shall promptly comply with all Legal Requirements with respect to the ERY Roof Component, the Association Property, the Common Facilities and the remainder of the Facility Airspace Parcel to the extent the same constitute Association Matters or the use or occupancy thereof (subject to Article 24 below with respect to any FAS Parcel Roof Component). If at any time a FASP Owner shall fail to comply with any Legal Requirements as required by this Section 8.3, and such failure or failures (a) could reasonably be expected to have a material adverse effect on the use or operation of any other FAS Parcel, the ERY Roof Component, the Association Property, the Common Facilities and/or the Facility Airspace Parcel as a whole as described in this Section 8.3 and (b) shall continue after written notice of not less than fifteen (15) Business Days and demand made by the Association (except in an Emergency, in which case only such notice as shall be practicable under the circumstances shall be required), the Association shall have the right (but, except with respect to the ERY Roof Component, in which case the last sentence of Section 24.1(b), Section 24.2(h) and any other applicable provisions hereof shall apply, not the obligation) to undertake to cure such violation of Legal Requirement at the sole cost and expense of the breaching FASP Owner. If the Association elects to cure any such breach or failure by a FASP Owner, it shall be entitled to reimbursement from the breaching FASP Owner, and the breaching FASP Owner shall be required to make any such reimbursement promptly (but in no event more than thirty (30) days) after request therefor, together with an invoice reasonably detailing the costs and expenses to be reimbursed, including, without limitation, reasonable attorneys’ fees, disbursements and court costs. Any dispute between the Association and the breaching FASP Owner with respect to the amount of such reimbursement shall be subject to resolution in accordance with Section 22.18. Nothing in this Section 8.3 shall be construed as limiting any obligations of Developer under the ERY Construction Agreement or the Balance Parcel Owner under the Balance Lease.

ARTICLE 9

MAINTENANCE, REPAIRS AND ALTERATIONS

Section 9.1 Maintenance and Repair of the ERY Roof Component. In accordance with the terms of the Master Declaration, the Association shall be exclusively, subject to the rights of the Association and the FASP Owners as set forth in Article 24 below, obligated to Maintain the ERY Roof Component (other than the ERY Roof Mechanical Equipment, the ERY Roof Utility Facilities, the ERY LIRR Relocations and the ERY New LIRR Facilities), in good order and repair, as an Association Matter, subject to and in accordance with the terms of the Master Declaration (including without limitation Articles X and XII and Section 15.2 thereof).

Section 9.2 [Intentionally omitted.]

Section 9.3 Maintenance and Repair of the Facility Airspace Improvements. No FASP Owner shall cause damage to the FAS Parcel or Facility Airspace Improvements of any other FASP Owner or to the Association Property or the Common Facilities, and no FASP Owner shall commit or suffer (and each FASP Owner shall use all reasonable precaution to prevent) waste, damage or injury to its own FAS Parcel or Facility Airspace Improvements (including without limitation Support Facilities) which it is obligated hereunder or under the Master Declaration to maintain. Each FASP Owner shall be obligated to maintain its Facility Airspace Improvements in good order and repair and in compliance with the Project Standards, at its sole cost and expense, and shall promptly repair any damage or condition relating thereto (including without limitation any leakage or seepage of water, rain, snow or other substances through the ERY Roof Component and/or through the connections of the ERY Roof Component with adjoining streets onto the Yards Parcel) if the failure so to maintain or repair could have a material adverse effect on any other FAS Parcel, any Facility Airspace Improvements, the Association Property, the Common Facilities or the Facility Airspace Parcel as a whole; provided however, to the extent that such damage or condition shall have been caused by the gross negligence or willful misconduct of another FASP Owner or its Occupant or any of their respective Personnel), then such FASP Owner shall be responsible for the cost and expense of such repair. All repairs to the Facility Airspace Improvements shall be at least equal in quality and class to the original work and shall be made in compliance with (a) the Project Standards, (b) all Legal Requirements, (c) requirements of the New York Board of Fire Underwriters or any successor thereto and (d) the Building Code of New York City, as then in force, for the Facility Airspace Improvements.

Section 9.4 Association Property and Common Facilities. The Association shall be solely responsible for the making of alterations, additions and improvements to and the making of repairs, restorations and replacements of, the Association Property and the Common Facilities (as a Horizontal Association Matter as set forth in Section 3.3) or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings.

Section 9.5 No Obligation or Liability on the Part of the FASP Owners.

(a) Except as may be otherwise expressly provided herein or in any other Association Document, no FASP Owner (or the Association) shall (i) be required to furnish any services, utilities or facilities whatsoever to the Facility Airspace Parcel or any Facility Airspace Improvements outside of such FASP Owner's FAS Parcel, or (ii) have any duty or obligation to make any alteration, change, improvement, Repair to, or to demolish, any Facility Airspace Improvements. Except as otherwise expressly provided herein, each FASP Owner assumes the full and sole responsibility for the design, construction, condition, operation, Repair, alteration, improvement, Maintenance and management of its Facility Airspace Improvements and shall be solely responsible to maintain the same in good and safe order and condition, and to Repair the same, in whole or in part, as and when needed, at its sole cost and expense.

(b) Except as may be otherwise expressly provided herein, no FASP Owner (or the Association) shall be liable to the other FASP Owners or to any other Person for any failure of water supply, gas or electric current or other utilities or services, nor for any injury or damage to the Facility Airspace Parcel, any improvements or any other property of a FASP Owner or any other Person caused by or resulting from fire or other casualty, terrorism, or hurricane, tornado, flood, wind or similar storms or disturbances, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the gross negligence or willful misconduct of such first FASP Owner or any Occupant of such first FASP Owner's Parcel (or of the Association, as applicable); provided, however, that nothing contained in this Section 9.5(b) shall be deemed to affect the obligation of the Association for the operation, Repair, alteration, improvement, Maintenance and management of the Association Roof Component, the Common Facilities and the Association Property.

(c) Notwithstanding anything to the contrary herein, each FAS Parcel, all Facility Airspace Improvements, the Association Property and the Common Facilities shall be kept and maintained in such a manner as meets or exceeds Project Standards, as appropriate for such portion of the Facility Airspace Parcel, Facility Airspace Improvements, Association Property or Common Facilities, by whichever of the FASP Owners or Association, as the case may be, is responsible for the maintenance and repair thereof under the Association Documents; and each such FASP Owner or the Association shall promptly make or perform, or cause to be made or performed, all Maintenance, Repairs, alterations, painting or decoration as are necessary in connection therewith and to ensure that such FAS Parcel, Facility Airspace Improvements, Association Property and/or Common Facilities meets or exceeds Project Standards. The covenants with respect to Project Standards set forth in this Section 9.5 and elsewhere in the Association Documents do not require that any portion of the Facility Airspace Parcel be used or operated so as to qualify as one of the uses referred to in the definition of Project Standards (e.g., as Class A office space), but only require that the appearance and condition of the portion of the Facility Airspace Parcel as to which the applicable covenant applies be consistent with Project Standards; provided, however, that (a) the Project Standards are also (in addition to being an appearance and condition standard) a

quality standard with respect to the Association Property and the obligations imposed on the Association and FASP Owners with respect thereto and (b) the Project Standards are only a condition standard (and not an appearance standard) with respect to all “non-public” components of each FAS Parcel. As used in the preceding sentence, a “non-public” component is any component other than those visible from outside the FAS Parcel or applicable Facility Airspace Improvements.

ARTICLE 10

CASUALTY AND CONDEMNATION; CAPITAL IMPROVEMENTS

Section 10.1 Obligation to Restore ERY Roof Component. If all or any part of any of the ERY Roof Component shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Association shall be responsible for the performance and completion of the ERY Roof Component Restoration (other than the ERY Roof Mechanical Equipment, the ERY Roof Utility Facilities, the ERY LIRR Relocations and the ERY New LIRR Facilities), as an Association Matter, subject to and in accordance with the terms of the Master Declaration (including without limitation Articles X and XII and Section 15.2 thereof). Without limiting any rights of the Yards Parcel Owner or the Facility Airspace Parcel Owner under the Master Declaration, the Association shall have all rights and obligations granted to the Facility Airspace Parcel Owner under Article X of the Declaration in connection with the ERY Roof Component Restoration including without limitation the obligation to enter into a construction agreement with the Yards Parcel Owner pursuant to Section 10.2 of the Master Declaration.

Section 10.2 Association’s Obligation to Restore Association Property. The Association shall be solely responsible, and shall have the exclusive right to restore the Association Property (to the extent of its interest therein) and Common Facilities, or any portion thereof, destroyed or damaged in whole or in part by fire or other casualty.

Section 10.3 Restoration of Facility Airspace Improvements. If all or any part of any of any Facility Airspace Improvement shall be destroyed or damaged in whole or in part by fire or other casualty, (x) at any time a Severed Parcel Lease or Balance Lease is in effect with respect to such FAS Parcel, the applicable FASP Owner shall comply with the terms of Article 15 of the applicable Severed Parcel Lease or Balance Lease or (y) at any time following a Fee Conversion, such FASP Owner shall have the right, but not the obligation, to effect a Restoration with respect to its Facility Airspace Improvements. If a FASP Owner elects not to effect a Restoration as provided for in the previous sentence, then such FASP Owner shall secure and fence in the FAS Parcel property boundary, and shall raze the Facility Airspace Improvements, if necessary, and put the Facility Airspace Improvements into compliance with Legal Requirements, and otherwise make the Facility Airspace Improvements and the FAS Parcel safe. Notwithstanding the foregoing, should a FASP Owner be required pursuant to the terms of a Severed Parcel Lease or the Balance Lease, or otherwise elect to undertake any Restoration of a Facility Airspace Improvement, such Restoration shall be performed in accordance with the Work Rules, the Project Standards, the Master Declaration, and any and all limitations and/or conditions set forth in Article 7 hereof.

Section 10.4 Facility Airspace Improvement Capital Improvements. Without limiting the provisions of the ERY Ground Lease, the Balance Lease or any Severed Parcel Lease, in each case to the extent applicable, each FASP Owner shall have the right to demolish, rebuild or make Capital Improvements to the Facility Airspace Improvements located on its respective FAS Parcel (and the Association shall have such right with respect to the Association Property and Common Facilities) from time to time in its sole discretion, provided that such FASP Owner (or Association) shall comply with the provisions the Master Declaration as if it were the “Facility Airspace Parcel Owner” thereunder with respect to such Capital Improvements, and subject to and in accordance with the Work Rules, the Project Standards and any and all limitations and/or conditions set forth in Article 7 hereof.

ARTICLE 11

INSURANCE

Section 11.1 Required Insurance. The Association shall obtain and maintain in full force and effect the insurance policies as required by Article VIII of the Master Declaration (as an Association Matter); provided, however, to the extent such requirements apply to a specific FASP Owner, FAS Parcel or Facility Airspace Improvement, the applicable FASP Owner shall be required (and solely responsible) to maintain the required insurance with respect thereto and the Association shall have no obligation or liability with respect thereto. Notwithstanding the foregoing, the Association shall ensure that, notwithstanding any procurement and maintenance of separate insurance policies in accordance with this Declaration, the FASP Owners and/or the Association shall at all times together maintain (or cause the maintenance of) the insurance types and coverage required by the Master Declaration (without any gaps or omissions in such coverage except as expressly permitted therein) and without limiting any right or remedy of the Association as provided herein or otherwise in respect of any FASP Owner which fails to maintain any insurance required of such FASP Owner or in respect of such FASP Owner’s FAS Parcel or Facility Airspace Improvements.

(a) The Association shall also maintain, or cause to be maintained:

(i) The insurance required by Article VIII of the Master Declaration with respect to the Association Property and Common Facilities, to the extent applicable;

(ii) Crime insurance covering the Association Board and all officers, directors and employees of the Association and of any Managing Agent(s) of the Association with limits of not less than \$1,000,000.

(iii) Directors’ and Officers’ insurance with respect to the Association Board with limits of no less than \$5,000,000.

(iv) such other insurance in such amounts as may from time to time be reasonably required by the Yards Parcel Owner against such other insurable hazards as at the time are commonly or customarily insured against in the case of premises similarly situated and/or with similar uses.

(b) The Association shall also maintain, or cause to be maintained, such other insurance in such amounts as may from time to time be required by the Association Board.

(c) The cost of all insurance maintained by the Association shall be an Association Expense and, except as otherwise specified herein or in the LLC Agreement, shall be allocated to the FAS Parcels on the basis of Association Share.

Section 11.2 ERY Roof Component. Notwithstanding anything to the contrary herein, the Association shall be solely responsible for maintaining the required insurance coverages set forth in Article VIII of the Master Declaration with respect to the ERY Roof Component. Such coverages shall be insured under a single program administered by one broker. The Association shall, or shall designate a single Person that will on its behalf, negotiate with the broker to procure the coverage and manage the overall program on behalf of the Association and all FASP Owners. Such Person will request the Association's approval on its behalf and on behalf of all FASP Owners (and shall have the authority) to bind coverage and make any necessary or desirable program changes. In the event that multiple carrier participation is necessary or desirable in order to maintain the required insurance with respect to casualty to the ERY Roof Component, a single policy form shall, to the extent available, be used, in order to result in continuity of coverage. With respect to any casualty affecting both the ERY Roof Component and any other portion of the Facility Airspace Parcel resulting in damage claims reasonably estimated to be in excess of \$1,000,000 (subject to CPI Adjustment), the Association shall (and shall have the authority hereunder to) designate a single forensic adjuster with respect to all such claims on behalf of the affected Persons.

Section 11.3 Lease Requirements. Whenever the ERY Ground Lease, Balance Lease and/or Severed Parcel Lease(s) shall be in effect, the provisions of each such lease binding on the applicable FASP Owner, as tenant thereunder, regarding insurance shall supersede the provisions of this Article XI with respect solely to insurance required under this Article XI to be maintained by such FASP Owner for the FAS Parcel that is the subject of such lease.

ARTICLE 12

ASSOCIATION SHARES, ASSOCIATION CHARGES AND ASSESSMENTS

Section 12.1 Determination of Association Shares. Each FAS Parcel (other than an Allocable Share Excluded Parcel) shall be allocated its "Association Share" by the Association based on a calculation as follows: the ERY Adjusted GSF of the Facility Airspace Improvements constructed and located on each such FAS Parcel relative to the total ERY Adjusted GSF for all such parcels within the Facility Airspace Parcel. Such allocation of a FAS Parcel's Association Share shall be deemed a determination of such FAS Parcel's Association Share as between all FASP Owners (other than the Association itself) and regardless of whether a Fee Conversion is consummated with respect to such FAS Parcel and shall only be modified as provided herein or as permitted by the LLC Agreement; provided, however, the method of allocating (for the avoidance of doubt, as distinguished from the allocation of) the Association Shares shall in no event be modified without the consent of each FASP Owner then a member of the Association. Notwithstanding the foregoing, in calculating the Association Shares to be

allocated to each FAS Parcel pursuant to this Declaration, (i) the gross square footage attributable to the Cultural Facility shall not be included in the ERY Adjusted GSF of the Facility Airspace Improvements constructed and located on any FAS Parcel or in the total ERY Adjusted GSF for all such parcels within the Facility Airspace Parcel, and (ii) an Association Share of zero shall be allocated to any FAS Parcel or portion thereof, and the applicable FASP Owner shall accordingly not be liable for any Association Charges with respect to its FAS Parcel, until such time as the initial temporary certificate of occupancy has been issued with respect to any FASP Improvements located on such FAS Parcel (any such parcel, a “Non-TCO Parcel”), unless the allocation to such Non-TCO Parcel of an Association Share of zero would cause any other FAS Parcel (an “Overallocated FAS Parcel”) to bear Association Expenses from time to time which are in excess of such Parcel’s “Stabilized Expense Share”, i.e., the Association Expenses that such other FAS Parcel would bear if the entire Facility Airspace Parcel were fully built out with all Facility Airspace Improvements constructed, occupied and operating as contemplated by the Association budget from time to time, in which case, the Non-TCO-Parcel shall have allocated to it until such time as the initial temporary certificate of occupancy has been issued with respect to any FASP Improvements located on such Non-TCO Parcel an Association Share which would result in such FAS Parcel bearing such excess of Association Expenses, but in no event greater than its Stabilized Expense Share as if the initial temporary certificate of occupancy had been issued for such Non-TCO Parcel. “Allocable Share Excluded Parcel” means (x) any FAS Parcel owned or leased by the Association (or which is otherwise Association Property), (y) any FAS Parcel which consists entirely of the Cultural Facility (for the avoidance of doubt, as distinguished from any FAS Parcel which includes the Cultural Facility and other Facility Airspace Improvements), or (z) any FAS Parcel which consists entirely of all or a portion of the Open Space Component. Notwithstanding the foregoing or anything otherwise contained herein, Allocable Share Excluded Parcels shall have no Association Share allocated to them. Subject to the foregoing, the Association Share of each FASP Owner and in respect of each FAS Parcel as described in this Declaration shall constitute the “Allocable Share” described in the Master Declaration. The preceding provisions of this Section 12.1 shall not prevent (x) the FAS Parcel D Owner from including within the calculation of its Association Share (to the extent pertaining to Association Charges allocable to FAS Parcel D generally) the gross square footage of the Cultural Facility (provided that the FAS Parcel D Owner and the Cultural Facility agree to include the same) (with FAS Parcel D Owner collecting from the Cultural Facility such portion of such Association Charges as is agreed upon by and between the FAS Parcel D Owner and the Cultural Facility), or (y) the Association from collecting, in connection with any Association Charges incurred for Association services rendered directly to the Cultural Facility upon its request therefor, such Association Charges either directly from the Cultural Facility or FAS Parcel D Owner, as elected by the Association, provided, however, that, in all events, to the extent any Association Charges under the preceding clauses (x) and (y) comprise YP Obligation Assessments, then (A) the Yards Parcel Owner shall be entitled (and is hereby authorized) to proceed directly against the FAS Parcel D Owner if exercising any remedies available to it hereunder or under the Master Declaration with respect thereto, and (B) the obligation to pay any such YP Obligation Assessments shall constitute an Association Matter Lien in favor of the Yards Parcel Owner against FAS Parcel D, as and to the extent provided in Section 16.3 below, and such lien and the priority thereof shall continue unimpaired, irrespective of any rights of collection directly or indirectly against the Cultural Facility under the preceding clauses (x) and (y).

Section 12.2 Determination of Association Expenses and Fixing of Association Charges. The Association shall have the power and authority, to the fullest extent permitted by Legal Requirements, to impose on each FASP Owner assessments (including Association Charges and Special Assessments). Annual or other periodic (as determined by the Association) assessments of Association Charges shall be levied against all FAS Parcels in such amounts as shall be fixed by the Association. The Association shall determine and allocate (i) all costs and expenses incurred by the Association in connection with the performance of the Association Matters (the “Association Matter Expenses”) and (ii) all costs and expenses incurred by the Association in connection with the performance of the Horizontal Association Matters (the “Horizontal Association Matter Expenses”; the Association Matter Expenses and the Horizontal Association Matter Expenses are sometimes referred to herein as the “Association Expenses”). All Association Expenses shall be determined and allocated by the Association, without any cost increase or markup of any kind whatsoever by the Association and otherwise in the manner provided in and subject to the provisions of the LLC Agreement, among the FASP Owners in accordance with their respective Association Shares, unless (x) expressly provided otherwise herein or in the LLC Agreement, or (y) the Association Board in its discretion determines that any applicable category of Association Expenses shall be allocated more equitably based on other factors such as, among others, actual usage, design load, survey, meter, submeter, etc., provided, however, any allocation under this clause (y) of costs and expenses comprising YP Obligation Assessments shall not be implemented by the Association unless the same is approved by the Yards Parcel Owner in its reasonable discretion. Pursuant to the Master Declaration, each FASP Owner is obligated to fund (including through Association Matter Special Assessments, as applicable) such FASP Owner’s Association Share of all Association Matter Charges hereunder. Pursuant to this Declaration, each FASP Owner is obligated to fund (including through Horizontal Association Matter Special Assessments, as applicable) such FASP Owner’s Association Share of all Horizontal Association Matter Charges hereunder.

Section 12.3 Payment of Association Charges and Special Assessments; Liens Against Parcels. Each FASP Owner (including, subject to the provisions of Sections 12.4 and 12.5, Balance Parcel Owner with respect to the Balance Parcel) shall be obligated to pay, and hereby covenants and agrees to pay, its Association Share of Association Charges and Special Assessments assessed by the Association pursuant to the terms of this Declaration or the LLC Agreement against its FAS Parcel at such time or times (but not less than annually and not more often than monthly) as the Association shall determine. Unless otherwise determined by the Association, Association Charges shall be assessed annually, but for the convenience of the Members, may be payable in installments on the first day of every month in advance. Special Assessments shall be payable at such time or times as may be determined by the Association Board. To the extent permitted by applicable Legal Requirements and subject to the limitations with respect to liens, as applicable, in the event that any portion of or interest in the Facility Airspace Parcel or any Facility Airspace Improvement is subject to a declaration of condominium as set forth in Article 13, the obligation of the Balance Parcel Owner and each FASP Owner to fund its Association Share of Association Charges and Special Assessments, shall constitute a lien in favor of the Association (“Association Lien”) and, in the case of Association Charges and Special Assessments in respect of a Master Declaration Obligation, the Yards Parcel Owner (“YP Obligations Lien”), against the Balance Parcel or the applicable FASP Parcel, as the case may be, prior to all other liens or encumbrances (other than Permitted Encumbrances), including first mortgages.

Section 12.4 Liability for the Payment of Association Charges and Special Assessments After the Sale or Other Transfer of a FAS Parcel. No FASP Owner shall be liable for the payment of any Association Charges or Special Assessments assessed against its FAS Parcel subsequent to a sale, transfer, or other conveyance by such FAS Owner of such FAS Parcel made in compliance with the terms of Article 14 hereof. A purchaser or other successor-in-title to the owner of a FAS Parcel shall be and remain, subject to the preceding sentence, liable for the payment of all Association Charges and Special Assessments accrued and unpaid against such FAS Parcel prior to its acquisition thereof.

Section 12.5 Abatement of Association Charges and Special Assessments. No FASP Owner shall be exempted from liability for the payment of Association Charges or Special Assessments, or entitled to a diminution or abatement in the amount thereof, for any reason or cause whatsoever, including, without limitation, as a result of:

- (a) any waiver made by such FASP Owner of its right to use or enjoy any or all of the Association Property or Common Facilities;
- (b) any casualty or condemnation, or period of restoration following the same, with respect to such FASP Owner's FAS Parcel (including, without limitation, the FAS Parcel Roof Component associated with any FAS Parcel);
- (c) the abandonment of such FASP Owner's FAS Parcel; or
- (d) any inconvenience or discomfort sustained by such FASP Owner or its Occupants arising from:
 - (i) the failure or interruption of any utility or other services;
 - (ii) the making of repairs or improvements to any FAS Parcel, any Association Property or any Common Facilities (including, without limitation, the FAS Parcel Roof Component associated with any FAS Parcel) or to pursuant to the terms of Article 3 hereof; or
 - (iii) any action taken by the Association in order to comply with any Legal Requirement(s).

Section 12.6 Statement of Association Charges and Special Assessments. The Association shall provide a written statement of all unpaid Association Charges and/or Special Assessments due from any FASP Owner (including Balance Parcel Owner) within seven (7) days of its receipt of a written request therefor from such FASP Owner. In connection therewith, the Association may request, and shall be entitled to receive from any applicable Condominium Board, if any, within seven (7) days of request, and shall be entitled to rely upon, a written statement as to arrearages, if any, of a Unit Owner, with respect to any common charges and special assessments due and owing to the Condominium (as the case may be) as provided under the applicable condominium declaration and condominium by-laws. With respect to any individual Unit Owner, the applicable Condominium Board may issue such statement on behalf of the Association (and, when so issuing such statement on behalf of the Association, such Condominium Board shall indemnify the applicable individual Unit Owner from any loss or

liability resulting from any error made by such Condominium Board in such statement), provided, however, the same shall not estop any claim of the Association nor any claim of the applicable Condominium Board for such Unit Owner's Individual Association Share of any unpaid Association Charges in the event of an error.

ARTICLE 13

CONDOMINIUMS

Section 13.1 Condominium Provisions.

(a) Notwithstanding anything to the contrary herein, a FASP Owner may subject any portion or all of a FAS Parcel or the Facility Airspace Improvements thereon or interest therein to a declaration of condominium pursuant to the provisions of Article 9-B of the New York State Real Property Law (the "Condominium Act"), and the board of managers created thereunder (the "Condominium Board"), as agent for the condominium association (as applicable, a "Condominium"), shall, in each case, be deemed the FASP Owner of the applicable FAS Parcel hereunder. Any FASP Owner that subjects its FAS Parcel to condominium ownership shall comply with the terms of Section 3.4 of the Master Declaration as if such FASP Owner were the "Facility Airspace Parcel Owner" thereunder. (The date upon which a declaration of condominium with respect to any such Condominium is recorded and the applicable condominium tax map floor plans are recorded with respect thereto in accordance with the Condominium Act is referred to herein as the "Condominium Formation Date" in respect of such Condominium.) Until the Condominium Formation Date, the Association Charges and Special Assessments shall be the obligation of the Severed Parcel Owner of such FAS Parcel and at all times following the Condominium Formation Date, the Association Charges and Special Assessments shall be the obligation of the applicable Condominium as the respective FASP Owner. Each Condominium Board shall collect the Association Charges and Special Assessments allocated to its FAS Parcel against all persons owning condominium units (each such owner, a "Unit Owner") in its Condominium. Such Association Charges and Special Assessments shall be assessed against the Unit Owners by such Condominium Board as common charges or special assessments, as set forth more specifically below. Each Unit Owner shall be responsible to fund in a timely manner its Individual Association Share of the total Association Charges and Special Assessments. Each Condominium Board shall be responsible to the Association for the amount assessed by the Association with respect to the units comprising its Condominium, irrespective of whether any Unit Owner pays or fails to pay its common charges.

(b) With respect to any FAS Parcel or portion thereof or any of the Facility Airspace Improvements that is a Condominium, every condominium unit within such Condominium shall be subject to levy or execution for the satisfaction of any monetary liability hereunder solely to the extent of the Individual Association Share of the Unit owned by the applicable Unit Owner. The term "Individual Association Share" shall mean, with respect to any Unit Owner, the percentage interest of such Unit Owner in the common elements of the Condominium which comprises such premises applied to the

total Association Share obligation of the Condominium as a FASP Owner, it being understood that the total Individual Association Share of each such Unit Owners shall, when aggregated with the total Individual Association Share of all of the Unit Owner(s) of the balance of the applicable Condominium, shall at all times be equal to one hundred percent (100%) of the total Association Share allocated to such FAS Parcel hereunder. In the event of a default in the obligations of the Condominium hereunder, a lien shall exist upon the property owned by each Unit Owner in favor of the Association, solely to the extent of each such Unit Owner's unpaid Individual Association Share, which lien shall include such Unit Owner's obligation for the costs of collection of such Unit Owner's unpaid Individual Association Share. Such lien shall have the same priority as the lien of the applicable Condominium Board for unpaid common charges of the Condominium, subject to the last sentence of Section 16.3 hereof concerning the priority of liens in the case of liens on a unit within a Condominium. Prior to enforcing its rights under this Declaration against a Unit Owner, the Association shall first use reasonable efforts to enforce its rights against the applicable Condominium Board. In the event such Condominium Board does not timely perform the obligations as a FASP Owner hereunder, the Association and the Yards Parcel Owner shall have the right at any time thereafter to obtain from the Condominium Board, the names and last known addresses of the Unit Owners who have not paid their Individual Association Shares.

(c) In the event that the Condominium Board fails to perform its obligations hereunder with respect to any YP Obligation Assessment and the Association fails to cause the Condominium Board to remedy such failure within ten (10) Business Days of the occurrence thereof, the Yards Parcel Owner shall be entitled, at its election, to make demand on and/or exercise any remedies against the Unit Owners directly to fund their respective Individual Association Shares of such YP Obligation Assessment. In no event shall the Yards Parcel Owner be obligated to bring suit against the Condominium Board or to exhaust remedies against the Condominium prior to making such demand on the Unit Owners to fund their Individual Association Shares of such YP Obligation Assessment or exercising any other remedies of the Yards Parcel Owner hereunder against the Condominium. Any suit by the Yards Parcel Owner against the Condominium Board and/or each Unit Owner to enforce the obligation to pay a YP Obligation Assessment may, at the option of the Yards Parcel Owner, be brought in a single action or successive actions (subject to any applicable statute of limitations). No Unit Owner shall be liable for payment of more than its Individual Association Share of any YP Obligation Assessment, and any Unit Owner that has duly paid its Individual Association Share of a YP Obligation Assessment to the Board shall not be obligated to pay any duplicative amount to the Yards Parcel Owner. Yards Parcel Owner shall hold any funds received from the Unit Owners on account of the YP Obligation Assessment in the name of and for the account of Yards Parcel Owner, and shall apply such funds to such Condominium's Association Share of such Master Declaration Obligations.

(d) If any FASP Owner files any application with the Attorney General to declare a condominium or other form of owners' association with respect to its FAS Parcel or any portion thereof or interest therein, the same shall be subject to, and the applicable FASP Owner shall comply with, Section 3.4(b) of the Master Declaration. In addition, the condominium declaration for such FAS Parcel and every deed conveying

title to a condominium unit therein shall also expressly state that the condominium declaration and/or the applicable conveyance is subject the Association Documents including, without limitation, Article 13 of this Declaration.

ARTICLE 14

SALES AND LEASES OF FAS PARCELS

Section 14.1 General. Any sale of a FAS Parcel, or assignment of a Severed Parcel Lease, or exercise of a Fee Conversion, shall be subject to the provisions of Section 12.4 of this Declaration.

Section 14.2 Leases of FAS Parcels. Each non-residential lease (except for space leases) of all or any part of a FAS Parcel (following Fee Conversion) shall expressly provide that the tenant thereunder acknowledges and agrees that: (i) its use of the applicable FAS Parcel, as well as the leasehold estate created by the lease, shall be subject, in all respects, to the Association Documents, as each of the same may be amended from time to time; and (ii) the provisions of the Association Documents with respect to use and occupancy of the Facility Airspace Parcel (and, for the avoidance of doubt, excluding any provisions relating to voting at any meetings of the Members or the Association Board or controlling or determining the governance of the Association, which the tenant or permitted occupant shall have no right to do, or to the payment of the Association Charges assessed against the FAS Parcel, which the tenant shall have no obligation to pay unless its lease expressly provides otherwise), as each of the same may be amended from time to time, are assumed, accepted, ratified and will be complied with by such tenant. In the absence of such express language in any lease of all or a portion of a FAS Parcel, the same shall be conclusively deemed to have been included therein.

ARTICLE 15

MORTGAGEE PROTECTIVE PROVISIONS

Section 15.1 Registered Mortgagee Requirements; Rights of Registered Mortgagees.

(a) The term “Registered Mortgage” as used herein shall mean a Mortgage, as the same may be amended, modified or restated from time to time, given to secure the repayment of money or other obligation owed by a FASP Owner: (i) which shall comply with the provisions of this Article 15; and (ii) a true and correct copy of such mortgage has been delivered to the Secretary of the Association. The term “Registered Mortgagee” as used herein shall mean the record holder of a Registered Mortgage from time to time; provided, however, with respect to a Mortgage on a FAS Parcel subject to a condominium regime, the term “Registered Mortgagee” with respect to such FAS Parcel shall mean the “Mortgagee Representative” under the applicable condominium documents for such FAS Parcel. All Mortgages, including all Registered Mortgages (and, subject to the last sentence of Section 16.3 hereof (concerning the priority of liens in the case of liens on a unit within a Condominium), the lien thereof, as applicable) shall be subordinate to this Declaration (and the provisions hereof) and to any Association

Matter Lien(s), whenever arising; and (z) any mortgagee, including a Registered Mortgagee (and its respective successors and assigns or any party taking title by or through such mortgagee) will take title (whether by foreclosure, deed-in-lieu of foreclosure or otherwise) subject to this Declaration.

(b) If a FASP Owner or its Registered Mortgagee shall have served on the Secretary of the Association, as described in the preceding subparagraph, a notice (“RM Notice”) specifying the name and address of such Registered Mortgagee, such Registered Mortgagee shall be given a copy of each and every notice of the occurrence of a default (including, without limitation, all notices (including notices that the Association or another Person intends to cure an Event of Default) described in Section 16.1 hereof) required or permitted to be given to such Registered Mortgagee’s mortgagor pursuant to this Declaration and each statement of Association Charges at the same time as and whenever such notice shall thereafter be given thereunder or hereunder, at the address last furnished by the applicable FASP Owner or Registered Mortgagee. The Association shall in no event be liable for the failure of delivery of any notice to a Registered Mortgagee if such Registered Mortgagee changes its address or such Mortgage is assigned and the Association does not receive a new RM Notice. After receipt of an RM Notice from a FASP Owner or Registered Mortgagee, no notice of the occurrence of a default thereafter given with respect to such Registered Mortgagee’s mortgagor under this Declaration by the Association (or any other party entitled to give such notice) shall be effective as to such Registered Mortgagee unless and until a copy thereof shall have been so given to the Registered Mortgagee(s).

(c) If more than one Registered Mortgagee having a lien on any FAS Parcel has exercised any of the rights afforded by this Section 15.1, only that Registered Mortgagee, to the exclusion of all other Registered Mortgagees, whose Registered Mortgage is most senior in priority of lien with respect to such FAS Parcel (the “Senior RM”) shall be recognized by the other FASP Owner(s) and the Association as having exercised such right, for so long as such Registered Mortgagee shall be diligently exercising its rights hereunder with respect thereto; provided, however, that by written notice to the Association, such Registered Mortgagees may designate one of them which is not most senior in priority to be deemed the Senior RM for purposes of this Section 15.1(c).

(d) Each Registered Mortgagee shall have the right, but not the obligation, to cure any Event of Default by such Registered Mortgagee’s mortgagor. The Association and all FASP Owners shall accept performance by a Registered Mortgagee (or its designee or nominee) of any covenant, condition or agreement on the part of a FASP Owner to be performed hereunder with the same force and effect as though performed by such Registered Mortgagee’s mortgagor, even if such performance is after the applicable time period set forth in clause (e) below.

(e) Notwithstanding any other provision of this Declaration or the LLC Agreement to the contrary, upon the occurrence of an Event of Default by a FASP Owner, no remedies contemplated under the Association Documents (other than (x) the remedies set forth in Section 16.9 hereof and (y) giving a notice pursuant to the first

sentence of Section 16.10 hereof) shall be exercised by the Association if a Registered Mortgagee of such FASP Owner shall (1) with respect to a Monetary Event of Default, within the period that is fifteen (15) days more than is given to the applicable FASP Owner hereunder following such Registered Mortgagee's receipt of any notice to the effect that a Monetary Event of Default has occurred with respect to its mortgagor, cure (or cause to be cured) such Monetary Event of Default, (2) with respect to any Non-Monetary Event of Default that is reasonably capable of being cured without owning or controlling the applicable FAS Parcel, within the period that is forty-five (45) days more than is given to the applicable FASP Owner following such Registered Mortgagee's receipt of any notice to the effect that such Non-Monetary Event of Default has occurred with respect to its mortgagor (a "Default Notice"), cure (or cause to be cured) such Non-Monetary Event of Default; provided if such cure cannot be effected within such additional forty-five (45) day period, the applicable Registered Mortgagee shall have such additional period of time to cure as may be reasonably necessary so long as the Registered Mortgagee is diligently prosecuting the same, or (3) with respect to any Non-Monetary Default in respect of which ownership or control of the applicable FAS Parcel or portion thereof is reasonably necessary to cure the Non-Monetary Event of Default in question, within ninety (90) days following its receipt of a Default Notice with respect thereto, commence to cure (or cause to be cured) the applicable Non-Monetary Event of Default, which cure may consist solely of exercising diligent efforts to obtain ownership or control of the applicable FAS Parcel or portion thereof, and then diligently and continuously pursue such cure until completion. In addition to a copy of the notice sent to the defaulting FASP Owner as provided above, the Association shall deliver to such FASP Owner's Registered Mortgagee a second notice if such defaulting FASP Owner has failed to cure the applicable default by the date that is no less than five (5) Business Days prior to the expiration of such FASP Owner's cure period hereunder, which notice shall notify the Registered Mortgagee of such failure.

(f) In addition, notwithstanding any provision hereof to the contrary, if one or more Events of Default has occurred with respect to a FASP Owner, but such defaulting FASP Owner's Registered Mortgagee is taking the actions described in the preceding subsection (as and when provided therein) with respect to, and/or has cured, each such Event of Default, then: (i) the Registered Mortgagee shall be entitled to replace and designate the Manager, if any, of the Association Board that such defaulting FASP Owner would otherwise have been entitled to designate, as if such Registered Mortgagee were the FASP Owner thereof; (ii) the Registered Mortgagee shall be entitled to vote at all Members Meetings (as defined in the LLC Agreement) at which the FASP Owner would otherwise have been entitled to vote and to give any consent or approval that its mortgagor could have given, which shall be granted or withheld under the same terms as are applicable to its mortgagor, as if such Registered Mortgagee were its mortgagor; and (iii) the Association shall rely (and be entitled to rely) on the votes of or actions taken by or consents or approvals given by the Registered Mortgagee or the Manager designated by it in determining the appropriateness of any action to be taken. Provided the applicable Registered Mortgagee provides the Registered Mortgagee the right to take any or all of the preceding actions, then, upon receipt of written notice from such Registered Mortgagee that the Registered Mortgagee is exercising such rights (and is taking the actions described in the preceding subsection (as and when provided therein)), the

Association shall accept such Registered Mortgagee's performance of such rights and each FASP Owner agrees that upon the Association's receipt of such written notice from a Registered Mortgagee, the Association shall be entitled to rely on such notice with no further investigation. Each FASP Owner agrees that it shall not take any action against the Association as a result of the Association's following the direction of any Registered Mortgagee as provided herein. The rights of a Registered Mortgagee under the preceding sentence shall remain in effect until the Secretary of the Association receives written notice that such Registered Mortgagee's mortgage has been satisfied or the lien has otherwise been released or terminated with respect to the applicable FAS Parcel or that such Registered Mortgagee is no longer exercising its rights herein. Payment or performance of any obligation of a FASP Owner by a Registered Mortgagee (prior to the date on which such Registered Mortgagee or its assignee or designee or nominee shall take title to the defaulting FASP Owner's FAS Parcel) shall not give rise to any obligation on the part of the Registered Mortgagee to continue to pay or perform such obligation or any other obligation in the future.

(g) Each FASP Owner shall consider in good faith any modification to this Declaration requested by a Registered Mortgagee as a condition or term of granting financing to another FASP Owner, provided, that the same does not materially increase the obligations or materially diminish the rights and remedies of the requested FASP Owner(s) hereunder.

(h) At the request of the Association from time to time, a FASP Owner shall execute and deliver an instrument addressed to the Association confirming that such holder is a Registered Mortgagee and entitled to the benefit of all provisions contained in this Declaration which are expressly stated to be for the benefit of Registered Mortgagees.

ARTICLE 16

EVENTS OF DEFAULTS AND CERTAIN REMEDIES

Section 16.1 Types; Notice and Cure Periods. Each of the following events shall be deemed an "Event of Default" hereunder (with those arising under "(a)", "(b)" and "(c)" below being referred to as "Monetary Events of Default" and those arising under "(d)" below being referred to as "Non-Monetary Events of Default"):

(a) if any FASP Owner shall fail to pay when due all or any portion of any of its Association Share of Association Charges to the Association, and such failure continues for a period of fifteen (15) days following receipt by the defaulting FASP Owner from the Association of a notice of default with respect thereto that specifies the amounts due, and states in bold print: "THIS IS YOUR FIRST AND ONLY REQUIRED NOTICE THAT YOU ARE IN DEFAULT IN THE PAYMENT OF THE SUMS DESCRIBED HEREIN WHICH ARE PAYABLE TO THE ASSOCIATION. FAILURE TO MAKE PAYMENT OF SUCH SUMS WITHIN FIFTEEN (15) DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE AN EVENT OF

DEFAULT UNDER ARTICLE 16 OF THE ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION DECLARATION.”;

(b) if any FASP Owner shall fail to pay when due all or any portion of any of its Association Share of any Special Assessments or all or any portion of any other amounts payable to the Association under this Declaration or the LLC Agreement, and such failure continues for a period of thirty (30) days following receipt by the defaulting FASP Owner from the Association of a notice of default with respect thereto that specifies the amounts due, and states in bold print: “THIS IS YOUR FIRST AND ONLY REQUIRED NOTICE THAT YOU ARE IN DEFAULT IN THE PAYMENT OF THE SUMS DESCRIBED HEREIN WHICH ARE PAYABLE TO THE ASSOCIATION. FAILURE TO MAKE PAYMENT OF SUCH SUMS WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER ARTICLE 16 OF THE ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION DECLARATION.”;

(c) if a FASP Owner shall fail to pay when due any monies expended by the Association in curing any default by such FASP Owner under this Declaration or the LLC Agreement, and such failure continues for a period of thirty (30) days following receipt by the defaulting FASP Owner from the Association of a notice of default with respect thereto that specifies the amounts due, and states in bold print: “THIS IS YOUR FIRST AND ONLY REQUIRED NOTICE THAT YOU ARE IN DEFAULT IN THE PAYMENT OF THE SUMS DESCRIBED HEREIN WHICH ARE PAYABLE TO THE ASSOCIATION. FAILURE TO MAKE PAYMENT OF SUCH SUMS WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER ARTICLE 16 OF THE ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION DECLARATION.”; or

(d) if a FASP Owner (whether due to its action or inaction, or the action or inaction of any Occupant of any such FASP Owner) defaults, in the performance of any non-monetary obligation set forth in this Declaration or the LLC Agreement or any other Association Document, as applicable (including, without limitation, the breach of any provision of the LLC Agreement or of this Declaration or the violation of any applicable Rules and Regulations), and if such default continues for a period of thirty (30) days following receipt by the defaulting FASP Owner of a notice of default from the Association, or, if the default is of a nature that it cannot reasonably be cured within such thirty (30) day period, if the defaulting FASP Owner (or its Occupant) fails to: (i) commence such cure as promptly as practicable within such thirty (30) day period; and (ii) thereafter proceed with diligence and continuity to complete such cure (however if a FASP Owner's Occupant shall be the cause of or otherwise give rise to the default as to which such notice has been given, no Event of Default shall exist if the FASP Owner uses commercially reasonable efforts (and promptly, diligently and continuously attempts) to cause such defaulting Occupant to cure such default (including, without limitation, the commencement and prosecution of an action to evict such Occupant or seeking an order to compel such Occupant to comply)).

(e) Nothing in this Article 16 shall derogate from any right that the Association or any other FASP Owner may have under this Declaration to exercise self-help or take any other actions (such as during an Emergency) without or prior to delivery of a notice; provided that the defaulting FASP Owner shall only be deemed to be in default hereunder upon the subsequent delivery of a notice, and failure to cure such default within the applicable time period.

Section 16.2 Late Charges. Upon the occurrence of any Monetary Event of Default, the amount due with respect to such Monetary Event of Default shall bear interest at the Involuntary Rate from the date such payment was due until such time as it is paid in full, together with a late payment charge equal to four (4%) percent of such unpaid obligation for each day that payment due remains unpaid in full. In no event shall any amount imposed by the Association hereunder for late payment of any Association Charges and/or Special Assessments exceed (in the aggregate) the maximum lawful amount that may be imposed on such FASP Owner for late payment, and, if the amount so imposed exceeds such maximum lawful amount, then the amount imposed by the Association shall automatically be reduced to such lesser amount as shall equal (but not exceed) the maximum lawful amount.

Section 16.3 Liens for Unpaid Charges. To the extent permitted by applicable Legal Requirements, (i) the obligation of each FASP Owner to pay its Association Share of all Association Charges and Association Special Assessments shall constitute a lien in favor of the Association (an “Association Matter Lien”) (and, with respect to any Association Matter Liens which arise in connection with YP Obligation Assessments, in favor of the Yards Parcel Owner pursuant to Section 16.4 of the Master Declaration and Section 16.4(c) below) against the applicable FAS Parcel, prior to all other liens or encumbrances (other than Permitted Encumbrances), including Mortgages, subject however to the last sentence of this Section 16.3 concerning the priority of liens in the case of liens on a unit within a Condominium, and (ii) the obligation of each FASP Owner to pay its Association Share of all Horizontal Association Matter Charges and Horizontal Association Matter Special Assessments, and related other costs and expenses which are the obligation hereunder of the applicable FASP Owner to the Association, shall constitute a lien in favor of the Association against the applicable FAS Parcel, prior to all other liens or encumbrances (other than Permitted Encumbrances, Association Matter Liens and Mortgages, subject however to the last sentence of this Section 16.3 concerning the priority of liens in the case of liens on a unit within a Condominium) (a “Horizontal Association Matter Lien”; Association Matter Liens and Horizontal Association Matter Liens are sometimes referred to herein collectively as “Association Liens”) against the applicable FAS Parcel. Notwithstanding anything otherwise contained herein, with respect to any FAS Parcel that is comprised of a Condominium, (x) the Association Liens contemplated hereby shall be of equal priority as the lien of the applicable Condominium Board for unpaid common charges of such Condominium, and (y) such Association Liens and such Condominium Board liens shall be superior to all other liens on a unit within such Condominium except, to the extent provided in Section 339-z of the New York Real Property Law (or other applicable Legal Requirements), the lien of any real property taxes and (other than in the case of an exclusive non-residential Condominium) any prior recorded first mortgage in respect of such unit.

Section 16.4 Liens and Proceedings for the Collection of Unpaid Association Charges or Special Assessments.

(a) Upon the occurrence of any Monetary Event of Default giving rise to an Association Lien and subject to the rights of a Registered Mortgagee set forth in Article XV, without limiting any of the foregoing, the Association may, subject to any prior liens permitted hereunder (including, in the case of any Horizontal Association Matter Lien, Mortgages): (i) bring an action to foreclose the Association Lien in accordance with and subject to applicable Legal Requirements; (ii) purchase the interest of the owner of such FAS Parcel at a foreclosure sale resulting from any such action; (iii) proceed by appropriate judicial proceedings to enforce the specific performance or observance by the defaulting FASP Owner of the applicable provisions of this Declaration or the LLC Agreement from which the Monetary Event of Default arose; and/or (iv) exercise any other remedy available at law or in equity. In the event that the net proceeds received on a foreclosure of an Association Lien (after deduction of all legal fees and disbursements, advertising costs, brokerage commissions, court costs and other costs and expenses paid or incurred in connection therewith), shall be insufficient to satisfy the defaulting FASP Owner's obligations to the Association, such FASP Owner shall remain personally liable for the deficit. Any surplus on such foreclosure sale shall be paid according to Legal Requirements. However, notwithstanding the foregoing, a suit to recover a money judgment for unpaid Association Charges or Special Assessments shall be maintainable without foreclosing or waiving the Association Lien securing the charges. Each of the remedies herein described as well as any other remedy available at law or in equity may be exercised concurrently or sequentially. Without limitation of the foregoing, in the case of any FAS Parcel or portion thereof or of any of the Facility Airspace Improvements that is comprised of a Condominium, each individual unit within such Condominium shall be subject to levy or execution for the satisfaction of any monetary liability hereunder or any other Association Document solely to the extent of the Individual Association Share of the applicable Unit Owner thereof, as more particularly provided in Section 13(b) hereof and in Section 3.4 of the Master Declaration (and not jointly and severally), and, accordingly, any remedies of the Association under any of the Association Documents may be exercised against each such Unit Owner and/or individual condominium unit, subject to said Section 13(b) hereof and Section 3.4 of the Master Declaration.

(b) In the event that the Association shall bring an action to foreclose its Association Lien as set forth above:

(i) the defaulting FASP Owner will be required to pay a reasonable rental for the use of the FAS Parcel, and the Association shall be entitled to the appointment of a receiver to collect the same; and

(ii) the Association shall have the power to purchase such FAS Parcel at the foreclosure sale thereof and to acquire, hold, lease, mortgage, convey, or otherwise deal with such FAS Parcel (but not to vote the votes appurtenant to the same).

(c) In the event that the Yards Parcel Owner shall have made a written demand for performance of the obligation by the Association and the Association fails to timely perform its obligations hereunder with respect to any YP Obligation Assessment,

the Yards Parcel Owner shall be entitled, at its election, to make demand on and/or exercise any remedies against the FASP Owners directly to fund their respective Association Shares of such YP Obligation Assessment. Subject to the obligations of the Yards Parcel Owner under Section 16.1(c)(iv) of the Master Declaration, in no event shall the Yards Parcel Owner be obligated to bring suit against the Association or to exhaust remedies against the Association prior to making such demand on the FASP Owners to fund their Association Shares of such YP Obligation Assessment or exercising any other remedies of the Yards Parcel Owner hereunder. Any suit by the Yards Parcel Owner against the Association and/or each FASP Owner to enforce the obligation to pay a YP Obligation Assessment may, at the option of the Yards Parcel Owner, be brought in a single action or successive actions (subject to any applicable statute of limitations). No FASP Owner shall be liable for payment of more than its Association Share of any YP Obligation Assessment, and any FASP Owner that has duly paid its Association Share of any YP Obligation Assessment to the Association shall not be obligated to pay any duplicative amount to the Yards Parcel Owner. Yards Parcel Owner shall hold any funds received from the FASP Owners on account of the YP Obligation Assessment in the name of and for the account of Yards Parcel Owner, and shall apply such funds to the Master Declaration Obligations. For the avoidance of any doubt and without limiting any of the foregoing provisions of this Article 16, the obligations and liabilities of each FASP Owner in respect of any YP Obligation Assessment shall be several and not joint.

Section 16.5 Association Right to Cure. Upon the occurrence of a Non-Monetary Event of Default, and subject to the rights of a Registered Mortgagee as set forth in Article XV, the Association shall have the right (but not the obligation) to enter upon such defaulting FASP Owner's FAS Parcel and summarily to abate, remove, or cure such violation or breach without thereby being deemed guilty or liable in any manner of trespass. In addition, in the event that the Association shall determine that the abatement, removal, or cure of any such violation or breach is immediately necessary for the preservation or safety of any FAS Parcel, the ERY Roof Component, for the safety of the occupants of any FAS Parcel or any part thereof, for the safety of other individuals, or to avoid the suspension of any necessary service at any FAS Parcel, the Association may take such action immediately, without prior notice and without allowing the defaulting FASP Owner any period of time within which to cure or to commence to cure such violation or breach.

Section 16.6 Abatement and Enjoinment. If any FASP Owner, any Occupant of such FASP Owner, any tenant of such FASP Owner, or any family member, guest, agent, employee, contractor, or invitee of such FASP Owner or of its tenant shall violate or breach any of the provisions of the Association Documents on such party's part to be observed or performed, the Association shall have the right to enjoin, abate, or remedy the continuance or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity. Additionally, the violation or breach of any of the terms of the Association Documents with respect to any of the rights, easements, privileges, or licenses granted to the Association shall give the Association or the Balance Parcel Owner the right to enjoin, abate, or remedy the continuation or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity.

Section 16.7 Fines for Violations of the Rules and Regulations. If any FASP Owner, any Occupant of such FASP Owner, tenant, or any family member, guest, agent, employee, contractor, or invitee of such FASP Owner or of its tenant shall violate or breach any of the Rules and Regulations on such party's part to be observed or performed, the Association shall have the right to levy a fine against such FASP Owner in an amount deemed appropriate by the Association. No such fine may exceed an amount per infraction to be determined by the Association Board, provided, however, that, (x) the amount of the fine which may be levied in respect of any specified infraction shall be applied on a non-discriminatory basis as to each FASP Owner, and (y) with respect to any violation or breach of the Rules and Regulations that continues for more than one day, each day during with such violation or breach continues shall be considered a new infraction for which a separate fine may be levied. Any fine levied against a FASP Owner pursuant to this Section 16.7 shall constitute a Special Assessment payable by such FASP Owner.

Section 16.8 Suspension or Denial of Rights and Privileges. If any FASP Owner, any tenant of a FASP Owner, or any Occupant of such FASP Owner or its tenant shall repeatedly abuse all or any portion of the Association Property or Common Facilities, the Association shall have the right to suspend or deny the use of all or any portion of the Association Property or Common Facilities. Similarly, the Association shall have the right to suspend any and all rights, services and privileges otherwise afforded to FASP Owners (including, without limitation, the right to use and enjoy all or any portion of the Association Property and Common Facilities and the right to receive Association services) with respect to any FASP Owner who shall be in arrears in the payment of Association Charges or Special Assessments for more than sixty (60), days as well as with respect to any such FASP Owner's tenant and to any Occupant of such FASP Owner and its tenant. In no event, however, may the Association, by virtue of this Section 16.8, suspend or deny the use of the roads, sidewalks, loading docks, underground delivery areas or utility lines and facilities constituting parts of the Association Property or Common Facilities to any Person or otherwise suspend or deny any right, privilege, or service whose suspension or denial is prohibited by applicable Legal Requirements, nor shall the right to vote at any meeting of the FASP Members be suspended or denied to any FASP Owner or the right of any Manager designated by a FASP Owner to vote at any meeting of the Association Board by reason of its non-payment of Association Charges or Special Assessments.

Section 16.9 Emergencies Caused by FASP Owners.

(a) In the event that an Emergency exists as a result of: (i) the failure or neglect by a FASP Owner (or its Occupants) to perform any Individual Parcel Matter; (ii) a condition existing or an occurrence within a FAS Parcel; or (iii) the violation by FASP Owner (or its Occupants) of any of the Declaration, these LLC Agreement or the Rules and Regulations, if any, all the other FASP Owners that are, or that have (or that have Occupants that are or that have) Facility Airspace Improvements, a FAS Parcel Roof Component, property or operations that are threatened or affected by such Emergency, shall have the right, but not the obligation, to enter that portion of the Facility Airspace Parcel in or from which, or as to which, such Emergency exists and to perform or cause to be performed any such operation, maintenance, care, upkeep or repair or otherwise take any reasonable action under the circumstances to summarily abate and remove, at

the expense of the defaulting FASP Owner, such Emergency, but in all events only to the extent reasonably and immediately necessary to do so (i.e., until the Emergency no longer exists), and the party effecting such performance shall not thereby be deemed guilty or liable in any manner of trespass, provided that such party gives the defaulting FASP Owner (or the Association, with respect to any Association Property or Common Facilities), such notice as is practicable under the circumstances (which may be, but shall not be presumed to be, none), which notice, to the fullest extent possible, shall describe the Emergency and the actions the party intending to effect performance intends to take, is taking, or has taken to abate such Emergency and further provided that such actions were taken only to the extent reasonably and immediately necessary to cause the Emergency no longer to exist. The reasonable costs and expenses incurred in connection with the making of any such maintenance, repair or replacement or the taking of any such action for which such applicable FASP Owner, is or would be otherwise responsible, together with interest thereon (at the Prime Rate for the first twenty days after demand for payment, and at the Involuntary Rate thereafter), shall be immediately payable upon demand by such FASP Owner to the FASP Owner effecting such performance (the “Curing FASP Owner”). The Association shall have an Association Lien in respect of amounts owed pursuant to the preceding sentence as if the same were payable to the Association as part of the Association Charges payable by such applicable FASP Owner, but such lien shall be held (and enforced) by the Association for the benefit of the Curing FASP Owner.

(b) Any operation, maintenance, repair or other action taken to abate and remove any such Emergency in accordance with the terms of this Section 16.9 shall be the sole responsibility of the FASP Owner taking such action with respect to the quality and the proper completion thereof (and such FASP Owner shall be liable for any and all damage caused thereby or in the course thereof and shall indemnify and hold the Association, Managing Agent, and other FASP Owners, to the extent affected thereby, harmless with respect to the same); except that the responsibility thereafter for maintenance and related obligations for the item or area repaired or replaced shall remain with the FASP Owner who had that responsibility prior to the Emergency.

Section 16.10 Cure of Monetary Events of Default. In the event that a Monetary Event of Default shall occur, and subject to the rights of a Registered Mortgagee as set forth in Article XV, each FASP Owner and the Association (for purposes of this Section 16.10, collectively, the “Paying Party”) shall have the right (with approval of the Association Board) but otherwise without the consent of the defaulting FASP Owner and without notice except as otherwise provided in this Section 16.10), but not the obligation, to cure any such Monetary Event of Default by paying to the Association the entire amount then due and unpaid to the Association, provided that prior to making any such payment, the Paying Party shall give notice to the defaulting FASP Owner, each such defaulting FASP Owner’s Registered Mortgagee(s), the Secretary of the Association, and each Association Board Member of its intention to cure the defaulting FASP Owner’s Monetary Event(s) of Default if such Monetary Event of Default is not cured by such FASP Owner within thirty (30) days following receipt by the defaulting FASP Owner of such notice from the Paying Party. Such notice shall identify and detail the amounts proposed to be paid by the Paying Party and shall state in bold: “YOUR FAILURE TO PAY THE AMOUNTS CURRENTLY DUE TO THE ASSOCIATION WITHIN THIRTY (30)

DAYS FOLLOWING YOUR RECEIPT OF THIS NOTICE SHALL ENTITLE US, WITHOUT DECREASING ANY OF YOUR OBLIGATIONS IN RESPECT THEREOF, TO PAY SUCH AMOUNTS ON YOUR BEHALF AND TO COLLECT INTEREST FROM YOU IN ACCORDANCE WITH THE TERMS OF THE ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION DECLARATION." Any funds so advanced by the Paying Party, together with interest at the Involuntary Rate from the date of payment to the date of repayment, shall be reimbursed by the defaulting FASP Owner to the Paying Party within thirty (30) days after written demand therefor; and the Association shall have an Association Lien in respect of any such amount as if the same were payable to the Association as part of the Association Charges payable by such defaulting FASP Owner, but such lien shall be held (and enforced) by the Association for the benefit of the Paying Party. The defaulting FASP Owner shall not have the right to dispute the obligation for, or the amount of, any payments made by the Paying Party under this Section 16.10 unless it commences an Arbitration with respect thereto no later than the last day of the thirty (30) day period set forth in the notice described in the second sentence of this Section 16.10.

Section 16.11 Costs and Expenses; Interest. All sums of money expended, and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and court costs) incurred, by the Association or the Managing Agent, in connection with:

- (a) the collection of any unpaid Association Charges and/or Special Assessments from a FASP Owner pursuant to the terms of Section 16.5 hereof and/or in foreclosing any Association Lien resulting therefrom;
- (b) the abatement, enjoinder, removal, or cure of any violation, breach, or default pursuant to the terms of Section 16.5 or 16.6 hereof;
- (c) the suspension or denial of any right, service, or privilege pursuant to the terms of Section 16.8 hereof; or
- (d) the exercise of any other remedy available to the Association under the Association Documents or otherwise; or

All such sums of money, costs and expenses, together with all overdue Association Charges and/or Special Assessments, shall (subject to the provision of Section 16.2 hereof) bear interest (to be computed from the date expended or due, as the case may be, to the date of actual payment) at the Involuntary Rate. All sums payable by a FASP Owner to the Association pursuant to the terms of this Section 16.9 shall constitute Special Assessments payable by such FASP Owner.

Section 16.12 Remedies Cumulative. The remedies specifically granted in this Article 16 or elsewhere in the Association Documents shall be cumulative, shall be in addition to all other remedies obtainable at law or in equity and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of the Association or Balance Parcel Owner, or if applicable, Yards Parcel Owner, as the case may be. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise, of any other remedy.

Section 16.13 No Lease Termination. For the avoidance of doubt, in no event shall a default under this Declaration or the LLC Agreement permit or serve as the predicate for a termination of the Balance Lease or any Severed Parcel Lease whenever the Balance Parcel Owner or the applicable Severed Parcel Owner, as the case may be, is not obligated to perform an action, or otherwise obligated beyond its Association Share, in accordance with the provisions of Article 13 hereof and the Master Declaration.

Section 16.14 Certain Events of Default Suspended by Arbitration. Notwithstanding anything to the contrary contained in this Section 16 above, (a) no Event of Default shall be deemed to exist by reason of any act, omission, event or condition which would otherwise give rise to or constitute a Non-Monetary Event of Default (other than a Non-Monetary Event of Default arising out of a Master Declaration Obligation) for so long as (but only for so long as) such act, omission, event or condition is the subject of an ongoing Arbitration; and (b) a Monetary Event of Default arising solely as a result of the failure to pay any amounts expended by the Association to cure a Non-Monetary Event of Default (other than cure of a Non-Monetary Event of Default arising out of a Master Declaration Obligation) under Section 16.5 (a “Special Monetary Event of Default”) shall be deemed not to exist for so long as (but only for so long as) whether or not such Non-Monetary Event of Default exists or existed, or whether or not any such amounts were required to be paid to effectuate such cure, is the subject of an ongoing Arbitration. For purposes of this Section 16.14 only, the Arbitration shall be considered “ongoing” during the period commencing upon the service on all parties thereto of an arbitration notice (as described in Section 22.18 hereof) and concluding upon the rendering of a final decision by the Arbitrator therein (or other final resolution of the matter in question) in accordance with the procedures applicable to such Arbitration. The foregoing shall not act to limit the right to Arbitration with respect to disputes concerning Monetary Events of Default, including, without limitation, those arising as a result of the failure to pay any amounts expended by the Association to cure Non-Monetary Events of Default; provided, however, that except as provided in clause (b) of the first sentence of this Section 16.14 with respect to Special Monetary Events of Default, the fact that such an Arbitration is ongoing shall not suspend the existence of such Monetary Event of Default for any purpose hereunder. The provisions of this Section 16.14 are subject to the provisions of Section 16.15 below.

Section 16.15 Rights to Dispute Events of Default and Time Period to Commence Arbitrations Relating to Events of Default. Notwithstanding any of the foregoing or any other provision hereof, no FASP Owner shall have the right to dispute that it has committed an Event of Default unless it commences an Arbitration so disputing (a) with respect to any Monetary Event of Default, within thirty (30) days after the expiration of the fifteen (15) day notice period under Sections 16.1(a), 16.1(b) or 16.1(c), whichever is applicable; and (b) with respect to Non-Monetary Events of Default under Section 16.1(d), within thirty (30) days after the expiration of the cure period set forth in the applicable notice described in Section 16.1(d) (or after the expiration of the cure period required to be set forth in such notice, if longer).

ARTICLE 17

COVENANT OF FURTHER ASSURANCES

Section 17.1 General. Any FASP Owner or other Person (including the Association) who or which is subject to the terms of this Declaration shall, at the expense of any other Person requesting the same, execute, acknowledge and deliver to such other Person such instruments, in addition to those specifically provided for in the Association Documents, and shall take such other action, as such other Person may reasonably request to effectuate the provisions of the Association Documents or any transaction contemplated therein or to confirm or perfect any right to be created or transferred thereunder or in connection with any such transaction (provided, that such instrument or action shall not impose any additional obligations or liabilities (other than to a de minimis extent) on the Person delivering the same or taking such action.

Section 17.2 Power of Attorney In Favor of the Association. If any FASP Owner or any other Person who or which is subject to the terms of this Declaration fails or refuses to execute, acknowledge, or deliver any instrument, or fails or refuses, within twenty (20) days after request therefor, to take any action that such FASP Owner or Person is required to take pursuant to this Declaration, the Association is hereby authorized, as the attorney-in-fact for such FASP Owner or other Person (which power shall be deemed to be coupled with an interest and irrevocable), to execute, acknowledge and deliver such instrument, or to take such action, in the name of such FASP Owner or other Person, and such document or action shall be binding on such FASP Owner or other Person. The terms of this Section shall not apply to any Mortgagee or the successors and assigns thereof, whether before or after foreclosure of such Permitted Mortgage.

Section 17.3 Power of Attorney in Favor of Balance Parcel Owner. If any FASP Owner, the Association, or any other Person who is subject to the terms of this Declaration fails or refuses to execute, acknowledge, or deliver any instrument, or fails or refuses, within twenty (20) days after request therefor, to take any action that the Association, such FASP Owner, or such other Person is required to take pursuant to this Declaration at the request of Balance Parcel Owner, Balance Parcel Owner is hereby authorized, as the attorney-in-fact for the Association, such FASP Owner, or such other Person (which power shall be deemed to be coupled with an interest and irrevocable), to execute, acknowledge and deliver such instrument, or to take such action, in the name of the Association, such FASP Owner, or such other Person, and such document or action shall be binding on the Association, such FASP Owner, or such other Person, as the case may be. The terms of this Section shall not apply to any Mortgagee or the successors and assigns thereof, whether before or after foreclosure of such Mortgage.

Section 17.4 Special Power of Attorney in Favor of Balance Parcel Owner. Without limiting the foregoing provisions of this Article 17, each FASP Owner and Occupant, the Association, all Persons having any interest in the Facility Airspace Parcel hereby authorize the Balance Parcel Owner, as the attorney-in-fact for each such Person (which power shall be deemed to be coupled with an interest and irrevocable), from time to time, to execute, acknowledge and deliver such instruments, or take such actions, in the name of the Association, such FASP Owner, or such other Person, all of which shall be binding on the Association, such

FASP Owner, or such other Person, as the case may be to in order to amend, adjust, expand, reduce or otherwise modify the metes and bounds (including elevation) of the Facility Airspace Parcel (including, without limitation, the location(s) of the Lower Limiting Plane or any tax lot line(s) in connection with all or any portion of same) (provided, however, that the metes and bounds description of the portion(s) of the Facility Airspace Parcel that is(are) subject to a Severed Parcel Lease shall be unchanged thereby), and to amend this Declaration and the Exhibits hereto, or record such other instruments, as may be necessary from time to time in order to effect the same or in furtherance thereof. No such change may be made without the express written approval of Declarant pursuant to Section 3.1(b) of the Master Declaration, however, following such approval, unless Declarant shall execute such documents and take such actions in its own name (which Declarant shall be authorized to do upon the consent of Balance Parcel Owner and without the consent of any other FASP Owner or other Person having any interest in the Facility Airspace Parcel or any portion thereof from time to time) Declarant may instead authorize Balance Parcel Owner to so act as its attorney in fact for the purposes of, and in the manner set forth in, this Section 17.4.

ARTICLE 18

COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS TO RUN WITH THE LAND

Section 18.1 General. Subject to the terms of Section 18.2 below, all of the provisions of this Declaration, the LLC Agreement and the Rules and Regulations (including, without limitation, the provisions of this Article 18) shall, unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants, conditions, easements and restrictions running with the land encumbered hereby and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon, and shall inure to the benefit of, the owners and mortgagees of all or any part thereof, or interest therein, and such party's heirs, executors administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in, or for the benefit of, the general public. All present and future owners, tenants and Occupants of FAS Parcels shall be subject to, and shall comply with, the provisions of this Declaration, the LLC Agreement and the other Association Documents, as each of the same may be amended from time to time. The acceptance of a deed or other instrument of conveyance, or the succeeding to title, the entering into a lease, or the entering into occupancy of any FAS Parcel, shall constitute an agreement that the provisions of this Declaration, the Certificate, the LLC Agreement and the Rules and Regulations, as each of the same may be amended from, time to time, are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having, at any time, any interest or estate in such FAS Parcel as though such provisions were recited and stipulated at length in each and every deed, other instrument of conveyance, or lease. However, the foregoing is not intended to impose affirmative duties or liability on Persons who hold an interest in a FAS Parcel merely as security for the performance of an obligation. The conveyance of a Person's only FAS Parcel to another shall constitute such Person's automatic withdrawal from, and resignation of, membership in the Association.

Section 18.2 Termination of this Declaration. This Declaration cannot be terminated except by a written agreement signed by all of the FASP Owners, the Association and the Yards Parcel Owner; provided, however, that this Declaration and all rights and obligations hereunder shall run with the ERY and shall not be terminated so long as the ERY Roof Component shall continue to exist.

Section 18.3 Subordination of Mortgages to Declaration. Each mortgage encumbering a FAS Parcel or any interest in a FAS Parcel (including, without limitation, a Severed Parcel Lease) shall be subordinate to the Master Declaration and the Association Documents, as the same may be amended from time to time in accordance with their terms, and neither the enforcement of any provisions in or the exercise of any remedies under any such mortgage, nor the actual transfer of ownership of or interest in any FAS Parcel, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, to any such mortgagee or any designee, can or shall cause the termination, or otherwise affect the existence, of the Association, the Master Declaration or the Association Documents. The foregoing shall not be construed as a joinder by any such mortgagee in this Declaration.

ARTICLE 19

AMENDMENTS TO THIS DECLARATION

Section 19.1 General.

(a) Subject to the terms of this Article 19 below (including, without limitation, Section 19.7 below) and the proviso concerning the method of allocating the Association Shares contained in the second sentence of Section 12.1 above, any provision contained in the body of this Declaration or any other Association Document may be amended, modified, added to, or deleted by the vote of at least sixty-six and two-thirds percent (66 2/3%) of the votes of the Association Board (including, without limitation, the vote of any Manager appointed by the Balance Parcel Owner for so long as Balance Parcel Owner leases or owns a FAS Parcel), taken in accordance with the provisions of the LLC Agreement.

(b) Notwithstanding anything contained in this Declaration to the contrary, for the avoidance of doubt, the terms of the proviso concerning the method of allocating the Association Shares contained in the second sentence of Section 12.1 hereof may not be modified without the consent of each FASP Owner then a member of the Association.

(c) Any provision contained in the Rules and Regulations may be amended, modified, added to, or deleted in accordance with Section 2.4 of this Declaration and Section 2.2(a)(xiv) of the LLC Agreement.

(d) Notwithstanding anything contained in this Declaration to the contrary, but subject to any limitation imposed by applicable Legal Requirements, no amendment to Article 15 of this Declaration shall be adopted without the consent of a majority of the then Registered Mortgagees (which shall be evidenced by the execution of such amendment by the Registered Mortgagees or majority of same), regardless of the nature

or substance of the amendment, which consent, however, shall not be unreasonably withheld or delayed.

(e) The consent of Declarant shall not be required with respect to any amendment to this Declaration unless and until Declarant shall be a FASP Owner in which event Declarant, as a FASP Owner, shall have such rights in respect of amendments hereto as are set forth herein generally with respect to FASP Owners; provided, however, that any provisions of this Declaration specifically referencing Declarant, including without limitation Article 23 hereof, may not be modified, amended, waived, or terminated without the prior written consent of Declarant.

Section 19.2 Yards Parcel Owner Rights. No modifications or amendments of this Declaration or any other Association Document which would affect the method of allocating the Association Shares among the FAS Parcels, the Master Declaration Obligations, the YP Obligation Assessments, and/or the rights and remedies of the Association or the Yards Parcel Owner in connection therewith, including without limitation the enforcement mechanisms set forth herein on the part of the Association and/or the Yards Parcel Owner with respect to Master Declaration Obligations and YP Obligation Assessments, shall be effective without the prior written consent of the Yards Parcel Owner to such modification or amendment. The consent of the Yards Parcel Owner shall not be unreasonably withheld, conditioned or delayed and shall in no event be withheld if the proposed amendment or modification does not conflict with the express provisions of the Master Declaration and of this Declaration (with respect to the same as originally recorded, or to any amendment or modification thereto previously consented to by Yards Parcel Owner). Notwithstanding the foregoing, if no comment or response has been received from the Yards Parcel Owner with respect to any proposed amendment or modification of this Declaration requiring approval of Yards Parcel Owner (approving the same or setting forth the basis for any objection to the same in reasonable detail) within twenty (20) days after receipt by the Yards Parcel Owner of such proposed amendment or modification, or if there is any dispute with respect to the disapproval of any such amendment or modification, the Association shall have the right to submit the same for resolution in accordance with Section 18.19 of the Master Declaration.

Section 19.3 Prior Notice; Execution of Amendments.

(a) A copy of any proposed amendment or modification to this Declaration or any other Association Documents shall be furnished to each FASP Owner no less than thirty (30) days prior to the duly constituted meeting of the Association Board at which such amendment or modification will be voted on by the Association Board.

(b) Subject to the rights of Declarant set forth in Section 19.1(e), of Yards Parcel Owner set forth in Section 19.2 and of any individual FASP Owner set forth in Section 19.7 below, any amendment or modification to this Declaration may be executed if effectuated by a vote of the FASP Owners (or applicable percentage thereof) pursuant to Section 19.1 above (and, to the extent required, the consent of the FASP Owner of the affected FAS Parcel, if applicable under Section 19.7) (and as to which the requisite advance notice was furnished pursuant to Section 19.3(a) above), by the President or Vice President of the Association. If the amendment or modification shall have been

effectuated by a vote of the FASP Owners (or applicable percentage thereof) pursuant to the terms of Section 19.1 above (and, to the extent required, the consent of the FASP Owner of the affected FAS Parcel, if applicable under Section 19.7) (and if the requisite advance notice was furnished pursuant to Section 19.3(a) above), there shall be attached to such amendment or modification an original executed Secretary's certification, certifying that all of the FASP Owners or the requisite percentage of FASP Owners (and, to the extent required, the FASP Owner of the affected FAS Parcel, if applicable under Section 19.7) approved the amendment or modification at a duly constituted meeting (subject to the requisite advance notice under Section 19.3(a) above) or (when permitted in the LLC Agreement) in writing without a meeting, in which certification shall be described the percentage of FASP Owners (and, to the extent required, the FASP Owner of the affected FAS Parcel, if applicable under Section 19.7) so consenting and (if voted upon at a meeting) the date and time of the meeting.

Section 19.4 Recording of Amendments. No amendment to this Declaration (including any amendment to the Table of Definitions annexed hereto as Exhibit E and to the LLC Agreement annexed hereto as Exhibit D, but excluding any amendment to the Rules and Regulations annexed hereto as Exhibit F) shall be effective unless and until the same shall be recorded in the Clerk's Office.

Section 19.5 Amendments to the LLC Agreement. In the event that the LLC Agreement shall be duly amended pursuant to the terms thereof, an amendment to this Declaration, suitably amending Exhibit D hereto, shall be duly executed by the President or Vice President and the Secretary or an Assistant Secretary of the Association (with a suitable Secretary's certification as described in Section 19.3 above attached thereto) and recorded in the Clerk's Office.

Section 19.6 Power of Attorney with respect to Amendments. To the extent necessary in order to effect any amendment or modification to this Declaration and/or the other Association Documents not requiring the consent of Declarant and/or Yards Parcel Owner and/or any FASP Owner, or where Declarant's and/or Yards Parcel Owner's and/or a FASP Owner's consent has been given or is otherwise deemed to have been given, Balance Parcel Owner and the Association shall each be authorized, as the attorney-in-fact for Declarant and/or the Yards Parcel Owner and/or such FASP Owner (which power shall be deemed to be coupled with an interest and irrevocable), from time to time, to execute, acknowledge and deliver such instruments, or take such actions, in the name of Declarant, which shall be binding on Declarant, to amend this Declaration and the other Association Documents, otherwise subject to the provisions hereof.

Section 19.7 Certain Limitations on Amendments. Notwithstanding anything contained in this Declaration to the contrary, in no event may this Declaration or any other Association Document be amended, modified, added to or deleted from:

- (a) so as to grant or create any power in the Association Board to change the (x) permitted uses of any FAS Parcel, (y) allocation of repair and maintenance obligations among the respective Occupants and/or individual Unit Owners within any FAS Parcel that is a Condominium, or (z) the internal security and other strictly internal

rules and regulations, in each case, of any FAS Parcel (other than any FAS Parcel (or the applicable portion thereof) owned or leased by the Association) that do not affect any open space or Common Facilities (including, without limitation, the use, operation, repair or maintenance thereof), without the consent of the FASP Owner of the affected FAS Parcel (it being understood that the foregoing provisions of this clause (a) are not intended to limit or vitiate any right of the Association to grant or modify easements as provided for in and subject to the terms and conditions of Article 7 hereof (including, without limitation, as provided in the Annex re Site Specific Easements); or

(b) if such proposed amendment(s), modification(s), addition(s) or deletion(s), individually or in the aggregate, would (or would reasonably be expected to): (i) adversely affect a FAS Parcel in any material respect, including, without limitation, to (A) increase in any material respect the obligations, or impair or decrease in any material respect the rights and entitlements, in each case appurtenant to the ownership, use or occupancy of any FAS Parcel or any portion thereof, or (B) adversely affect in any material respect the use, occupancy, management, operation or ability to lease, sell or finance any FAS Parcel or any portion thereof; (ii) change the provisions set forth herein with respect to the methodology of allocating the Association Shares; (iii) change the Stabilized Expense Share, as applicable, of any FAS Parcel; or (iv) modify the provisions hereof with respect to the allocation of Association Expenses (as opposed to the provisions hereof concerning the determination of Association Expenses); in each case without the consent of the FASP Owner(s) of the affected FAS Parcel(s) (or of the affected portion(s) of any FAS Parcel), if any (it being understood that the foregoing provisions of this clause (b) are not intended to limit or vitiate any right of the Association to grant or modify easements as provided for in and subject to the terms and conditions of Article 7 hereof (including, without limitation, as provided in the Annex re Site Specific Easements)).

ARTICLE 20

INDEMNIFICATION

Section 20.1 Indemnification of Association. Each FASP Owner, to the fullest extent permitted by law, shall indemnify and save the Association, any Managing Agent and their respective shareholders, partners, members, agents, directors, Occupants, officers and employees (collectively, the "Association Indemnified Parties"), harmless from and against any and all liability for loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, charges and expenses, which may be suffered by, imposed upon or incurred by or asserted against the Association Indemnified Parties (including without limitation any claims made by the Yards Parcel Owner), or any of them, by reason of any negligent or tortious act or failure to act by the applicable FASP Owner, or its respective Occupants or Personnel in or on the Facility Airspace Parcel, except to the extent that any of the foregoing shall have been caused by the gross negligence or willful misconduct of any of the Association Indemnified Parties. For the avoidance of doubt, the indemnification obligations of the FASP Owners hereunder are several, not joint. The term "Association Indemnified Parties" shall be deemed to include Balance Parcel Owner when acting in the capacity of attorney in fact for Declarant.

Section 20.2 Indemnification of FASP Owner and Occupants. The Association and each FASP Owner, to the fullest extent permitted by law, shall indemnify and save the (other) FASP Owner(s), any of such FASP Owner's Occupants and Personnel and their respective shareholders, partners, members, agents, directors, officers and employees (collectively, the "FASP Owner Indemnified Parties"), harmless from and against any and all liability for loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, charges and expenses which may be suffered by, imposed upon or incurred by or asserted against the FASP Indemnified Parties (including, without limitation, any claims made by the Yards Parcel Owner), or any of them, by reason of any negligent or tortious act or failure to act by the Association or the other FASP Owner(s) or their respective Occupants or Personnel in or on the Facility Airspace Parcel, except to the extent that any of the foregoing shall have been caused by the gross negligence or willful misconduct of any of the FASP Owner Indemnified Parties. For the avoidance of doubt, the foregoing shall not excuse or limit any FASP Owner's obligations in respect of the payment of Association Charges and Special Assessments. The term "FASP Owner Indemnified Parties" shall be deemed to include Balance Parcel Owner when acting in the capacity of attorney in fact for Declarant.

Section 20.3 Notice and Defense Process.

(a) If any claim, action or proceeding is made or brought against any of the Association Indemnified Parties by reason of any event (or allegation of any event) for which the FASP Owners have agreed to indemnify any Association Indemnified Parties in this Article 20 (any such event or allegation, a "FASP Owner Negligence Claim"), and not by reason of any event (or allegation of any event) for which the Association has agreed to indemnify any FASP Owner in this Article 20 (any such event or allegation, an "Association Negligence Claim") then, upon demand by such Association Indemnified Party, the applicable FASP Owner(s) shall resist or defend such claim, action or proceeding (in the Association's name, if necessary) by the attorneys for the applicable FASP Owner's insurance carrier (if such claim, action or proceeding is covered by insurance) or (in all other instances) by such attorneys as the applicable FASP Owner shall select and such Association Indemnified Party shall approve, which approval shall not be unreasonably withheld. If any claim, action or proceeding is made or brought against any of the Association Indemnified Parties by reason of both a FASP Owner Negligence Claim and an Association Negligence Claim, such Association Indemnified Party may engage attorneys to defend it against such claim, action or proceeding and, if the accident, injury or damage is determined by a court of competent jurisdiction (whether by impleader or otherwise) to have been caused in whole or in part by any negligent or tortious act or failure to act by a FASP Owner, any Occupant and/or their respective Personnel, the applicable FASP Owners shall pay or reimburse such Association Indemnified Party for all or a portion of the reasonable fees and disbursements of such attorneys (based on the comparative negligence or liability of the applicable FASP Owner, any Occupant and/or their respective Personnel, as the case may be).

(b) If any claim, action or proceeding is made or brought against any of the FASP Owner Indemnified Parties by reason of any Association Negligence Claim, and not by reason of any FASP Owner Negligence Claim, then, upon demand by such FASP

Owner Indemnified Party, the Association shall resist or defend such claim, action or proceeding (in such FASP Owner Indemnified Party's name, if necessary) by the attorneys for the Association's insurance carrier (if such claim, action or proceeding is covered by insurance) or (in all other instances) by such in-house or external attorneys as the Association shall select and (in the case of external attorneys) such FASP Owner Indemnified Party shall approve, which approval shall not be unreasonably withheld. If any claim, action or proceeding is made or brought against any of the FASP Owner Indemnified Parties by reason of both a FASP Owner Negligence Claim and an Association Negligence Claim, such FASP Owner Indemnified Party may engage attorneys to defend it against such claim, action or proceeding and, if the accident, injury or damage is determined by a court of competent jurisdiction (whether by impleader or otherwise) to have been caused in whole or in part by any negligent or tortious act or failure to act by the Association and/or its Personnel, the Association shall pay or reimburse such FASP Owner Indemnified Party for all or a portion of the reasonable fees and disbursements of such attorneys.

(c) Each of the Association Indemnified Parties and FASP Owner Indemnified Parties will not withhold their respective consent(s) to any proposed settlement by the indemnifying party of any matter which is fully covered by such party's indemnification hereunder, provided that such settlement provides solely for the payment of money and does not impose any other liability on the respective Association Indemnified Party or FASP Owner Indemnified Party.

Section 20.4 Not Affected by Insurance. The obligations of the FASP Owners and the Association under this Article 20 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the FAS Parcels or the Association Property.

Section 20.5 No Personal Liability. Notwithstanding anything to the contrary contained in this Declaration, no direct or indirect partner, director, member or shareholder of the Association nor any FASP Owner (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the respective party's obligations hereunder.

ARTICLE 21

NOTICES

Section 21.1 General. All notices required or desired to be given hereunder shall be sent by hand delivery, by registered or certified mail, return receipt requested or by national overnight courier that provides a receipt, postage prepaid addressed:

(a) if to the Association, to the Association at its principal office as set forth in the LLC Agreement, or such other address as the Association shall designate in writing to the FASP Owners from time to time (with a photocopy sent in like manner to the Managing Agent (if any) at its principal office address);

(b) if to FAS Parcel C Owner, to the following address(es): (i) c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, and (ii) to the owner of Office Unit 1 (as such term is defined in the Tower C Condominium Documents): (x) from and after the recording of this Declaration until the date Coach has taken possession of Office Unit 1 for the conduct of its business: c/o Coach, Inc., 516 West 34th Street, New York, New York 10001, Attention: Todd Kahn, and (y) from and after the date Coach has taken possession of Office Unit 1 for the conduct of its business until Coach or any Coach Affiliate (as each such term is defined in the FAS Parcel C Condominium Documents) no longer is the Unit Owner of Office Unit 1 or otherwise occupies more than 60% of Office Unit 1, c/o Coach, Inc.: at its address at Office Unit 1, Attention: Todd Kahn, and (z) thereafter, to the then Unit Owner or occupant of 60% or more of Office Unit 1;

(c) if to any other FASP Owner, to such FASP Owner at its address at the Facility Airspace Parcel;

(d) if to Balance Parcel Owner, at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023;

(e) if to Declarant, to the address set forth in the introductory paragraph of this Declaration; or

(f) if to a Mortgagee, to such Mortgagee at its latest address designated in writing to the Association;

(g) if to Yards Parcel Owner, to the address set forth in the Master Declaration.

Any of the foregoing parties may change the address to which notices are to be sent, or may designate not more than two (2) additional addresses for the giving of notice, by sending written notice to the other parties as aforesaid. All notices sent pursuant to the terms of this Section 21.1 shall be deemed given when delivered by hand, when deposited in a branch or general post office or depository maintained by the United States Postal Service located in the State of New York or delivered to a national overnight courier service, enclosed in a sealed, postage prepaid wrapper, addressed as aforesaid, provided, however, that notices of changes of address, notices designating additional addresses and notices deposited in a United States Postal Service depository located outside of the State of New York shall be deemed to have been given when received.

Section 21.2 Waiver of Service of Notice. Whenever any notice is required to be given by Law or pursuant to the terms of this Declaration, a waiver thereof in writing, signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE 22

MISCELLANEOUS

Section 22.1 Inspection of Documents. The Association shall maintain in its offices, and make available for inspection by FASP Owners and their authorized representatives during reasonable business hours, current copies of this Declaration, the Certificate, the LLC Agreement and the Rules and Regulations as each of the same may be amended from time to time.

Section 22.2 Estoppel Certificates. Whenever requested upon at least ten (10) days' prior written notice from a FASP Owner in connection with a proposed transfer of a FAS Parcel, lease or a Mortgage of a FAS Parcel, the Association shall execute and deliver a certificate addressed to the applicable transferee or mortgagee: (a) whether this Declaration is in full force and effect; (b) the extent to which this Declaration has been modified, whether by instrument of record or otherwise; (c) the extent to which, to the best of the Association's knowledge, the applicable FASP Owner is in default under this Declaration, which default remains uncured; and (d) any other information known to the Association and reasonably requested by the requesting party.

Section 22.3 Incorporation by Reference. The terms, covenants, conditions, descriptions and other information contained in:

- (a) the description of the ERY and Facility Airspace Parcel annexed hereto as Exhibits A, and B-1 through B-3;
- (b) the Certificate of Formation annexed hereto as Exhibit C;
- (c) the LLC Agreement annexed hereto as Exhibit D;
- (d) the table of definitions annexed hereto as Exhibit E;
- (e) the description of FAS Parcel C annexed hereto as Exhibit G;
- (f) the description of FAS Parcel D annexed hereto as Exhibit H; and
- (g) the provisions, terms and conditions of the Annex re Specific Site Easements annexed hereto as Exhibit 1,

are, by this reference, each incorporated herein and made a part of this Declaration as if the same were set forth at length in the text hereof.

Section 22.4 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

Section 22.5 Severability. If any provision of this Declaration is invalid or unenforceable as against any Person or under certain circumstances, the remainder of the

provisions of this Declaration, and the applicability of such invalid or unenforceable provision to other Persons or circumstances, shall not be affected thereby. Each provision of this Declaration shall, except as otherwise provided herein, be valid and enforced to the fullest extent permitted by Law.

Section 22.6 No Merger. There shall be no merger of this Declaration or of the estates or interests created by this Declaration or with any other estates or interests created by this Declaration by reason of the fact that this Declaration or the estates or interests created by this Declaration may be held, directly or indirectly, by or for the account of any person or persons who shall own the entire Facility Airspace Parcel. No such merger shall occur unless and until all persons at the time having an interest in the entire Facility Airspace Parcel and all persons having an interest in this Declaration or in the estates created by this Declaration shall join in a written instrument effecting such merger and shall duly record the same.

Section 22.7 Enforcement. In the event of any breach or violation or threatened breach or violation by any FASP Owner of the terms and conditions provided herein, the Association will have, in addition to the right to claim damages, the right to enjoin such breach or violation or threatened breach or violation or to seek specific performance in a court of competent jurisdiction. In no event shall the Association, any FASP Owner or Occupant or any Person acting by or on behalf of the Association, a FASP Owner or Occupant be liable for consequential or punitive damages to any Person hereunder.

Section 22.8 Exculpation. Any liability arising under or pursuant to this Declaration in respect of any FAS Parcel (or a portion thereof) or the Association Property shall be enforceable only against the then-current FASP Owners or Occupants of such FAS Parcel or the Association, as applicable, and not against any of (a) the Personnel of such FASP Owners or of such Occupants or of the Association, (b) the then-current FASP Owners or Occupants of any other FAS Parcel, or (c) any prior FASP Owners or Occupants of any FAS Parcel or any portion thereof, except to the extent that the liability arose during the period of ownership or occupancy of such FASP Owners or Occupants. Any liability of any FASP Owners or the Association hereunder shall be limited to the FASP Owners' interest in its FAS Parcel or the Association's interest in the Association Property, as applicable, and the proceeds thereof. For the avoidance of doubt, no Personnel of any FASP Owner or the Association shall have any personal liability hereunder.

Section 22.9 Force Majeure. Neither the Association nor any FASP Owner shall be deemed to be in default in the performance of any obligation to be performed under this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by Force Majeure.

Section 22.10 Jury Trial. The FASP Owners and the Association shall be deemed to have waived all rights to trial by jury in any action or proceeding arising out of this Declaration.

Section 22.11 Approvals. If the Association withholds its consent or approval of any matter requiring such consent or approval hereunder, the Association shall specify the basis on which such consent or approval is being withheld. Wherever in this Declaration the

Association has agreed not to withhold unreasonably its consent or approval to a matter (or any provision of like import), the same shall be deemed a covenant by the Association not to unreasonably delay or condition the same.

Section 22.12 Parties-in-Interest. Notwithstanding anything to the contrary contained in this Declaration, if all or any portion of the Facility Airspace Parcel is held as a Condominium, the applicable Condominium Board shall be deemed to be the sole FASP Owner, party-in-interest and beneficiary for all purposes under this Declaration with respect to the premises held as a Condominium, and the holder of a lien encumbering any unit of such Condominium, and the holder of any other occupancy or other interest in such unit shall not be deemed to be a FASP Owner, party-in-interest or third-party beneficiary hereunder.

Section 22.13 Gender. A reference in this Declaration to any one gender, masculine, feminine, or neuter, includes the other two, and the singular includes the plural, and vice-versa, unless the context otherwise requires.

Section 22.14 Captions. The index hereof and the captions herein inserted are included only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration or the intent of any provision hereof.

Section 22.15 Statutory References. References in this Declaration to any Legal Requirements, including without limitation any statutes, codes, zoning text, rules and regulations, shall be deemed to include references to any amendments, modifications, replacements or successors thereto in effect from time to time.

Section 22.16 Successors and Assigns. The rights and/or obligations of, and limitations imposed on, Declarant or its designee as set forth herein shall inure to the benefit of, and shall be binding upon, the respective successors and assignees of Declarant and its designee (as the case may be), as well as any designated transferees of their respective FAS Parcels and/or the Association Property. Subject to the foregoing, Declarant and its designee (as the case may be) shall each have the right, at any time, in its sole discretion, to assign or otherwise transfer its interest herein, whether by merger, consolidation, lease, assignment, or otherwise. Notwithstanding the foregoing, any Mortgagee of a FAS Parcel, or a purchaser at a foreclosure sale of a Registered Mortgage, who succeeds to the interest of a FASP Owner shall be responsible only for the obligations of such FASP Owner arising from or after the effective date of succession to title to such FAS Parcel and shall not be liable for any obligations theretofore accruing (including, without limitation, for any unpaid Association Charges or Special Assessments).

Section 22.17 Third Party Beneficiary. Notwithstanding anything to the contrary herein, (i) the Yards Parcel Owner shall be a third-party beneficiary of the provisions of the Association Documents which affect the obligations of the Association or the FASP Owners to the Yards Parcel Owner pursuant to the Master Declaration and/or this Declaration, including without limitation the determination of Association Shares, Master Declaration Obligations, YP Obligation Assessments, and the rights and remedies of the Association and the Yards Parcel Owner in connection therewith, including without limitation the enforcement mechanisms set forth herein on the part of the Association and/or the Yards Parcel Owner with respect to Master

Declaration Obligations and/or YP Obligation Assessments, the breach of which would otherwise have a material adverse effect on the Yards Parcel, (ii) the Yards Parcel Owner shall be entitled, subject to the terms and conditions herein and in the Master Declaration, to enforce such provisions against the Association and/or the FASP Owners, as the case may be, and (iii) subject to and as more particularly provided in Section 19.2 herein above, in no event shall any such provisions be amended without the prior written consent of the Yards Parcel Owner. Without limitation of the foregoing, to the extent that a Condominium Board or the Association has rights enforceable against any Individual Unit Owner with respect to Master Declaration Obligations and/or YP Obligation Assessments, then the Yards Parcel Owner shall be a third party beneficiary of any such rights.

Section 22.18 Dispute Resolution.

(a) Except as may otherwise be expressly provided in the Association Documents, any dispute, controversy or claim between or among any one or more of the FASP Owners and/or the Association arising out of or concerning the Association Documents (each, for purposes of this Section, an “Arbitrable Claim”), shall be determined and resolved by arbitration (and not by litigation) conducted in the City and County of New York in accordance with the terms of this Section 22.18 (each such proceeding, an “Arbitration”). Nothing in this Article or elsewhere in the Association Documents shall (unless otherwise expressly provided) require Arbitration of any dispute between: (a) any Condominium Board on the one hand and any third-parties (including, without limitation, mortgagees, tenants, insurers and managing agents) on the other or (b) the Association on the one hand and any such third parties on the other or (c) any FASP Owner on the one hand and any such third parties on the other.

(b) Notwithstanding the foregoing, prior to any FASP Owner’s commencement of an Arbitration with respect to any Arbitrable Claim relating to a payment of a monetary obligation to the Association, such FASP Owner shall be required to submit such payment to the Association, which payment will be adjusted as directed by the Arbitrator as set forth herein.

(c) The following provisions shall apply to any arbitration of an Arbitrable Claim (an “Arbitration”):

(i) The arbitration shall be administered and conducted by a neutral Person in New York, New York, mutually agreed to by the parties to the Arbitration (the “Arbitrator”). The Arbitrator shall have not less than ten (10) years’ experience in the subject area of the Arbitrable Claim, and shall not have been employed by, or engaged in a professional capacity (other than as an arbitrator) for any of the FASP Owners or the Association. In the event that the applicable parties cannot agree within fifteen (15) days on the identity of the Arbitrator, any party may apply to the Supreme Court, New York County, for the appointment of an Arbitrator; provided, however, that if an arbitrator has been appointed and is still serving in such capacity under this Declaration for the resolution of a dispute between any of the (other) FASP Owners and/or the Association concerning the same or any similar issue, such arbitrator shall serve

as Arbitrator hereunder. The Arbitrator shall, once so selected, serve as Arbitrator for all disputes hereunder with respect to such issue and/or any similar issue until the earlier of (x) the fifth (5th) anniversary of the date hereof and (y) any death, incapacity, resignation or removal (by mutual agreement of the applicable parties) of the Arbitrator. As soon as reasonably practicable after the fifth (5th) anniversary of the date hereof and each succeeding fifth (5th) anniversary thereafter and any death, incapacity, resignation or removal (by mutual agreement of the applicable parties) of the Arbitrator, the applicable parties (acting reasonably and in good faith) shall agree on a successor Arbitrator, who may or may not have previously served as the Arbitrator, through the procedures set forth above. The fees and expenses of the Arbitrator in connection with the arbitration shall be borne equally by the parties to such Arbitration.

(ii) Within fifteen (15) Business Days after the delivery of an arbitration notice in accordance with the foregoing provisions of this Section 22.18(c), each of the parties to such Arbitration shall submit to the Arbitrator a single proposed settlement of the dispute (which settlement shall not be inconsistent with this Declaration or the Master Declaration), together with such written explanation or evidence relating thereto as the submitting party deems appropriate. After making its submission, a party may not make any additions to or deletions from, or otherwise change, the same. If any party fails to make a submission within such fifteen (15) Business Day period, TIME BEING OF THE ESSENCE WITH RESPECT THERETO, such party shall be deemed to have irrevocably waived its right to make any submission.

(iii) Within five (5) Business Days after the earlier of (x) the receipt by the Arbitrator of submissions from each of the parties to such arbitration in accordance with clause (B) of this Section 23.18(c) or (y) the end of the fifteen (15) Business Day period described in such clause, the Arbitrator shall select the settlement proposed in one of such submissions, in its entirety and without any modification thereto, and shall render a determination to such effect in a signed and acknowledged written instrument, originals of which shall be sent simultaneously to the parties to such Arbitration. Such determination shall be conclusive, final and binding on such parties, shall constitute an “award” by the Arbitrator for the purposes of applicable Legal Requirements, and judgment may be entered thereon in any court of competent jurisdiction.

(iv) It is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for any of the FASP Owners not to comply, or otherwise fully perform in accordance with, this Declaration.

(v) If any party to an Arbitration as set forth above protests the determination of the Arbitrator, such party may commence a lawsuit in the New York Supreme Court for New York County under Article 75 or Article 78 of the New York Civil Practice Law and Rules, as applicable, it being understood that the review of the Court shall be limited to the question of whether or not the

Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with clause (B) of this Section 22.18(c).

Section 22.19 Subordination to Master Agreement. This Declaration is subordinate in all respects to the Master Declaration. In the event of any conflict between any provision of this Declaration and express provisions of the Master Declaration, the provisions of the Master Declaration shall control.

Section 22.20 Competitive Businesses. Each FASP Owner may be interested, directly or indirectly, in various businesses and undertakings related or unrelated to the ownership and operation of its FAS Parcel, and such businesses and undertakings may compete, either directly or indirectly, with the business of any other FASP Owner, a Unit Owner or Occupant of a FAS Parcel, including the leasing thereof. Additionally, each FASP Owner (and/or its Occupants) may be interested in leasing the space in its FAS Parcel and engaging in various businesses in its FAS Parcel and such leasing and businesses may compete, either directly or indirectly, with the leasing and businesses conducted in another FAS Parcel or in the Association Property. This Declaration and the LLC Agreement shall be without prejudice to each FASP Owner's right to have such other interests and activities, to so lease its space and to engage in such businesses and to receive and enjoy profits or compensation therefrom, without any liability or obligation to the Association, other FASP Owner or any Occupant (except, the foregoing is not intended to limit each FASP Owner's obligation hereunder and under the LLC Agreement to perform its covenants contained herein) and comply with the limitations on its actions with respect to its FAS Parcel contained herein and without obligation to present to the Association or any other FASP Owner an opportunity of any kind whatsoever with respect thereto, and each FASP Owner waives any rights it or the Association might otherwise have to share or participate in such other interests or activities of any other FASP Owner.

Section 22.21 Cooperation. Whenever a Person subject to this Declaration is required under any provision of this Declaration or the LLC Agreement to cooperate with another Person, at no cost or expense to the cooperating Person, the cooperating Person shall not incur any liability for providing such cooperation, and the Person requesting such cooperation shall indemnify and hold the cooperating Person harmless from and against all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, charges and expenses, which may be suffered by, imposed upon or incurred by or asserted against the cooperating Person arising out of such cooperation, except in the event of the cooperating Person's gross negligence or willful misconduct or unjustified failure to cooperate.

Section 22.22 Certain References.

(a) The terms "herein," "hereof" or "hereunder," or similar terms used in this Declaration, refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires. When used in this Declaration or the LLC Agreement, the terms "now", the "date hereof" or the "date of this Declaration" shall mean the date on which this Declaration is filed in the Clerk's Office.

The term “hereafter” when used in this Declaration or the LLC Agreement shall mean after the date on which this Declaration is filed in the Clerk’s Office.

(b) Whenever in this Declaration or the LLC Agreement the term “including” is used, it shall be deemed to mean “including without limitation.”

(c) Whenever this Declaration or the LLC Agreement provide that any Person subject to this Declaration is permitted to perform any act or exercise any rights under the Declaration or the LLC Agreement, such Person may authorize other Persons to do so, unless otherwise prohibited by applicable Legal Requirements or the provisions of this Declaration and/or the LLC Agreement. Whenever this Declaration or the LLC Agreement refers to any act performed by, or exercise of rights by, any Person subject to this Declaration, such reference shall include any acts performed by, or rights exercised by, any such other Person so authorized by such Person.

Section 22.23 Rights of Occupants. Nothing contained herein is intended or shall be deemed to give any Occupant any greater rights than such Occupant is given under its lease, license or other occupancy agreement with the FASP Owner of the premises leased, subleased, licensed or otherwise occupied by such Occupant.

Section 22.24 Deemed Consent. Whenever the consent or approval of any FASP Owner is requested by the Association under any provision of this Declaration or any of the other Association Documents and such provision requires such FASP Owner to not unreasonably withhold its consent or approval, if no comment or response has been received from such FASP Owner with respect to such request for consent or approval within the time specified in this Declaration or such other Association Document (or, if no time is specified, within twenty (20) days after receipt of such request), such approval or consent shall be deemed given if not given or denied or conditioned within ten (10) business days following such FASP Owner’s receipt of a second request therefor accompanied by a copy of the initial request and stating in bold print: “THIS IS A SECOND AND FINAL REQUEST FOR YOUR [CONSENT TO] [APPROVAL OF] THE ENCLOSED REQUEST WHICH WAS DELIVERED TO YOU IN CONNECTION WITH THAT CERTAIN DECLARATION ESTABLISHING THE ERY FACILITY AIRSPACE PARCEL OWNERS’ ASSOCIATION AND OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS. YOUR FAILURE TO RESPOND WITHIN TEN BUSINESS DAYS FROM THE DATE HEREOF SHALL BE DEEMED TO CONSTITUTE YOUR [CONSENT TO] [APPROVAL OF] SAME.” Whenever the consent or approval of Declarant is requested by the Association under this Declaration or any of the other Association Documents, if no comment or response has been received from Declarant with respect to such request for consent or approval within the time specified in this Declaration or such other Association Document (or, if no time is specified, within twenty (20) days after receipt of such request), such approval or consent shall be deemed given if not given or denied or conditioned within ten (10) business days following Declarant’s receipt of a second request therefor accompanied by a copy of the initial request and stating in bold print: “THIS IS A SECOND AND FINAL REQUEST FOR YOUR [CONSENT TO] [APPROVAL OF] THE ENCLOSED REQUEST WHICH WAS DELIVERED TO YOU IN CONNECTION WITH THAT CERTAIN DECLARATION ESTABLISHING THE ERY FACILITY AIRSPACE PARCEL OWNERS’ ASSOCIATION AND OF COVENANTS, CONDITIONS, EASEMENTS AND

RESTRICTIONS. YOUR FAILURE TO RESPOND WITHIN TEN BUSINESS DAYS FROM THE DATE HEREOF SHALL BE DEEMED TO CONSTITUTE YOUR [CONSENT TO] [APPROVAL OF] SAME.” (For the avoidance of doubt, the provisions of this Section 22.24 are not intended to, and do not, address requests by the Association for the consent or approval of the Yards Parcel Owner.)

Section 22.25 Consents Generally. Any consent or approval required of a FASP Owner in any provision of this Declaration or the LLC Agreement may be withheld in such FASP Owner’s sole and absolute discretion, unless the provision requiring such consent or approval specifically states that such FASP Owner shall not withhold such consent or approval unreasonably. Whenever a Party’s consent or approval is required under the Declaration or the LLC Agreement to not be “unreasonably withheld,” such provision shall be deemed to mean that the consent or approval shall not be “unreasonably withheld, conditioned or delayed”. If any dispute shall arise as to whether a Party is acting reasonably, such dispute shall be resolved in accordance with Section 22.18.

Section 22.26 Right to Contest Legal Requirements. Each FASP Owner and the Association shall have the right, subject to the conditions hereinafter set forth, to contest, at its sole cost and expense, by appropriate legal proceedings diligently conducted in good faith, the validity of any Legal Requirements and its application to such FASP Owner’s FAS Parcel or the Association Property, as applicable (each, a “Contest”). To the extent permitted by applicable Legal Requirements, such FASP Owner or the Association, as applicable, may defer performance of the contested obligation pending outcome of the Contest, provided, that in each instance, the following conditions (collectively, the “Contest Conditions”) remain satisfied: (i) such deferral or noncompliance shall not subject any other FASP Owner or any other FAS Parcel or the Association, as applicable, to any fine or penalty or criminal liability or to any other cost or liability, or to possible prosecution for a crime, or cause any FAS Parcel or any Association Property, as applicable, to be condemned or vacated or in reasonable danger of being adversely affected in any material way, or being forfeited or lost; (ii) such deferral or noncompliance creates no material risk of a lien, charge or other liability of any kind against any other FAS Parcel or Association Property, as applicable; (iii) the contesting FASP Owner (or Association, as applicable) shall prosecute such Contest with reasonable diligence and in good faith to a final determination by a court, department or governmental authority or body having final jurisdiction; (iv) such deferral or non-compliance shall not result in a cancellation of insurance policies covering any other FAS Parcel or any Association Property, as applicable; and (v) the contesting FASP Owner (or Association, as applicable) shall indemnify each other FASP Owner (and the Association, as applicable) from and against all costs, losses, expenses and damages incurred by reason of the outcome of such Contest.

Section 22.27 Subordination; Non-Disturbance. At the request of any FASP Owner made from time to time, the Association Board shall, at the sole cost and expense of the requesting FASP Owner, execute and deliver in favor of any Occupant leasing all or any part of a FAS Parcel (pursuant to a bona fide arms-length non-residential lease of space in excess of 100,000 square feet of floor area within the ERY Project), a Non-Disturbance Agreement, provided, however, the Association Board shall not be required to deliver same to any Occupant if, under the terms of the lease by which such Occupant leases such FAS Parcel or portion thereof, the requesting FASP Owner is not required to obtain a non-disturbance agreement from

the lender holding the mortgage(s) encumbering the applicable FAS Parcel in which the applicable leased area to which the lease relates is contained. The term “Non-Disturbance Agreement” means the standard form of non-disturbance and attornment agreement as shall be then employed by the Association Board, as the Association Board shall approve from time to time.

ARTICLE 23

EXCULPATION AND INDEMNIFICATION OF DECLARANT

Section 23.1 Exculpation of Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant shall have no liability under or with respect to this Declaration (except to the extent of Declarant’s gross negligence or willful misconduct), and all obligations of Declarant arising under this Declaration shall be performed by the Association and/or the FASP Owners, as the case may be, at their sole cost and expense. None of the members, directors, officers, employees, agents or servants of Declarant shall have any liability (personal or otherwise) hereunder, and no property or assets of Declarant or the members, directors, officers, employees, agents or servants of Declarant shall be subject to levy, execution or other enforcement procedure hereunder, except to the extent of any gross negligence or willful misconduct of Declarant.

Section 23.2 Indemnity of Declarant. The Association and each FASP Owner, to the fullest extent permitted by law, shall indemnify and save Declarant and its agents, contractors, affiliates, licensees, invitees, trustees, members, directors, shareholders, partners, officers, employees and disclosed and undisclosed principals (collectively, the “Declarant Indemnitees”), harmless from and against any and all actions, liabilities, suits, judgments, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Declarant Indemnitees arising out of or in connection with this Declaration, the operations of the Association, or any other matter arising under or in connection with this Declaration, except to the extent that any of the foregoing shall have been caused by the gross negligence or willful misconduct of any of the Association Indemnified Parties. The indemnification process for Declarant shall be as set forth in Article 20 of this Declaration, as if Declarant were an Indemnified Party as set forth therein.

ARTICLE 24

DELEGATION OF CERTAIN ASSOCIATION MATTERS TO FAS PARCEL OWNERS

Section 24.1 FASP Parcel Roof Components.

(a) Subject in all events to the Master Declaration (including, without limitation, Section 16.1(c) thereof) and to Section 9.1 of this Declaration, and without diminishing the primary responsibility or obligation of the Association hereunder to the Yards Parcel Owner in respect of any Master Declaration Obligations in respect of the ERY Roof Component, such obligations with respect to the ERY Roof Component or any portion thereof to the extent located within or under such FASP Owner’s FAS Parcel (a

“FAS Parcel Roof Component”) including, without limitation, all obligations and rights relating to maintenance and Repair (including following a casualty or condemnation) of the ERY Roof Component and to make ERY Roof Component Capital Improvements (collectively, “FASP Owner Roof Repairs”), may be fulfilled and performed on behalf of the Association by a FASP Owner (and as among the Association and the FASP Owners only, each FASP Owner shall have sole responsibility for all such matters (other than the obligation to initially fund the ERY Roof Maintenance Reserve)).

(b) If at any time there is more than one FASP Owner performing the obligations of Association with respect to the ERY Roof, the Association shall (i) designate one of them, or a third party reasonably acceptable to the Yards Parcel Owner, to represent all of such FASP Owners in all communication with the Yards Parcel Owner; and (ii) otherwise comply with the requirements of the Master Declaration and Section 9.1 of this Declaration, as applicable. The Yards Parcel Owner shall have no responsibility or liability, and the performance by the Association of its obligations under this Declaration shall not be excused, modified or delayed, as a result of the performance of such obligations by more than one FASP Owner, any coordination or lapses therein, or any failures, delays or disputes arising therefrom. In the event that any failures of coordination or delays or disputes in performance arise as a result of the performance of such obligations by more than one FASP Owner, the Yards Parcel Owner shall have the right to demand, and the Association shall (upon reasonably sufficient prior notice) oversee, a single coordinated performance of all such obligations.

Section 24.2 FAS Parcel Roof Component Repairs. All FASP Owner Roof Repairs performed by a FASP Owner shall be performed in accordance with the following:

(a) The FASP Owner, at its expense, shall (x) obtain all necessary municipal and other governmental permits, authorizations, approvals and certificates for the commencement and prosecution of its FASP Owner Roof Repairs (and shall maintain the same in effect during the course of the FASP Owner Roof Repairs) and shall obtain final approval thereof upon completion (including, without limitation, a certificate of occupancy, if required), and deliver copies of the same to the Association and (y) obtain on behalf of the Association and itself such insurance coverage with respect to the FASP Owner Roof Repairs as the Association determines is necessary or appropriate in its reasonable discretion and as required by the Master Declaration and shall maintain the same in effect during the course of the FASP Owner Roof Repairs. The Association shall cooperate with a FASP Owner and, at such FASP Owner’s expense, execute all applications, authorizations and other instruments reasonably required to enable such FASP Owner to obtain such insurance, permits, authorizations, approvals and certificates.

(b) No FASP Owner Roof Repairs shall be commenced by a FASP Owner until the Association Board shall have been furnished with (i) certificates of insurance, in such form, amount and from an insurance carrier or carriers reasonably satisfactory to the Association Board, indicating that the insurance coverage then required by the Association to be carried during the making of any FASP Owner Roof Repairs is in effect, (ii) a certification of the architect for the FASP Owner Roof Repairs stating that such FASP Owner Roof Repairs will not adversely affect the structural integrity of the

ERY Roof Component as a whole or violate any Legal Requirements, (iii) in the case of FASP Owner Roof Repairs involving unusual or excessive noise or vibrations, a certification of the architect for the FASP Owner Roof Repairs stating that such FASP Owner Roof Repairs will be performed in a commercially reasonable manner so as to minimize such vibrations, and (iv) all necessary permits, authorizations, approvals and certificates required for the commencement of the FASP Owner Roof Repairs.

(c) A FASP Owner shall not commence FASP Owner Roof Repairs until such FASP Owner has given five (5) business days' prior written notice to the Association of its intent to perform the FASP Owner Roof Repairs (the "Work Notice") which Work Notice shall include a set of plans of the FASP Owner Roof Repairs and a copy of the application for the building permit for the FASP Owner Roof Repairs, to the extent required by Legal Requirements.

(d) Once FASP Owner Roof Repairs are commenced, such work shall be completed with reasonable diligence and designed and undertaken in such manner as not to unreasonably delay or impose any unreasonable additional expense upon the Association or the other FASP Owners in the construction, maintenance, cleaning, repair, safety, management, security of operation of the Facility Airspace Improvements, the remainder of the ERY Roof Component or the other LIRR Roof and Facilities, or any part thereof, and so as not to unreasonably interfere with, or cause unreasonable interruption of, the operation and maintenance of the Facility Airspace Improvements, the remainder of the ERY Roof Component or the other LIRR Roof and Facilities, or any part thereof, or cause unreasonable annoyance to, or unreasonable interference with, the use and occupancy of the Facility Airspace Improvements, the remainder of the ERY Roof Component or the other LIRR Roof and Facilities by the Occupants thereof (including, without limitation causing unusual noise or vibrations). No FASP Owner Roof Repairs may jeopardize the soundness or structural integrity of any Facility Airspace Improvements, the ERY Roof Component, the other LIRR Roof and Facilities, the Association Property or the Common Facilities or the safety of any Occupants or involve commercially unreasonable levels of noise, odors or vibrations (taking into account the fact that portions of the Facility Airspace Improvements may be occupied by residential tenants).

(e) Any application to any department of The City of New York or to any other governmental authority having jurisdiction thereof for a permit to perform any structural alterations in connection with any FASP Owner Roof Repairs shall, if required by law or such department or authority, be executed by the Association, provided that the Association shall not incur any liability, cost or expense in connection with such application or to any contractor, subcontractor, materialman, architect or engineer on account of such FASP Owner Roof Repair or to any person having any claim for injury to person or damage to property arising therefrom. In the event the Association fails to execute any such application, the Association shall be deemed to have granted an irrevocable power of attorney nominating, constituting and appointing the applicable FASP Owner its attorney-in-fact, coupled with an interest and with power of substitution, to execute any application, form, declaration or other agreement necessary to commence,

perform and complete any work permitted to be performed under the terms of the Declaration.

(f) Each FASP Owner performing FASP Owner Roof Repairs shall:

(i) Comply in all respects with any obligation(s) set forth in the Master Declaration and the ERY Project Documents with respect to the ERY Roof Component, to the extent applicable to a FASP Owner's FAS Parcel Roof Component.

(ii) Give prompt notice to the Association of any written notice of violation received by said FASP Owner arising from or otherwise connected to the FASP Owner Roof Repairs performed by it or on such FASP Owner's behalf, which shall be issued by any Governmental Authority, and, upon receipt of notice from the Association Board or otherwise acquiring knowledge thereof, promptly procure the cancellation or discharge of the same at its expense; provided, however, subject to the Master Declaration, nothing herein shall prevent a FASP Owner from contesting in good faith and at its own expense any such notice of violation, provided that (in addition to any other requirements of the Master Declaration): (w) neither the Association nor any other FASP Owner shall by reason thereof be subject to criminal penalty or to prosecution for a crime, nor shall the Facility Airspace Parcel or any part thereof be subject to being foreclosed upon, condemned or vacated, nor shall the certificate(s) of occupancy for such FASP Owner's Facility Airspace Improvements be suspended or threatened to be suspended by reason of non-compliance or otherwise by reason of such contest; (x) before the commencement of such contest, the FASP Owner shall furnish to the Association such security or indemnification reasonably satisfactory in all respects to the Association; (y) neither such non-compliance nor such contest shall constitute or result in any violation of the terms of the Master Declaration, this Declaration or the LLC Agreement; and (z) the FASP Owner shall keep the Association Board regularly advised as to the status of such proceedings.

(iii) Within 30 days after a FASP Owner receives notice from the Association or otherwise acquires knowledge of the filing of any lien or violation resulting from such FASP Owner's FASP Owner Roof Repairs performed by it, such FASP Owner shall discharge, by payment; bond or otherwise, such mechanics' liens or any other liens filed against the FAS Parcel or the FAS Parcel Roof Component for work, labor, services or materials claimed to have been performed at or furnished to such FASP Owner's FAS Parcel or the FAS Parcel Roof Component as aforesaid for or on behalf of such FASP Owner. If a FASP Owner shall fail to so discharge any such lien within such 30 day period, the Association shall have the right, but not the obligation, to do so at the expense of such FASP Owner and any such expenditure shall be a Special Assessment assessed against such FASP Owner's FAS Parcel.

(g) Neither the Association nor the FASP Owners (other than the FASP Owner performing the relevant FASP Owner Roof Repairs) shall incur any liability, cost or expense (i) in connection with the preparation, execution, or submission of the applications referred to in Section 24.2(e) hereof; (ii) to any contractor, subcontractor, materialman, architect or engineer on account of any FASP Owner Roof Repair by any other FASP Owner, or (iii) to any Person asserting any claim for personal injury or property damage arising therefrom. A FASP Owner making FASP Owner Roof Repairs shall agree (in writing executed and delivered to the Association, if the Association shall so request), and shall be deemed to agree (in the absence of such writing) to indemnify and hold the Association, the members of the Association, the officers of the Association, the Managing Agent and the other FASP Owners harmless from and against any such liability, cost and expense. Without limiting the foregoing, such indemnity shall include any and all liability or expense incurred by the Association or any other FASP Owner in respect of any obligation for the FASP Owner Roof Repairs of the FASP Owner performing the same or resulting from such FASP Owner failing to perform the same when required of the Association under the Master Declaration and the Association Documents.

(h) Notwithstanding the foregoing, if any such FASP Owner shall fail to perform the FASP Owner Roof Repairs as provided for herein, the Association shall have the right to (and to the extent required hereunder or under the Master Declaration in order to avoid a default in any obligation to the Yard Parcel Owner under the Master Declaration shall) revoke the delegation of performance of the applicable FASP Owner Roof Repairs and following such revocation, the Association shall have the right to (and to the extent required, shall) perform any such FASP Owner Roof Repairs and/or maintain the applicable FAS Parcel Roof Component; provided the applicable FASP Owner shall be solely responsible for the Association's costs incurred therewith, payable as if part of such FASP Owner's Association Charges.

(i) Notwithstanding anything to the contrary herein, all FASP Owner Roof Repairs shall comply at all times with the applicable provisions of the Master Declaration as if such performing FASP Owner is the "Facility Airspace Parcel Owner" thereunder (including without limitation Articles XI and XII and Section 15.2 thereof, as applicable) and the other ERY Project Documents, and the Association and the Yards Parcel Owner shall have all remedies provided for in this Declaration and/or the LLC Agreement upon any FASP Owner's failure to so comply. Notwithstanding the foregoing, the delegation by the Association of FASP Owner Roof Repairs to the individual FASP Owners shall in no event relieve the Association of liability for the performance of such obligation(s) as an "Association Matter" vis-a-vis the Yards Parcel Owner under the Master Declaration and nothing herein shall limit any rights of the Yards Parcel Owner under the Master Declaration with respect to the same.

ARTICLE 25 INTERNATIONAL ORGANIZATIONS

Section 25.1 Waiver of Immunity. By its acceptance of a deed to a FAS Parcel or any portion thereof, including any unit in a Condominium, or the succeeding to title to, or the

entering into of a lease or the act of occupancy of a FAS Parcel or any portion thereof, including any unit in a Condominium, each FASP Owner, Unit Owner or Occupant that is a foreign government or the United Nations, any agency, department, embassy, consulate or mission or governmental entity of a foreign state or the United Nations, or any other international organization or instrumentality entitled to diplomatic or sovereign immunity (each, an "International Occupant"):

(a) Expressly acknowledges and agrees that the purchase or lease of a FAS Parcel or any portion thereof, including any unit in a Condominium, constitutes commercial activity by such International Occupant within the meaning of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1602, et seq., as the same may be amended or modified ("FSIA");

(b) Expressly and voluntarily waives any sovereign immunity from the personal jurisdiction of the courts of the United States and of the States as to any controversy, dispute or claim in connection with or relating to the Association Documents, the ERY Project or its ownership, use, occupancy or operation of its FAS Parcel or portion thereof, including any unit in a Condominium;

(c) Expressly and voluntarily waives all rights to immunity from pre-judgment attachment, attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State even though the applicable FAS Parcel or portion thereof, including any unit in a Condominium, may be used for the purposes of maintaining a diplomatic or consular mission or the residence of the chief of such mission;

(d) Irrevocably and unconditionally (i) consents to any suit, action or proceeding arising out of or relating to the Association Documents, the ERY Project or its ownership, lease, use, occupancy or operation of its FAS Parcel or portion thereof, including any unit in a Condominium, being brought in any state or federal court in the State of New York; (ii) waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding under clause (i) above, in any such court, or claim that any such suit, action or proceeding under clause (i) above, has been brought in an inconvenient forum; and (iii) acknowledges the competence of any such court, submits to the jurisdiction of any such court in any such suit, action or proceeding; and (iv) agrees that any final non-appealable order or judgment issued by any such court in any such suit, action or proceeding shall be conclusive and binding upon it and may be enforced in the courts of such International Occupant's country of origin once a further judgment has been obtained in the courts of such International Occupant's country of origin, which further judgment may as a matter of practice be obtained without re-litigation on the merits of the matter adjudicated upon by such state or federal court in the State of New York, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its obligation; provided that service of process is effected upon it in the manner specified above or as otherwise permitted by law; and (v) irrevocably consents to service of process upon it out of said courts in any such suit, action or proceeding by mailing copies thereof by registered or certified mail, postage prepaid, to such International Occupant at the Property; and

(e) Agrees that, in connection with any such suit, action or proceeding in the state or federal courts in the State of New York, to the extent that FSIA is applicable to International Occupant, the waiver of immunity and arrangements for service of process set out herein are made in conformity with, and shall be governed by FSIA, and the foregoing provisions constitute a special arrangement for service between such International Occupant and each other Person entitled to enforce the provisions of this Article for the purposes of FSIA.

Section 25.2 Designation of Agent for Service of Process. For the purpose of any suit, action or proceeding taken in any state or federal court in the State of New York, each International Occupant shall maintain an agent for service of process in the City of New York, State of New York. Absent a written designation of another Person executed and delivered to the Association Board by the International Occupant, each International Occupant shall be deemed to have irrevocably designated, appointed and empowered the Association Board as its duly authorized and lawful agent to receive process for and on behalf of such International Occupant in any state or federal suit, action or proceeding in the State of New York based on, arising out of or connected with the Association Documents, the ERY Project, or the International Occupant's ownership, use, occupancy and operation of its FAS Parcel or portion thereof, including any unit in a Condominium. Nothing contained herein is intended or shall be deemed to limit the rights of the Association Board or any other FASP Owner to serve process in any other country or any other manner permitted by law or to bring any legal action or proceeding or to obtain an attachment or execution of judgment in any competent jurisdiction, including in the courts of the International Occupant's country of origin.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the _____ day of _____, 201_.

**METROPOLITAN TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

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

On the ___ day of _____ in the year 201_ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION – ERY

I. LEGAL DESCRIPTION – YARDS PARCEL

All of the lands at or below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.) and the southerly line of West 33rd Street (60' R.O.W.); running thence

1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 520.33 feet to a point; thence
2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 630.64 feet to a point; thence
3. South 78°45'38" West, a distance of 49.37 feet to a point; thence
4. North 89°56'53" West, a distance of 120.95 feet to a point in the easterly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 530.00 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
6. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 417,670 square feet or 9.588 acres, more or less.

II. LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL

Facility Airspace Parcel: Airspace

All of the lands above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.) and the southerly line of West 33rd Street (60' R.O.W.); running thence

1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 520.33 feet to a point; thence

2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 630.64 feet to a point; thence
3. South 78°45'38" West, a distance of 49.37 feet to a point; thence
4. North 89°56'53" West, a distance of 120.95 feet to a point in the easterly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 530.00 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
6. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 417,670 square feet or 9.588 acres, more or less.

III.LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL TERRA FIRMA

Facility Airspace Parcel: Terra Firma

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 800.00 feet to a point formed by the intersection of the said northerly line of West 30th Street and the easterly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 182.50 feet to a point; thence
3. Leaving Eleventh Avenue, South 89°56'53" East, a distance of 120.95 feet to a point; thence
4. North 78°45'38" East, a distance of 49.37 feet to a point; thence
5. South 89°56'53" East, a distance of 630.64 feet to a point in the aforementioned westerly line of Tenth Avenue; thence
6. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 152,330 square feet or 3.497 acres, more or less.

EXHIBIT B[1-3]

LEGAL DESCRIPTION – LOWER LIMITING PLANE (B-1)
LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL (B-2)
LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL TERRA FIRMA (B-3)

[See Attached]

EXHIBIT B-1

LEGAL DESCRIPTION – LOWER LIMITING PLANE

All of the lands at or below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.) and the southerly line of West 33rd Street (60' R.O.W.); running thence

1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 520.33 feet to a point; thence
2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 630.64 feet to a point; thence
3. South 78°45'38" West, a distance of 49.37 feet to a point; thence
4. North 89°56'53" West, a distance of 120.95 feet to a point in the easterly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 530.00 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
6. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 417,670 square feet or 9.588 acres, more or less.

EXHIBIT B-2

LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL

Facility Airspace Parcel: Airspace

All of the lands above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.) and the southerly line of West 33rd Street (60' R.O.W.); running thence

1. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 520.33 feet to a point; thence
2. Leaving Tenth Avenue, North 89°56'53" West, a distance of 630.64 feet to a point; thence
3. South 78°45'38" West, a distance of 49.37 feet to a point; thence
4. North 89°56'53" West, a distance of 120.95 feet to a point in the easterly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 530.00 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
6. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 417,670 square feet or 9.588 acres, more or less.

EXHIBIT B-3

LEGAL DESCRIPTION – FACILITY AIRSPACE PARCEL TERRA FIRMA

Facility Airspace Parcel: Terra Firma

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to a point formed by the intersection of the said northerly line of West 30th Street and the easterly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 182.50 feet to a point; thence
3. Leaving Eleventh Avenue, South $89^{\circ}56'53''$ East, a distance of 120.95 feet to a point; thence
4. North $78^{\circ}45'38''$ East, a distance of 49.37 feet to a point; thence
5. South $89^{\circ}56'53''$ East, a distance of 630.64 feet to a point in the aforementioned westerly line of Tenth Avenue; thence
6. Along said westerly line of Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 152,330 square feet or 3.497 acres, more or less.

EXHIBIT C

CERTIFICATE OF FORMATION

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION LLC", FILED IN THIS OFFICE ON THE FIRST DAY OF APRIL, A.D. 2013, AT 10:09 O'CLOCK A.M.

5311730 8100

130378643

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0323985

DATE: 04-01-13

CERTIFICATE OF FORMATION

OF

ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION LLC

April 1, 2013

The undersigned, an authorized natural person, for the purpose of forming ERY Facility Airspace Parcel Owners' Association LLC, a limited liability company, under the provisions and subject to the requirements of the Limited Liability Company Act of the State of Delaware, hereby certifies that:

1. The name of the limited liability company is ERY Facility Airspace Parcel Owners' Association LLC (the "Company").
2. The address of the Company's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, Delaware 19904. The registered agent at this address is National Registered Agents, Inc.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/ Mary Paris

Mary Paris, Authorized Person

EXHIBIT D

**LLC AGREEMENT OF ERY FACILITY AIRSPACE PARCEL OWNERS'
ASSOCIATION, INC.**

EXECUTION COPY

**LIMITED LIABILITY COMPANY AGREEMENT
OF
ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION LLC
A DELAWARE LIMITED LIABILITY COMPANY**

Dated as of April 10, 2013

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**LIMITED LIABILITY COMPANY AGREEMENT
OF
ERY FACILITY AIRSPACE PARCEL OWNERS' ASSOCIATION LLC
A DELAWARE LIMITED LIABILITY COMPANY**

This LIMITED LIABILITY COMPANY AGREEMENT (as amended, supplemented or otherwise modified from time to time, this "Agreement") of ERY Facility Airspace Parcel Owners' Association LLC, a Delaware limited liability company (the "Association"), dated as of April 10, 2013 (the "Effective Date"), is entered into by and among the Persons set forth on the signature pages hereto (together with any other Persons who shall in the future become Members of the Association in accordance with the provisions hereof, the "Members"). Capitalized words and phrases used in this Agreement shall have the meanings set forth on Schedule B hereto unless defined elsewhere herein.

RECITALS

WHEREAS, the Association was formed as a Delaware limited liability company pursuant to a Certificate of Formation, dated as of April 1, 2013, and filed with the Secretary of State of the State of Delaware (the "Secretary of State") on April 1, 2013; and

WHEREAS, the Members desire to enter into this Agreement to provide for the conduct of the business and affairs of the Association.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, intending to be legally bound, hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Formation.

(a) The Association was formed as a limited liability company under the Act by the filing of the Certificate of Formation of the Association (the "Certificate") with the Secretary of State on April 1, 2013. Mary Paris was designated as an "authorized person" within the meaning of the Act for the purpose of executing, delivering and filing the Certificate with the Secretary of State. The execution, delivery and filing of the Certificate, and all actions taken in connection with the formation of the Association, are hereby adopted, approved, ratified and confirmed by the Members. On the Effective Date, Mary Paris will cease to be an "authorized person" of the Association and hereafter such officers and other Persons as so designated by the Board shall be "authorized persons" as such term is used in the Act.

(b) This Agreement shall constitute the limited liability company agreement of the Association. The Board shall take such other actions as may from time to time be necessary or appropriate under the laws of the State of Delaware with respect to the formation, operation and continued good standing of the Association as a limited liability company.

Section 1.2 Name. The name of the Association shall be, and the business of the Association shall be conducted under the name of, “ERY Facility Airspace Parcel Owners’ Association LLC”, or as otherwise modified by the Board.

Section 1.3 Purpose.

(a) The purpose of the Association is to engage in any lawful business that may be engaged in by a limited liability company under the Act, as such business may be determined from time to time by the Board, including, but not limited to, acting as the property owners’ association in conjunction with that certain Declaration Establishing the ERY Facility Airspace Parcel Owners’ Association and of Covenants, Conditions, Easements and Restrictions Relating to Premises Known As Eastern Rail Yard Section of the John D. Caemmerer West Side Yard (the “Association Declaration”), dated as of April 10, 2013, which is to be recorded in the New York County office of the Register of the City of New York.

(b) The Association shall have the power to engage in all actions, proceedings, activities and transactions that, subject to applicable law and the terms of this Agreement and the Association Declaration, the Board may deem necessary or advisable in connection with the foregoing purpose.

Section 1.4 Registered Office and Agent. The registered agent of the Association for service of process in the State of Delaware and the registered office of the Association in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Board shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be, in the manner provided by law.

Section 1.5 Principal Office. The principal office of the Association shall be located either at the ERY or at such other place in the Borough of Manhattan in the City of New York reasonably convenient thereto as may be designated from time to time by the Board.

Section 1.6 Liability of the Members. The Members shall have no liability for the obligations or liabilities of the Association except to the extent expressly provided in the Act.

Section 1.7 Term. The Association shall continue in existence until dissolution of the Association pursuant to Article IX; provided that such date may be extended by the Board.

Section 1.8 Ownership; Property. The Interest of each Member in the Association shall be personal property for all purposes. All property and interests in property, real or personal, owned by the Association shall be deemed owned by the Association as an entity, and no Member, individually, shall have any ownership of such property or interest except by having an ownership interest in the Association as a Member. Each of the Members irrevocably waives any right that it may have to maintain any action for partition with respect to any assets of the Association.

Section 1.9 Limits of Association. The relationship between the Members, in their capacity as such, shall be limited to the carrying on of the business of the Association in

accordance with the terms of this Agreement and the Association Declaration. Such relationship shall be construed and deemed to be a limited liability company for the sole and limited purpose of carrying on such business. Except as otherwise expressly provided for in this Agreement, nothing herein shall be construed to create a partnership, joint venture or any other relationship between the Members or to authorize any Member to act as an agent for any other Member.

Section 1.10 Certificates. All Interests issued hereunder shall be uncertificated; provided that the Board may, in its sole discretion, approve a specific form of certificate and issue to the Members certificates representing the Interests.

ARTICLE II

MANAGEMENT OF THE ASSOCIATION

Section 2.1 Management and Control.

(a) General. Except to the extent otherwise expressly provided in this Agreement or as required by non-waivable provisions of the Act or other applicable law, the management, operation and control of the Association, its business and the Association's assets shall be vested in a board of managers comprised of the Managers appointed thereto in accordance with Section 2.3 (the "Board"). All powers of the Association for which approval by the Members to the exercise thereof is not expressly required by this Agreement or non-waivable provisions of the Act or other applicable law, shall be exercised by, or under the authority of, and the business and affairs of the Association shall be managed by, or under the direction and control of, the Board in a manner consistent with the terms, provisions and conditions of this Agreement and the Act. Without limiting the foregoing, the Board shall possess and exercise all of the rights and powers of a "manager" as provided in the Act. Any act within the power of the Board to perform, and deemed necessary or desirable to be performed by the Board, shall be performed: (i) by the Board as determined by a vote of the Managers in accordance with this Article II; and/or (ii) except to the extent prohibited by the terms of Section 2.1(d) or by law, by the agents, employees, committees or designees of the Board on its behalf and at its direction.

(b) Committees. The Board may appoint an executive committee by duly adopted resolution, which executive committee shall have, and may exercise, all of the powers of the Board, subject to both the exceptions and limitations contained in Section 2.1(d) and such additional exceptions and limitations as the Board may, from time to time, deem appropriate, during the interval between the meetings of the Board. In addition, the Board may, from time to time, appoint, by duly adopted resolutions, such other committees as the Board deems appropriate to perform such duties and services as the Board shall direct, each of which committees shall have, and may exercise, all of the powers delegated to it in its enabling resolution, subject, however, to the exceptions and limitations contained in Section 2.1(d).

(c) Managing Agent. The Board may cause the Association to retain or engage a Managing Agent, to serve at a compensation to be established by the Board and to perform such duties and services in the name of the Association as the Board shall direct. Subject to the exceptions and limitations contained in Section 2.1(d), the Board may delegate to

such Managing Agent the authority to exercise any of the rights and powers available to the Association by law, contract or otherwise.

(d) Limitations on Authority. Notwithstanding anything to the contrary contained in this Section 2.1, neither the executive committee nor the Managing Agent shall have, or be entitled to exercise, any powers or duties that may not be delegated to them by the Board or the Association, as the case may be, pursuant to the Act or other applicable law.

Section 2.2 Powers and Duties of the Board.

(a) General. The Board shall have all of the powers and duties necessary for, or incidental to, the conduct and administration of the affairs of the Association; provided that the Board shall not have such powers or duties that by law, or pursuant to the terms of this Agreement or the Certificate, may not be delegated to the Board by the Members. Without intention to limit the generality of the foregoing in any respect, but subject to the terms of Section 2.2(b), the Board shall have the following specific powers and duties:

(i) to perform each and every Association Matter as set forth in the Association Declaration including, without limitation, all obligations with respect to the ERY Roof Component to the extent provided for in the Association Declaration, including, without limitation, Article XXIV thereof;

(ii) to cause the Association to acquire or lease, in the name of the Association or its designee, corporate or otherwise, all Association Property and all applicable Common Facilities and all rights, titles, appurtenances, benefits and interests in real and personal property deemed necessary or proper by the Board for use in connection with any Association Matters and/or the ownership and operation of the Association Property and all applicable Common Facilities;

(iii) (A) to operate, care for, upkeep and maintain; (B) to make alterations, additions and improvements to; and (C) to make repairs, restorations and replacements of, the Association Property and the Common Facilities, in the condition and otherwise in such manner that the Project Standards are maintained, including the purchase and leasing of supplies, equipment and material and the employment, compensation and dismissal of agents, contractors, personnel and others;

(iv) to cause to be maintained complete and accurate books and records with respect to the finances and the operation of the Association, including, without limitation:

(A) detailed accounts, in chronological order, of all receipts and expenditures incurred in connection with Association Matters or affecting the Association Property;

(B) detailed books of account of the Association;

(C) any other financial records that may be required to be kept by the Association pursuant to the terms of this Agreement or pursuant to law; and

(D) minutes and other records of all meetings held pursuant to the terms of this Agreement;

(v) to prepare and adopt a budget for the Association for each fiscal year thereof, setting forth or including, without limitation:

(A) a detailed accounting of the anticipated expenses of the Association for the ensuing fiscal year;

(B) a detailed projection of all sources and amounts of income available to discharge the same; and

(C) reserves in connection with anticipated capital expenditures for such fiscal year and the four (4) fiscal years thereafter;

(vi) to determine the amount, and establish the means and methods of payment, of the Association Charges in order to pay Association Expenses, and to cause the Association to collect the same from: (i) the Members (including a Member comprised of a Condominium); and (ii) Unit Owners who have failed to pay their Individual Association Share to their respective Condominium Board(s), as applicable;

(vii) subject to the limitations contained in Section 2.2(b), to cause the Association to borrow money, when necessary or desirable in the judgment of the Board, in connection with the performance of the Association Matters and/or the operation, maintenance, repair, restoration, improvement, alteration and replacement of the Association Property, and to cause the Association to grant mortgages and other liens against all or any portion of the Association Property, when necessary or desirable in the judgment of the Board, in order to secure any such borrowings;

(viii) to cause the Association to open and maintain bank accounts, and to designate the signatories required therefor (with designees appointed by Ground Lease Tenant hereby being the initially designated approved signatories),

(ix) to cause the Association to use the Association Charges collected from the Members, as well as all other funds held by the Association or received by the Association in connection with the obligations of the Association with respect to the Facility Airspace Parcel for the conduct and administration of the affairs of the Association, including, without limitation:

(A) the payment of expenses of the Association (including, without limitation, the payment of any taxes and other assessments levied against the Association Property and the making of all payments required, and prepayments permitted, under any mortgage encumbering the same);

(B) the establishment, funding and augmentation of the ERY Roof Maintenance Reserve Fund (as defined in the Master Declaration) in accordance with the Master Declaration and other reserve and similar funds as the Board shall elect or, as applicable, be required to maintain, such as, without intention to limit the generality of the foregoing in any

respect, funds for contingencies, for general operating reserves, for working capital and for replacements with respect to the Association Property and Association Matters; and

(C) to make up any operating deficit or shortfall of the Association for any prior year(s);

(x) to review and approve the coverage amount and terms, policy forms, deductibles and insurance carriers with respect to the fire and casualty insurance policies as set forth in Article 11 of the Association Declaration, to obtain and maintain such insurance, as well as to supervise and approve the adjustment and settlement of claims under any such insurance policies and to execute and deliver releases upon such adjustment and settlement on behalf of all Members, all holders of mortgages and other liens on FAS Parcels and of all holders of any other interest in the Association Property;

(xi) subject to the provisions of the Association Declaration, to pass upon requests received from Members for the Association's consent to the making of additions to, and alterations of, and improvements to the Facility Airspace Improvements located on any of the FAS Parcels (including, without limitation, any FASP Owner Roof Repairs), if and to the extent required;

(xii) subject to the provisions of the Association Declaration, to supervise the making of additions to, and alterations of, and improvements to the Facility Airspace Improvements located on any of the FAS Parcels (including, without limitation, any FASP Owner Roof Repairs) and to assess the cost of any FASP Owner Roof Repairs against the applicable FAS Parcel (notwithstanding the inclusion of any of the same initially as part of Association Expenses or the collection of the same as Association Charges);

(xiii) subject to the provisions of the Association Declaration, to supervise the making of repairs to, and restorations and replacements of, the structures located on any FAS Parcels after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(xiv) to adopt, amend, modify, add to and/or delete from time to time the Rules and Regulations governing the use of the FAS Parcels and the Signage Guidelines, and the use and operation of the Association Property and Common Facilities, as well as to levy and collect fines against Members for violations of the same on or in respect of their respective FAS Parcels, subject to the requirements and restrictions set forth elsewhere in the Association Declaration and this Agreement;

(xv) to cause the Association to perform its obligations, and exercise its rights, under any document or instrument that shall be binding upon, or that shall inure to the benefit of, the Association including, without limitation, the Association Declaration and any other document or instrument encumbering, or otherwise in force and effect and relating to, the Facility Airspace Parcel, the FAS Parcels and/or the Association Property or Common Facilities;

(xvi) to bring or defend against any proceedings that may be instituted on behalf of, or against, the Association or in respect of the Association Property;

(xvii) to retain or engage a Managing Agent to assist the Board and the officers of the Association in connection with Association Matters and such other matters as the Board may deem necessary or desirable, and to delegate to the Managing Agent the exercise of such rights and powers as the Board deems appropriate, as well as otherwise in connection with the performance of the obligations and conduct of the affairs of the Association and to retain such attorneys, accountants, architects, engineers, brokers and other professionals as the Board deems necessary or desirable in connection therewith, in all instances for such compensation as the Board considers reasonable, suitable and appropriate;

(xviii) to organize corporations or other entities from time to time to act as the designees or nominees of the Association in acquiring rights, titles and interests in real and personal property for use in connection with the ownership and operation of the Association Property or in the conduct or performance of Association Matters;

(xix) to cause the Association to execute, acknowledge and deliver any consent, covenant, restriction, easement, declaration or other instrument affecting the Association Property or in connection with any Association Matter that the Board deems necessary or appropriate to comply with any law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the same;

(xx) to cause the Association to:

(A) protest, complain, or apply to the appropriate taxing authority to correct the tax assessment of the Association Property (including any Facility Airspace Improvements or other improvements thereon or components thereof that are not part of a FAS Parcel or owned by a Member), as applicable, and/or to apply for, pursue and take such actions and make such filings as the Board deems necessary or appropriate to qualify for and maintain any tax abatement, reduction or exemption applicable to the Association (or the Association Property, including any Facility Airspace Improvements or other improvements thereon or components thereof); and, with respect to other FAS Parcels, only at the request of and subject to obtaining the prior written consent of the applicable Members owning the same (or the applicable Condominium Boards with respect to any FAS Parcel organized as a Condominium), such other FAS Parcels for any year;

(B) commence and prosecute a special proceeding for the review of assessments of the Association's real property as an aggrieved person under applicable city, state and local real property tax laws as necessary;

(C) seek administrative and judicial review of the tax assessments of Association Property for any tax year;

(D) negotiate and settle with the taxing authority the tax assessments of Association Property and any resulting proceedings and litigation;

(E) retain legal counsel in connection with the foregoing; and

(F) prosecute, defend and settle litigation generally;

(G) negotiate, execute and perform agreements generally in furtherance of the purpose of the Association;

(H) make and liquidate investments; and

(I) select, appoint and terminate auditors;

(xxi) to enter into, from time to time, leases, subleases, licenses, permits or other arrangements for the use of Association Property (including, without limitation, for events, placement of artwork, advertisements, and the like) on such terms and conditions (including, without limitation, rentals or fees) as the Board deems appropriate;

(xxii) to establish rules and procedures with respect to noise, nuisance, disturbances, public assembly, temporary closures, including to avoid public dedication and use of the Association Property by Members and their Occupants and invitees;

(xxiii) to procure such fidelity bonds as the Board deems advisable to cover officers and employees of the Association handling and responsible for the Association's funds and personal property and to procure such directors' and officers' liability insurance as the Board deems advisable; provided that the premiums of such bonds and insurance shall be at market rates and be paid by the Association and deemed Association Expenses;

(xxiv) to comply with, satisfy and perform all of the obligations of the Association as owner or lessee of the Association Property under all other encumbrances by which the Association Property is bound and which the Association has the ability to perform, subject to the terms of the Association Declaration and this Agreement, unless (x) the failure to perform the same would have no more than a de minimus adverse effect or (y) compliance, satisfaction and performance of the same is the obligation of a Member (in its capacity as a FASP Owner) under the express provisions of the Association Documents; and

(xxv) to maintain any and all other property within the Facility Airspace Parcel that the Association is obligated to maintain.

(b) Conditions to, and Limitations on, the Exercise of Certain Powers. Notwithstanding anything to the contrary provided in Sections 2.1(a) and 2.2(a) or otherwise in this Agreement, the Board shall not cause the Association to:

(i) except for borrowings in respect of alterations, additions or improvements which are the subject of Section 2.2(b)(ii)(B), borrow any sum in excess of \$500,000 (subject to CPI Adjustment) in any one fiscal year (regardless of the balance of any loans outstanding from previous fiscal years), except upon a 66-2/3% affirmative vote of the Managers taken at a duly constituted meeting of the Board; or

(ii) either:

(A) grant a mortgage or other lien against all or any portion of the Association Property to secure repayment of the Association's indebtedness (regardless of the amount of such indebtedness); or

(B) borrow or expend in any fiscal year of the Association in connection with the performance of any alteration, addition or improvement to the Association Property or any portion of same, more than an aggregate of \$500,000 (subject to CPI Adjustment), except upon a majority vote of the Managers taken at a duly constituted meeting of the Board, except as may otherwise be required under the Master Declaration.

Notwithstanding anything to the contrary contained herein, any borrowing authorized hereunder shall be permitted only if the documents evidencing any lien granted to secure repayment of such borrowing expressly provide that if any such sum borrowed by the Association is not repaid by the Association in accordance with the terms of such borrowing, a Member who pays to the creditor such proportion thereof equal to such Member's Association Share shall be entitled to obtain from the creditor, and the creditor shall be obligated to provide, a release of any judgment or other lien which said creditor has filed or has the right to file against such Member's FAS Parcel.

Notwithstanding anything to the contrary contained herein, nothing in the foregoing provisions of this Section 2.2 shall be deemed to vitiate the Board's authority to effectuate borrowings and to subject Association Property to the lien of any mortgage or similar instrument in connection with the initial construction of the Facility Airspace Parcel or any portion thereof.

Section 2.3 Number of Managers; Removal; Vacancies; Compensation.

(a) Number, Appointment, Voting and Qualifications of Managers.

(i) Each Member (other than the Ground Lease Tenant) shall appoint one (1) Manager to the Board upon the consummation of the applicable Severance, and Ground Lease Tenant, its affiliate or designee, in its capacity as the FASP Owner of the Balance Parcel and a Member hereunder, shall appoint one (1) Manager; provided that each Manager designated by a Member comprised of a Condominium must also serve as the president of such Condominium's Condominium Board or serve in a similar chief officer position of such Condominium Board. There shall be no limit on the number of terms of office, successive or otherwise, that a Manager may serve on the Board.

(ii) Each Manager shall have a proportionate vote commensurate with the Association Share allocated to the Member having appointed such Manager to the Board and any and all references in this Agreement or the other Association Documents to a "majority" vote or "majority" of Managers, or other specified percentage vote or percentage of Managers shall in all instances mean a majority (or such other specified percentage) vote determined in accordance with the Association Share, as in effect from time to time, allocated to the FAS Parcel of the Member having appointed such Manager to the Board. For the avoidance of doubt, therefore, (A) a Manager appointed by a Member (whose FAS Parcel shall have allocated to it at the time an Association Share) shall be entitled to cast a percentage of the votes in a meeting of the Board equal to the quotient, expressed as a percentage, of (x) the Associate Share allocated to such Member having appointed such Manager at such time divided by (y) the aggregate Association Shares allocated to all Members having appointed a Manager to the Board who is serving on the Board at such time and (B) a Manager shall have no vote on any matters presented to the Board

for consideration unless and until the FAS Parcel of the Member who appointed such Manager has an Association Share allocated to it.

(iii) Notwithstanding the foregoing in Section 2.3(a)(i) or (ii) above or otherwise in the Association Documents to the contrary, for the period commencing on the date the Association Declaration is recorded through the date that is two (2) years following the date of the final completion of the final Facility Airspace Improvements as contemplated by the Approved Severed Parcel Plan in accordance with the terms of the ERY Project Documents (the "Development Period"), the Manager appointed by Ground Lease Tenant or Ground Lease Tenant's successor or designee shall at all times shall have the right to cast 51% of the votes on all matters determined by or votes taken by or on behalf of the Board, and each other Manager shall be entitled to cast a percentage of the votes in a meeting of the Board equal to the product, expressed as a percentage, of (x) 49% multiplied by (y) the quotient of (A) the Association Share allocated to the Member having appointed such other Manager at such time divided by (B) the aggregate Association Shares allocated to all Members having appointed all such other Managers to the Board (excluding the Manager appointed by Ground Lease Tenant or Ground Lease Tenant's successor or designee) who are then serving on the Board at such time. The Manager(s) designated by Ground Lease Tenant or Ground Lease Tenant's successor or designee need not be FASP Owners or Occupants.

(iv) Notwithstanding anything to the contrary contained herein, no Member may appoint a Manager if the Association has perfected an Association Lien against such Member's FAS Parcel or if the Member has committed an Event of Default, and the amount necessary to release such lien has not been paid at the time of such appointment or such Event of Default has not been cured at the time of such appointment. Notwithstanding anything to the contrary contained herein, a Manager shall not be entitled to vote on any matters presented to the Board if at such time the Association has perfected an Association Lien against the FAS Parcel of the Member who appointed such Manager or if the Member who has appointed such Manager has committed an Event of Default, and the amount necessary to release such lien has not been paid at the time or such Event of Default has not been cured as of such time.

(v) Notwithstanding anything to the contrary contained herein, following notice by Declarant (or its successor in interest as landlord under a Severed Parcel Lease and/or Balance Lease) to the Board that an Event of Default has occurred under a Severed Parcel Lease or the Balance Lease, (i) the Manager appointed to the Board by the Member that is the tenant under such lease may not thereafter exercise the rights of a Manager hereunder, and (ii) Declarant or such successor (or such Person as Declarant or such successor shall designate by notice to the Board), shall be deemed the Manager with respect to the applicable FAS Parcel of such Member with the same percentage of votes as the Manager being replaced until further notice from Declarant or such successor to the Board that the rights of the Manager appointed to the Board by such Member have been reinstated.

(b) Term. Each Manager will serve for as long as the Member appointing such Manager elects or, in the case of a Manager designated by a Member comprised of a Condominium, for so long as such Manager also serves as president of such Condominium's Condominium Board (or serves in a similar chief officer position of such Condominium Board).

Notwithstanding anything to the contrary contained in this Section 2.3(b), however, each Manager shall serve until his or her successor shall be appointed.

(c) Resignation of a Manager. Any Manager may resign his or her position at any time by giving written notice thereof to the Board.

(d) Removal of Managers.

(i) Each Manager shall be subject to removal from office as follows:

(A) any Manager may be removed from office for cause by a majority of the votes of the Managers only at a duly constituted meeting of the Board who are entitled to vote upon his or her removal, and shall be given prior written notice thereof and an opportunity to be present and heard thereat; and

(B) any Manager may be removed from office without cause by the Member having so appointed such Manager.

(ii) The Board may not remove any Managers appointed by Ground Lease Tenant or its affiliates except for cause in which case Ground Lease Tenant shall have the right to replace such Manager.

(e) Vacancies.

(i) In the event of any vacancy on the Board that is caused by the removal, resignation, or death of a Manager, the Member who appointed such Manager shall appoint a replacement Manager to fill such vacancy, subject to the requirements of Section 2.3(a)(i) in the event such Member is comprised of a Condominium.

(ii) Each Manager who is appointed to fill a vacancy pursuant to the terms of Section 2.3(e)(i) shall serve as a Manager for the remainder of the term of the Manager that he or she replaced and until his or her successor shall be appointed and qualified pursuant to the terms hereof.

(f) Compensation. No Manager shall receive any compensation from the Association for acting as such.

Section 2.4 Meetings of the Board.

(a) Organizational Meeting of the Board. The first meeting of the Board following formation of the Association pursuant to the filing of the Certificate with the Secretary of State shall be held within thirty (30) days after recordation of the Association Declaration, at such time and place in the Borough of Manhattan in the City of New York as shall be both fixed and designated by Ground Lease Tenant in a written notice given to all of the Managers by personal delivery, mail, facsimile, email or overnight carrier not later than five (5) business days prior to such date.

(b) Regular and Special Meetings of the Board.

(i) Regular meetings of the Board may be held at such time and place in the Borough of Manhattan in the City of New York as shall be determined from time to time by a majority vote of the Managers; provided that at least one such meeting of the Board shall be held during each calendar quarter. Written notice of all regular meetings of the Board shall be given to each Manager by personal delivery, mail, facsimile, email or overnight carrier at least five (5) business days prior to the day of such meeting.

(ii) The President may call a special meeting of the Board whenever he or she deems the same to be necessary or desirable, and the President shall call such a meeting upon the written request of three (3) or more Managers. Written notice of all special meetings shall be given to each Manager by personal delivery, mail, facsimile, email or overnight carrier at least five (5) business days prior to the day of such meeting, which notice shall state the time, place (in the City of New York) and purpose of the meeting. Notwithstanding the foregoing, for so long as there are three (3) or fewer Managers appointed to the Board, any one (1) Manager may call for a special meeting of the Board; provided that such Manager may call for no more than one (1) special meeting per year.

(c) Waiver of Notice of Meetings. Any Manager may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Manager at any meeting shall constitute a waiver by him or her of notice of the time and place thereof. If all of the Managers are present at any meeting of the Board, no notice of such meeting shall be required and any business may be transacted at such meeting.

(d) Quorum of the Board; Remote Participation; Adjournment. For purposes of all meetings of the Board, Managers sufficient to cast a majority of votes allocated to all Managers then serving on the Board shall constitute a quorum for the transaction of business. In connection therewith one or more Managers may participate in any meeting by means of a conference telephone or similar communications equipment permitting all individuals participating in the meeting to hear each other at the same time, and such participation shall constitute the presence of such Manager(s) at such a meeting for all purposes. If, at any meeting of the Board, there shall be less than a quorum present, the Managers in attendance may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting that was originally called (but for the lack of a quorum) may be transacted without further notice.

(e) Conduct of Meetings.

(i) The President shall preside at all meetings of the Board. The Secretary shall faithfully record the minutes of all such meetings, which minutes shall include the full text of all resolutions duly adopted by the Board and a record of all transactions and proceedings occurring at the same.

(ii) The then current edition of Robert's Rules of Order, or any other rules of procedure that are, from time to time, acceptable to a majority of the Managers, shall govern the conduct of the meetings of the Board, unless the same shall be in conflict with the terms of this Agreement or of any law.

(f) Voting; Action by Written Consent. Except as otherwise expressly provided in this Agreement, the vote, at a meeting of the Managers at which a quorum of Managers is present, of a majority of Managers shall constitute the decision of the Board. Alternatively, any decision that is required or permitted to be made by the Board may be made without a meeting thereof if all of the Managers consent in writing to such decision. All such written consents shall be duly filed by the Secretary of the Association in the minutes of the Board.

Section 2.5 Common or Interested Managers. Each Manager shall perform his or her duties, and shall exercise his or her powers, in good faith and with a view to the interests of the Association. No contract or other transaction shall be entered into between the Association and either:

(a) any one or more of the Members, the Managers and/or the officers of the Association; and/or

(b) any corporation, partnership, fiduciary, firm, association, limited liability company or other entity in which any one or more of the Members, the Managers and/or the officers of the Association are officers, directors, employees, partners, fiduciaries, beneficiaries, members, or principals, or are otherwise interested, pecuniarily or otherwise; provided, that such restriction shall not apply if:

(i) the fact thereof is disclosed to, or known by, the Board or a majority of the Managers, or noted in the minutes thereof, and the Board shall authorize, approve, or ratify such contract or transaction in good faith by a vote of a majority of the entire Board, less the number of any such interested Managers; or

(ii) the fact thereof is disclosed to, or known by, the Board or a majority of the Managers, or noted in the minutes thereof, and the contract or transaction is commercially reasonable at the time that the same is authorized, approved, ratified, executed, or otherwise consummated.

In no way shall the foregoing restrict the right of the Association to enter into any management agreement or similar arrangement or other agreements with Ground Lease Tenant or its affiliates (or affiliates of The Related Companies, L.P.) in connection with the ERY Project.

Without limiting the foregoing, any interested Manager may be counted in determining the presence of a quorum at any meeting of the Board that authorizes, approves, or ratifies any such contract or transaction.

Section 2.6 Waiver of Certain Duties; Good Faith and Fair Dealing. To the maximum extent permitted by applicable law, no Member or Manager, in its or their capacity as such, shall have any duty of any kind to the Association, its Members or any other Person other than as expressly provided in this Agreement, including any fiduciary duty associated with self-dealing or corporate opportunities or any other fiduciary duty of care or loyalty, all of which are hereby expressly waived. Without limiting the generality of the foregoing, in voting on matters presented to the Board, a Manager may consider the specific interests of the Member who

appointed him or her and may act in his or her sole discretion, including to the detriment of the other Members, and no Member may institute any action against any Manager arising out of the exercise of such Manager's voting powers on the ground of breach of fiduciary responsibility towards the Members and/or the Association. Each Member hereby agrees that any standard of care or duty imposed under the Act or any other applicable laws shall be modified, waived or limited in each case as required to permit the Manager or Member, as the case may be, to act pursuant to the terms of this Agreement, or any other agreement contemplated hereby, in accordance with the express terms hereof or thereof, and to make any decision pursuant to the authority prescribed in this Agreement to such other agreement. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall be construed as eliminating the implied contractual covenant of good faith and fair dealing or limiting or eliminating liability for any act or omission that constitutes a bad faith violation of such implied contractual covenant.

ARTICLE III

OFFICERS

Section 3.1 General.

(a) Subject to the terms of this Article III, the Board shall have the authority to appoint and terminate officers of the Association and/or its Subsidiaries and to retain, determine the compensation of and terminate employees, agents, contractors and consultants of the Association and/or its Subsidiaries and to delegate and revoke such powers and duties exercisable by the Board to any such officers, employees or agents of the Association and/or its Subsidiaries as the Board deems appropriate, including the power, acting individually or jointly, to represent and bind the Association and/or its Subsidiaries in all matters, in accordance with the scope of their respective powers and duties.

(b) The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as, in its discretion, may be necessary or desirable. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed, upon the direction of the Board, by any two officers of the Association, or by such lesser number of officers, or by such other person or persons, as may be designated from time to time by the Board, including without limitation, the Managing Agent.

Section 3.2 President. The President shall be elected from amongst the Managers. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board. The President shall have all of the general powers and duties that are incident to the office of president of a corporation organized under the laws of the State of Delaware, as he or she may decide, in his or her discretion, are appropriate to assist in the conduct of the affairs of the Association

Section 3.3 Vice President. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent or unable to act; provided that the Vice President shall not preside at meetings of the Board unless the Vice President is

also a Manager. If both the President and the Vice President are unable to act, the Board shall appoint some other Manager to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall be imposed upon him or her from time to time by the Board or by the President and in all events shall have the duties that are incident to the office of a vice president of a corporation organized under the laws of the State of Delaware.

Section 3.4 Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board. The Secretary shall have charge of such books and papers as the Board shall direct and, in general, shall perform all of the duties that are incident to the office of secretary of a corporation organized under the laws of the State of Delaware.

Section 3.5 Treasurer. The Treasurer shall have the care and custody of the funds and securities of the Association and shall be responsible for keeping full and accurate financial records and books of account thereof, showing all receipts and disbursements necessary for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all funds and other securities in the name of the Association, or in the name of any managing agent appointed by the Board pursuant to the terms of Section 2.1(c), in such depositories as may, from time to time, be designated by the Board. In general, the Treasurer shall perform all of the duties incident to the office of treasurer of a corporation organized under the laws of the State of Delaware.

Section 3.6 Election, Term of Office and Qualifications of Officers. Each of the officers of the Association shall be elected annually by a majority vote of the Board taken at the organizational meeting of each new Board, and shall serve at the pleasure of the Board. Other than the President, who shall also be a Manager, the other officers of the Association need not be Members or Managers and need not have any interest in the Association.

Section 3.7 Removal and Resignation of Officers. Any officer of the Association may be removed from office, with or without cause, by an affirmative vote of a majority of the Managers. In addition, any officer may resign at any time by giving written notice to the Board. If the President or the Vice President of the Association shall cease to be a Manager during his or her term of office, such officer shall be deemed to have resigned his or her office effective upon the date upon which his or her status as a Manager shall cease.

Section 3.8 Vacancies. Any vacancy in an officer position shall be filled by a majority vote of the Board taken at any regular meeting of the Board or at a special meeting thereof called for such purpose.

Section 3.9 Compensation of Officers. No officer of the Association shall receive any compensation from the Association for acting as such.

ARTICLE IV

MEMBERS; MEETINGS OF THE MEMBERS

Section 4.1 General. Except those expressly granted to the Members by the terms of this Agreement or conferred on the Members by non-waivable provisions of the Act or other applicable law, the Members shall have no right or authority to vote on any matters and only the

Board and such officers, employees or other agents of the Association authorized by the Board (or as otherwise provided herein) shall have the authority to bind the Association or have any rights or powers to conduct the business or affairs of the Association. Any act of a Member in contravention of this Section 4.1 shall be null and void and without force or effect.

Section 4.2 Annual Meetings of the Members. No annual or other meeting of the Members (a “Members Meeting”) shall be required to be held unless required, in each case, by applicable Legal Requirements, in which event any such meeting so required to be held shall be held on the date specified by the Board.

Section 4.3 Special Meetings of the Members. The President shall call a special Members Meeting whenever so directed by a duly adopted resolution of the Board or upon receipt by the Secretary of a petition calling for such a meeting signed by Members as to which is allocated a majority of the Association Shares outstanding at such time. Each such resolution or petition shall set forth, in reasonable detail, the purposes for calling such a meeting, and no business shall be transacted at such special meeting except business reasonably related to such stated purposes. Notwithstanding the foregoing, for so long as there are three (3) or fewer Members, any one (1) Member may petition the Secretary to call for a special meeting of the Members; provided that such Member may call for no more than one (1) special meeting per year.

Section 4.4 Place of Meetings. All Members Meetings required or permitted to be held, if any, shall be held at the principal office of the Association or at such other suitable and convenient place in the County of New York as may be designated by the Board.

Section 4.5 Notice of Meetings.

(a) The Secretary of the Association shall give notice of each annual or special Members Meeting then of record entitled to vote at such meeting, which notice shall:

(i) set forth the purpose, time and place of such meeting; and

(ii) be given to each Member by personal delivery, mail, facsimile or overnight carrier not later than five (5) business days prior to the day fixed for the meeting (however, the mailing of such notice to any Member, addressed to its FAS Parcel, at least ten (10) days prior to the day fixed for the meeting shall be conclusively deemed the giving of notice to such Member of such meeting).

(b) Any Member may designate an address for the giving of notice other than such Member’s FAS Parcel by giving written notice thereof to the Secretary of the Association not less than ten (10) days prior to the giving of notice of the applicable meeting.

(c) If the business to be conducted at any Members Meeting shall include the consideration of a proposed amendment to this Agreement or to any other document or instrument that shall be binding upon the Association, the Members and/or the Association Property, the notice of such meeting shall be mailed to all Members at least fifteen (15) days prior to the day fixed for such meeting and shall be accompanied by a copy of the text of such proposed amendment.

Section 4.6 Quorum of the Members; Adjournment. Except as otherwise provided in this Agreement, the presence, in person or by proxy, of Members representing fifty percent (50%) or more in aggregate Association Share shall constitute a quorum at all Members Meetings, if any. If, at any Members Meeting, there shall be less than a quorum present, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time fixed for the original meeting. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting that was originally called (but for the lack of a quorum) may be transacted without further notice.

Section 4.7 Conduct of Meetings. The President shall preside at all Members Meetings, if any, and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Members and a record of all transactions and proceedings occurring thereat. The then current edition of Robert's Rules of Order, or any other rules of procedure acceptable to a majority of the Members present at any meeting, in person or by proxy, shall govern the conduct of the Members Meetings, unless the same shall be in conflict with any applicable law or the terms of this Agreement. All votes of the Members shall be tallied by the persons appointed by the presiding officer of the meeting.

Section 4.8 Order of Business. The order of business at all Members Meetings, if any, shall be as follows:

- (i) Roll call;
- (ii) Proof of notice of meeting;
- (iii) Reading of the minutes of the preceding meeting (unless waived);
- (iv) Reports of officers of the Association;
- (v) Reports of committees;
- (vi) Election of inspectors of election (when so required);
- (vii) Unfinished business; and
- (viii) New business.

Section 4.9 Voting. Subject to the terms of Section 4.10, the Members shall, at all Members Meetings, be entitled to vote as follows:

(a) Each Member shall have a vote equal to its Association Share as follows: each Member shall have one (1) vote for each 0.0001% of its respective Association Share outstanding at the time in question.

(b) If two (2) or more Persons own a FAS Parcel, they shall designate one Person amongst them to cast the vote appurtenant to their FAS Parcel in a writing given to the Secretary of the Association, and the vote of such designee shall be binding upon all of such

Persons. Failing such a designation, all of such Persons shall mutually cast such vote under one ballot without division, and the concurrence of all such Persons shall be conclusively presumed if any one of them purports to cast such vote without protest being contemporaneously made to the individual presiding over the meeting at which such vote is taken. If protest is made, the disputing Members shall be counted solely for the purpose of determining whether a quorum is present.

(c) A Member may designate any Person to act as a proxy on its behalf. The designation of any such proxy shall be made in a writing both signed and dated by the designator and delivered to the Secretary of the Association at or before the appointed time for the meeting(s) during which the same is to be effective. Facsimile or photocopies of any designation of a proxy shall not be valid. Any such designation shall be revocable at any time upon written notice given to the Secretary of the Association; provided that no revocation of such a designation shall be effective with respect to any votes cast by such proxy prior to the receipt of such revocation notice by the Secretary of the Association or, if such revocation is made at a meeting of the Members during which the Secretary of the Association is not in attendance, by the individual acting as the secretary of such meeting. No designation to act as a proxy shall be effective for a period in excess of six (6) months after the date thereof.

(d) Except when otherwise required by the Act or other applicable law or provided in this Agreement, the affirmative vote of a majority in number of the votes of the Members (measured in accordance with Section 4.9(a) above) present in person or by proxy shall constitute the decision of the Members. For the avoidance of doubt, each Member shall have a proportionate vote commensurate with the Association Share allocated to such Member (measured in accordance with Section 4.9(a) above) and any and all references in this Agreement or the other Association Documents to a “majority” vote or “majority” of Members, or other specified percentage vote or percentage of Members shall in all instances mean a majority (or such other specified percentage) in number of the affirmative votes of the Members (measured in accordance with Section 4.9(a) above) present in person or by proxy at a meeting of the Members.

(e) Notwithstanding anything to the contrary contained herein, following notice by Declarant (or its successor in interest as landlord under a Severed Parcel Lease and/or Balance Lease) to the Board that an Event of Default has occurred under a Severed Parcel Lease or the Balance Lease, (x) the Member that is the tenant under such lease may not thereafter exercise any voting rights as a Member until further notice from Declarant or such successor to the Board that such voting rights have been reinstated, and (y) Declarant or such successor may vote on behalf of such Member, with respect to the Association Share of such Member, subject to the right of such Member to be reinstated after a further notice to such effect from Declarant or such successor.

Notwithstanding anything to the contrary contained herein, at all times prior to the expiration of the Development Period, Ground Lease Tenant shall be deemed to maintain a majority of the Association Shares and hold a voting majority of the Members for all purposes of Member(s) voting hereunder.

Section 4.10 Action Without a Meeting. Any action required or permitted to be taken by the Members at a duly constituted meeting may be taken without such a meeting if Members, having sufficient votes to approve such an action at a duly constituted meeting of such Members pursuant to this Agreement, consent in writing to the adoption of a resolution approving such action. All written consents given by such Members pursuant to this Section 4.10 shall be retained in the records of the Association, together with true copies of the resolutions to which they relate.

ARTICLE V

ASSOCIATION SHARES; FINANCES OF THE ASSOCIATION; CAPITAL ACCOUNTS; ALLOCATIONS OF PROFITS AND LOSSES

Section 5.1 Association Shares. The names and addresses of the Members and the Association Shares held by each Member as of the Effective Date are as set forth on Schedule A hereto. The Board shall update Schedule A from time to time to reflect any change with respect to the information stated therein and shall send prompt notice of any such update to each Member. Revisions to Schedule A as contemplated by this Section 5.1 shall not constitute amendments to this Agreement for purposes of Section 13.3. For all purposes of this Agreement, reference to a Member's Association Share shall mean the Association Share assigned to such Member's FAS Parcel pursuant to, and in accordance with, the Association Declaration. The Board shall be responsible for ensuring that Association Shares are allocated to FASP Owners in accordance with the terms of the Association Declaration.

Section 5.2 Capital Contributions; Failure to Make Contributions.

(a) As of the Effective Date, each Member has made (or shall be deemed to have made) Capital Contributions to the Association in an aggregate amount set forth on Schedule A hereto (which shall be updated or supplemented by the Board from time to time to reflect the admission of additional Members and Transfers pursuant to Article VII and any additional Capital Contributions, redemptions, withdrawals or any other amounts as the Board may determine). Payments of Association Charges and Special Assessments shall be treated as Capital Contributions by the Members for all purposes of this Agreement; provided that any charges payable by the Members other than on a *pro rata* basis in accordance with their Association Shares shall not be deemed Capital Contributions for purposes of this Agreement.

(b) In the event a Member fails to make a Capital Contribution in full in accordance with the terms of this Agreement or the Association Declaration (a "Defaulting Member"), in addition to the remedies for such failure as set forth in Section 11.1 and the rights of the Association, Declarant and Yards Parcel Owner in respect of such failure as set forth herein and the Association Declaration, each of the other Members shall have the right, but not the obligation, to fund its *pro rata* share of the Capital Contribution amount which the Defaulting Member failed to contribute to the Association (the "Default Amount") in accordance with its Association Share (based on the aggregate Association Shares of all non-defaulting Members), and if another non-defaulting Member fails to elect to fund its *pro rata* share, each of the electing Members (a "Funding Member") may thereafter fund its *pro rata* share of such remaining Default Amount, based on the Association Shares of all Funding Members so electing to fund the

Default Amount, until the entire Default Amount has been funded in full. Upon such failure to make a Capital Contribution, the Association shall deliver written notice (a “Default Funding Notice”) to all non-defaulting Members, providing each such Member the right to fund its *pro rata* share of the Default Amount, which right shall be exercisable by written notice to Association delivered within five (5) days of receipt of such Default Funding Notice; provided that if a Funding Member desires to fund more than its initial *pro rata* share of the Default Amount, it shall indicate in its response the maximum amount it so desires to fund in the event any of the non-defaulting Members fail to elect to fund their initial *pro rata* share of the Default Amount. All such amounts funded by the Funding Members pursuant to this Section 5.2(b) shall be treated as a loan by such Funding Member to the Association and evidenced by a Note delivered by the Association to the Funding Member, and shall in no event be treated as a Capital Contribution of the Funding Member for purposes of this Agreement.

Section 5.3 Determination of Association Expenses and Fixing of Association Charges.

(a) From time to time, but not less frequently than once a year, the Board shall:

(i) prepare and adopt a budget for the Association, subject, in all respects, to the strictures set forth in Sections 2.2(a) and (b);

(ii) determine the aggregate amount of money necessary to be contributed by the Members to the Association (hereinafter called the “Association Charges”) in order to meet the anticipated expenses of the Association (including general operating and capital reserves as determined by the Board) (hereinafter called the “Association Expenses”); and

(iii) allocate and call for contribution of Association Charges amongst the Members *pro rata* in accordance with their Association Shares, except as otherwise set forth in the Association Declaration or elsewhere in this Agreement (including Schedule C hereto).

(b) Promptly after the same is determined, but in no event later than fifteen (15) days before the date upon which the newly-determined Association Charges are due to be contributed by the Members to the Association (which Association Charges shall be contributed by the Members in incremental installments to be made at least quarterly, or more frequently as the Board may determine), the Board shall:

(i) advise each Member in writing as to the new amount of Association Charges to be contributed by such Member, including the date(s) on which such Association Charges are to be funded (the first of which shall be no less than fifteen (15) days from the date of such notice), and

(ii) furnish each Member with a copy of the budget (in a reasonably itemized form) upon which the determination of such new amount of Association Charges was based.

(c) In the event that the Board shall neglect or delay in the preparation or adoption of a budget, or in the projection of the Association Expenses and/or a determination of

the new Association Charges, for any fiscal year, the Association Charges that were in effect at the end of the prior fiscal year shall continue to be the Association Charges required to be contributed by the Members until a new projection of the Association Expenses and a determination of the new Association Charges shall be made.

Section 5.4 Modifications of Association Charges During a Fiscal Year. The Board may, in its sole discretion, and from time to time during any fiscal year of the Association:

(a) modify its projection of the Association Expenses for such fiscal year; and/or

(b) increase or decrease the amount of the Association Charges to be contributed by the Members during the balance of such fiscal year (and, thereafter, until a new amount of Association Charges is fixed by the Board pursuant to the terms of this Article V).

However, no change in the amount of the Association Charges shall be effective until each Member has been given at least fifteen (15) days' prior written notice thereof.

Section 5.5 Declaration of Special Assessments. In addition to its right to call for contribution of Association Charges, the Board shall have the right, again subject, in all respects, to the strictures contained in Sections 2.2(a) and (b), to require the contribution by the Members of Special Assessments in order to either:

(a) meet those Association Expenses that were not provided for, or not sufficiently provided for, when the Board fixed the then current Association Charges; and/or

(b) collect any other charges that the Members, or any one or more of them, shall be obligated to contribute to the Association pursuant to the terms of this Agreement or of any other document or instrument that shall be binding upon the Association, the Members and/or the Association Property.

All Special Assessments shall be allocated among the Members in the same manner as the Association Charges; and shall be contributed to the Association either in one lump sum or in installments, as the Board shall determine.

However, the Board shall give each Member not less than fifteen (15) days' written notice prior to the date upon which such Special Assessment, or the first installment thereof, as the case may be, shall be due to be contributed to the Association, which notice shall set forth, in reasonable detail, the nature and purpose thereof.

Section 5.6 Financial Records. The Treasurer of the Association, or any Managing Agent appointed by the Board pursuant to the terms of Section 2.1(c) acting under the supervision of the Treasurer, shall keep full, detailed and accurate records and books of account with respect to the financial affairs of the Association in accordance with generally accepted accounting principles consistently applied, which records and books of account shall include, without limitation:

(a) a listing of all receipts of and expenditures by the Association, whether directly or through such Managing Agent; and

(b) a separate listing for each Condominium and other FAS Parcel, setting forth, among other things, the amount of Association Charges and Special Assessments called for from the applicable Condominium Board or Member that owns such FAS Parcel, the date when due, the amounts paid thereon (and as to any Unit Owner), the balance, if any, remaining unpaid.

Section 5.7 Annual Reports. Within four (4) months after the end of each fiscal year of the Association, the Association shall submit to each Member an annual report of the receipts and expenditures of the Association, each of which shall be prepared by an independent certified public accountant. The cost of such annual report shall be paid by the Association and deemed an Association Expense.

Section 5.8 Inspection Rights. Each Member and his or her duly appointed representatives and Registered Mortgagees shall be permitted to examine the books of account, the minutes of the Board and any subcommittees thereof and such other information and records as may be in the possession or under the control of the Board, its agents or professionals in connection with the ownership, operation and maintenance of the Association Property at reasonable times on business days, but not more frequently than once a month; provided that a Member shall be responsible for causing its Registered Mortgagee to keep such information confidential in accordance with the terms of Section 13.4. The Board shall cause the Association to retain the books and records of the Association for inspection hereunder for at least six (6) years.

Section 5.9 Fiscal Year. The fiscal year of the Association shall be the calendar year, unless otherwise determined by a duly adopted resolution of the Board.

Section 5.10 Capital Accounts.

(a) Capital Accounts. A capital account (“Capital Account”) shall be maintained for each Member in accordance with this Section 5.10. Without limiting the generality of the foregoing, a Member’s Capital Account shall be increased by (i) the amount of money contributed by the Member to the Association, (ii) the initial gross fair market value of property contributed by the Member to the Association, as determined by the Board (net of liabilities that the Association is considered to assume or take subject to pursuant to Code Section 752) and (iii) the Net Income (or items thereof) allocated to the Member. A Member’s Capital Account shall be decreased by (x) the amount of money distributed to the Member, (y) the gross fair market value of any property so distributed to the Member as determined by the Board (net of any liabilities that such Member is considered to assume or take subject to pursuant to Code Section 752) and (z) the Net Losses (or items thereof) allocated to the Member.

(b) Negative Capital Account. No Member shall be required to make up a deficit balance in such Member’s Capital Account or to pay to any Member the amount of any such deficit in any such account. A deficit Capital Account of a Member shall not be deemed to be a liability of such Member (or of such Member’s members) or an asset or property of the

Association (or any Member), and no Member shall have any obligation to the Association (or any Member) to contribute any portion of such Member's negative Capital Account to the Association upon dissolution or liquidation.

(c) Credit for Capital Contribution. For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any Capital Contribution which such Member is to make until such Capital Contribution is actually made.

(d) Transfer of Interest. In the event of a Transfer of Interests in accordance with the terms of this Agreement, the Capital Account of the transferring Member shall become the Capital Account of the transferee Member, to the extent it relates to the Interests transferred.

(e) Compliance with Section 704(b) of the Code. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board determines that it is prudent to modify the manner in which the Capital Accounts are computed in order to comply with such Regulations, the Board may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member upon dissolution of the Association. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of the Association capital reflected on the Association's balance sheet, as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with the Regulations.

Section 5.11 Interest. No interest shall be paid or credited to the Members on their Capital Accounts or upon any undistributed amounts held by the Association.

Section 5.12 Capital Withdrawal Rights; Interest and Priority. Except as permitted by the consent of the Board, no Member shall be entitled to withdraw or reduce such Member's Capital Account in whole or in part. A Member who withdraws or purports to withdraw as a Member of the Association without the consent of the Board shall be liable to the Association for any damages suffered by the Association on account of the withdrawal or purported withdrawal and shall not be entitled to receive any payment in respect of its Interest or a return of its Capital Contribution, if any, until the time otherwise provided herein for distributions to Members.

Section 5.13 Allocation of Profits and Losses.

(a) General Rule. Except as provided elsewhere in this Agreement, Net Income (and items thereof) and Net Losses (and items thereof) for any fiscal year (or other applicable period) shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after giving effect to such allocation and increased by any amounts (x) described in Regulations Section 1.704-1(b)(2)(ii)(c) which such Member is unconditionally obligated to contribute to the Association pursuant to this Agreement or applicable law or (y) which such Member is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), is, as nearly as possible, equal (proportionately) to the amount of the distributions that would be made to such

Member during such fiscal year (or other applicable period) pursuant to Article IX, based on the assumptions that (i) the Association is dissolved and terminated, (ii) its affairs are wound up and each Association asset is sold for cash equal to its Gross Asset Value as of such date, (iii) all Association liabilities are satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the asset(s) securing such liability) and (iv) the net assets of the Association are distributed in accordance with Article IX to the Members immediately after giving effect to such allocation (taking into account distributions made during such fiscal year or other applicable period). The Board may, in its discretion, make such other assumptions (whether or not consistent with the above assumptions) as it deems necessary or appropriate in order to effectuate the intended economic arrangement of the Members as reflected in this Agreement.

(b) Allocation of Net Income and Net Losses for Tax Purposes. Income, gain, loss and deductions of the Association shall, solely for income tax purposes, be allocated among the Members in accordance with Section 704(c) of the Code so as to take account of any difference between the adjusted basis of Association assets for federal income tax purposes and their respective adjusted Gross Asset Values, and otherwise shall be allocated in the same manner as the related book items were allocated to the Members. Any allocations required by Section 704(c) of the Code shall be effectuated using any method chosen by the Board and described in Regulations Section 1.704-3.

(c) Special Allocations.

(i) Section 704(b) Allocation Limitations. Notwithstanding Section 5.13(a), special allocations of Net Income or specific items of income or gain may be specially allocated for any fiscal year (or other period) as follows:

(A) Minimum Gain Chargeback. The Association shall allocate items of income among the Members at such times and in such amounts as necessary to satisfy the minimum gain chargeback requirements of Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

(B) Qualified Income Offset. The Association shall specially allocate Net Income and items of income and gain when and to the extent required to satisfy the “qualified income offset” requirements within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d).

(ii) The Net Losses allocated pursuant to Section 5.13(a) shall not exceed the maximum amount of losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any taxable year. In the event that some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Losses pursuant to Section 5.13(a), the limitation set forth in this Section 5.13(c) shall be applied on a Member by Member basis so as to allocate the maximum permissible Net Losses to each Member under Regulations Section 1.704-1(b)(2)(ii)(d).

Section 5.14 Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year (or other applicable period), as determined under Regulations Section 1.704-2(d), shall be specially allocated *pro rata* among the Members in proportion to their respective Association Shares,

except to the extent that applicable Regulations require that such deductions be allocated in some other manner. Any Member Nonrecourse Deductions for any fiscal year (or other applicable period) shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

Section 5.15 Grant of Security Interest.

(a) Each Member hereby delivers, assigns, pledges, sets over and grants to the Association a first priority lien and security interest in and upon its entire Interest, including all economic, voting and control rights with respect thereto and any amounts due such Member under this Agreement, together with all substitutions and replacements thereof and any products and proceeds thereof to secure the payment and performance of all of its obligations, liabilities and undertakings under this Agreement, including as a result of any Event of Default. This Agreement shall be deemed to be a security agreement for the purposes of the Uniform Commercial Code of the State of Delaware or any other applicable law which shall govern perfection of the liens and security interests created hereby. Each Member hereby (i) grants to the Association all rights available to a secured party under the Uniform Commercial Code of the State of Delaware or any other applicable law which shall govern perfection of the liens and security interests granted hereby, (ii) authorizes the Association to file all financing statements with respect to the collateral pledged to the Association by such Member immediately above and (iii) agrees, upon request, to deliver to the Association any other document that may reasonably be requested by the Association with respect thereto.

(b) Notwithstanding the grant of the security interest pursuant to Section 5.15(a), the obligation of each Member to contribute its respective share of Association Charges and Special Assessments is personally recourse to the Member and may be enforced against such Member by all available means in accordance with law.

ARTICLE VI

TAX MATTERS

Section 6.1 Tax Matters.

(a) The Members intend for the Association to be treated as a partnership for U.S. federal and applicable state and local income tax purposes, and agree not to take any action or position, or to make any election, in a tax return or otherwise, inconsistent with the classification of the Association as a partnership for such purposes.

(b) ERY Tenannt shall be designated on the Association's annual federal information tax return, and have full powers and responsibilities, as the Tax Matters Partner of the Association for purposes of Section 6231(a)(7) of the Code and in any similar capacity under applicable state and local law (the "Tax Matters Partner"). The Tax Matters Partner shall: (i) take such reasonable action as may be necessary to cause each of the other Members to become a notice partner within the meaning of Section 6223 of the Code, (ii) keep each of the other Members reasonably advised of the progress of any audit, and (iii) promptly supply each of the

other Members with copies of any written communications received from the Internal Revenue Service or other taxing authority relating to any audit. The Tax Matters Partner shall be reimbursed by the Association for any reasonable expenses incurred by the Tax Matters Partner, or on that Member's behalf, in such Member's capacity as the Tax Matters Partner.

(c) The Association shall prepare and file, or cause to be prepared and filed, all income and other tax returns that the Association is required to file. The Association shall use commercially reasonable efforts to distribute to the Members such information concerning the Association (including Schedule K-1 or successor schedule) as is necessary for a Member to complete and file its federal, state, local and foreign tax returns as soon as reasonably practicable from the perspective of the Board.

ARTICLE VII

ADDITIONAL MEMBERS; TRANSFERS OF INTERESTS

Section 7.1 Admission of Additional Members. Every Person who or which becomes a FASP Owner and/or the Balance Parcel Owner from time to time shall, upon acceptance of a deed or other instrument of conveyance of, or the succeeding of title to, or acquiring a leasehold interest under a Severed Parcel Lease or the Balance Lease in, the entirety of a FAS Parcel, become a member of the Association, and in connection therewith such Person shall deliver to the Association a joinder to this Agreement in the form attached as Exhibit A hereto (the "Joinder Agreement") and such other information as may be required by the Board; provided that Persons who hold an interest in a FAS Parcel merely as security for the performance of an obligation shall not become a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, the ownership of such interest in a FAS Parcel, whether fee or leasehold. Becoming and being a FASP Owner, as aforesaid, shall be the sole qualification for membership in the Association. Notwithstanding the foregoing, in no event shall a Unit Owner or lessee of any space within any FAS Parcel organized as a Condominium be or be deemed a Member solely by virtue of its ownership of a Unit in any Condominium established on a FAS Parcel. For the avoidance of doubt, (i) no Person shall become a Member unless such Person owns or acquires a leasehold interest in the entirety of a FAS Parcel, including ownership by means of a fee interest and (ii) the foregoing is not intended to grant to the Association any right to approve or restrict the transfer of any individual condominium units within any FAS Parcel that is a Condominium. Notwithstanding anything to the contrary contained herein, (i) upon a FASP Owner submitting its FAS Parcel to a declaration of condominium pursuant to the provisions of the Condominium Act as contemplated by Section 13.1(a) of the Association Declaration, the Condominium Board created thereunder, as agent for the Condominium created thereby, shall, in each case, be deemed to be the FASP Owner of the applicable FAS Parcel and deemed to be the Member hereunder in respect of such FAS Parcel and (ii) in connection therewith, the Interest of such FASP Owner shall be automatically assigned to such Condominium Board which shall become the Member in respect of such FAS Parcel for all purposes of this Agreement.

Section 7.2 Transfers; Restrictions on Transfer. Except as provided in this Article VII, no Member, including any assignee or successor in interest of any such Member, may (voluntarily or involuntarily), directly or indirectly, transfer, participate, assign, pledge,

hypothecate, hedge against or otherwise dispose of (each, a “Transfer”) all or any portion of its Interest. A Member who has Transferred all of its Interest in accordance with this Agreement shall cease to be a Member of the Association and thereafter shall have no powers, rights and privileges as a Member of the Association hereunder (except in respect of indemnification pursuant to Article XII).

Section 7.3 Permitted Transfers. A Member may transfer all, and not less than all, of its Interest in connection with the sale and conveyance of such Member’s entire interest in a FAS Parcel; provided that all of the following conditions shall have been satisfied prior to giving effect thereto:

(a) the Member and the transferee shall have provided the Board with a copy of an executed and delivered instrument of assignment and assumption evidencing the Transfer in a form acceptable to the Board;

(b) the Member and the transferee shall have executed and delivered such other instruments (including an indemnification of the Association and the Board) and taken such other action as the Board shall have deemed necessary or desirable to carry out such substitution, including the execution by the transferee of a Joinder Agreement;

(c) the Member or transferee shall have provided an opinion of counsel, which opinion and counsel shall be satisfactory to the Association, to the effect that such disposition is exempt from all applicable registration requirements and that such disposition will not violate any applicable laws regulating the disposition of securities;

(d) if so requested by the Board, the Member or proposed transferee shall have reimbursed the Association for any fees and expenses (including reasonable attorneys’ fees) incurred by or on behalf of the Association in respect of such Transfer;

(e) prior to such Transfer, the Member shall have made all Capital Contributions required to be made by such Member pursuant to the terms of this Agreement; and

(f) any other conditions that the Board may have reasonably specified shall have been satisfied, including providing the Board with the transferee’s taxpayer identification number.

Section 7.4 Unauthorized Transfers. Any purported Transfer of any Member’s Interest which does not comply with the conditions set forth in this Agreement (an “Unauthorized Transfer”) shall be null and void and of no force or effect whatsoever; provided that, if the Association is required under the Act or other applicable law (including under any bankruptcy law, law of successions or by reason of death, a separation agreement or divorce, equitable or community or marital property distribution, judicial decree or other court order relating to the division or partition of property between spouses), as reasonably determined by the Board or by a court of competent jurisdiction to recognize an Unauthorized Transfer (or if all of the Members elect to recognize such Unauthorized Transfer for the limited purposes provided in this Section 7.4), the Person to whom such Interest is Transferred (an “Assignee”) shall have only the rights as set forth in Section 7.5. Any distributions with respect to such Transferred Interest may be applied (without limiting any other legal or equitable rights of the Association)

towards the satisfaction of any debts, obligations or liabilities for damages that the transferor or transferee of such Interest may have to the Association.

Section 7.5 No Rights of Assignees. An Assignee is not a Member and shall be entitled only to (a) allocations pursuant to Section 5.13 and (b) distributions in accordance with this Agreement with respect to the Interest Transferred to such Assignee. An Assignee shall (i) have no right to vote or otherwise participate in Association matters, (ii) take no part in the management of the Association's business and affairs or transact any business on behalf of the Association, (iii) have no right to serve as or designate a Manager, (iv) have no right to any notices provided hereunder, (v) have no power to sign on behalf of, or to bind, the Association, (vi) have no right to any information or accounting of the affairs of the Association, (vii) not be entitled to inspect the books or records of the Association and (viii) not have any other rights of a Member under the Act or this Agreement other than those described in the first sentence of this Section 7.5. Except as set forth in this Section 7.5, no Member may Transfer all or any part of its Interest, except in accordance with Section 7.3.

ARTICLE VIII

DISTRIBUTIONS

Section 8.1 Distributions of Available Cash. The Board shall, in its sole discretion, determine whether there is Available Cash for distribution to the Members. Except as provided in Section 9.2(a), to the extent the Board determines that there is Available Cash for distribution, the Board shall cause the Association to distribute such Available Cash, from time to time as the Board shall determine in its sole discretion, to the Members in the following order of priority:

(a) *First*, to Funding Members that made loans to the Association pursuant to Section 5.2(b), to pay accrued interest and then the principal on such loans (which shall be repaid in the order in which Funding Member loans are made pursuant to Section 5.2(b) (*i.e.*, a Funding Member loan made earlier in time shall be repaid in full prior to any payments on subsequently made Funding Member loans and Funding Member loans made in connection with the same Default Funding Notice shall be considered to have been made at the same time and shall be repaid on a *pro rata, pari passu* basis to the Funding Members that made such Funding Member loans)); and

(b) *Thereafter, pro rata and pari passu* to the Members in accordance with their then respective Association Shares.

Section 8.2 Amounts Withheld. Except as provided below, all amounts withheld or paid pursuant to the Code or any provisions of state, local or foreign tax law with respect to any payment, distribution, allocation or other consideration paid or other item that is allocable to any Member, including in connection with a contribution of assets to the Association by a Member, shall be treated as amounts paid or distributed, as the case may be, to the Member with respect to or on behalf of which such amount was withheld or paid pursuant to this Section 8.2 for all purposes under this Agreement. The Association is authorized to withhold or pay, when and to the extent required under applicable law, from payments, distributions, or other consideration paid or otherwise distributable to any Member or received from any Member pursuant to this

Section 8.2, and with respect to allocations to any Member, and to pay over to any federal, state, local or foreign government any amounts required to be so withheld or paid pursuant to the Code or any provisions of any federal, state, local or foreign law, and shall allocate any such amounts to the Member with respect to or on behalf of which such amounts were withheld or paid. To the extent that the Association is required to make any such payment on behalf of a Member in excess of the Available Cash (if any) distributable to such Member at such time, the Member shall promptly on demand of the Board pay to the Association the amount of such excess. In such event, the Association's use of such cash to make the related governmental payment shall not be treated as a distribution of Available Cash to the Member. In addition, each Member shall indemnify and hold harmless the Association and the Board from liability for any amounts required to be withheld or paid under the Code or any provisions of state, local or foreign law in respect of or on behalf of such Member, and any interest, penalties, additions to tax or other amounts in respect thereof. Such Member shall pay such indemnity within ten (10) days of written demand therefor, regardless of the circumstances in which such liability arises.

Section 8.3 No Other Distributions. Except as otherwise provided in Section 8.1, no Member shall have any right to the return of such Member's Capital Contributions, or any right or power to demand or receive Association assets other than cash in accordance with the terms of this Agreement. However, the Board may cause the Association to distribute Association assets other than cash on the basis of the net fair market value of the property distributed, as determined by the Board.

Section 8.4 Limitations on Distribution. Notwithstanding any other provision of this Agreement to the contrary, the Association shall not make a distribution to the Members on account of their Interests if such distribution would violate Section 18-607 of the Act or other applicable law.

ARTICLE IX

DISSOLUTION AND TERMINATION OF THE ASSOCIATION

Section 9.1 Dissolution. The Association shall dissolve and commence winding up and liquidating upon the first to occur of: (i) the authorization of the Board; or (ii) the entry of a decree of judicial dissolution of the Association pursuant to Section 18-802 of the Act; provided that the Association may not be dissolved unless the Association Declaration has been terminated in accordance with Section 18.2 of the Association Declaration.

Section 9.2 Dissolution, Winding Up and Liquidation.

(a) Upon a dissolution of the Association, the Association shall continue solely for purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying claims of its creditors. The liquidator of the Association shall take full account of the Association's liabilities and property and shall cause the property or the proceeds from the sale thereof, to the extent sufficient therefor, to be applied and distributed, to the maximum extent permitted by law, in the following order:

(i) *First*, to creditors in the order of priority as provided by law in satisfaction of all of the Association's debts and other liabilities, including the expenses of the winding-up, liquidation and dissolution of the Association (whether by payment or the making of reasonable reserves to provide for payment thereof); and

(ii) *Thereafter*, in the same order and priority as set forth in Section 8.1.

(b) Subject to the Act, where the distribution pursuant to this Section 9.2 consists both of cash (or cash equivalents) and non-cash assets, the cash (or cash equivalents) shall first be distributed, in descending order, to fully satisfy each category starting with the most preferred category above. In the case of non-cash assets, the distribution values are to be based on the fair market value thereof as determined in good faith by the Person winding up the affairs of the Association, and the shortest maturity portion of such non-cash assets (e.g., notes or other indebtedness) shall, to the extent such non-cash assets are readily divisible, be distributed, subject to the Act, in descending order, to fully satisfy each category above, starting with the most preferred category.

(c) Distributions pursuant to this Section 9.2 shall be made no later than the end of the fiscal year during which the Association is liquidated (or, if later, ninety (90) days after the date on which the Association is liquidated).

(d) The Members shall look solely to the assets of the Association for all distributions with respect to the Association and shall have no recourse therefor (upon dissolution or otherwise) against the Managers, officers or any Managing Agent, except as otherwise explicitly provided in this Agreement. No Member shall have any right to demand or receive property other than cash upon dissolution or termination of the Association and the liquidation of the Association's property.

Section 9.3 Capital Account Deficit Balance Restoration Obligation. In no event shall any Member be liable with respect to, or be required to contribute capital to restore, a negative or deficit balance in such Member's Capital Account upon the dissolution or liquidation or at any other time of either the Association or such Member's Interest except to the extent such Member expressly agrees thereto in writing with the Association.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Section 10.1 General. Each Member, for the benefit of the other Members and the Association, hereby makes each of the following representations and warranties applicable to such Member as of the Effective Date or on the date such Person becomes a Member and such warranties and representations shall survive the execution of this Agreement.

(a) **Organization; Binding Obligation.** If such Member is not an individual, such Member is duly organized, validly existing, and in good standing under the law of its state of organization, has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder and all actions necessary for the due authorization, execution, delivery and performance by that Member of this Agreement have been duly taken. This

Agreement has been duly authorized, executed and delivered by such Member and constitutes the legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms.

(b) No Conflict with Restrictions; No Default. Neither the execution by such Member nor the performance by such Member of its obligations hereunder (i) conflict with or will result in a breach of, the terms, conditions or provisions of, or constitute a default by such Member under, any agreement by which such Member is bound, (ii) violate any restriction, requirement, covenant or condition contained in any agreement to which such Member (to the best of such Member's knowledge) is bound or (iii) violate or conflict with any provision of any law to which such Member is subject. No approval of a Governmental Authority or approval of any other Person is required to be obtained by such Member in connection with its execution and delivery of this Agreement or the consummation of the transactions contemplated by or the performance of this Agreement by such Member.

(c) Certain Restrictions. No funds or assets of such Member constitutes property of, or are beneficially owned directly or indirectly, by any Person subject to sanctions or trade restrictions under United States law (an "Embargoed Person") that are identified on (1) the "List of Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control ("OFAC"), U.S. Department of the Treasury, and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the membership in the Association (whether directly or indirectly), is prohibited by law, or (2) Executive Order 13224 (September 23, 2001) issued by the President of the United States ("Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), any related enabling legislation or any other similar Executive Orders. No Embargoed Person has any direct interest or indirect interest, of any nature whatsoever, in the Interests of such Member, with the result that such Member's membership in the Association (whether directly or indirectly) is prohibited by law.

(d) Form W-9. Each Member agrees to complete, execute and deliver to the Association an Internal Revenue Service Form W-9 (and any other required documents or certifications requested by the Association). If a change in circumstances or law causes such Form(s) to become invalid or inaccurate, each Member will promptly (i) notify the Association of such change and (ii) duly complete, execute and deliver to the Association such Forms as may be required in order for the Association to comply with its information reporting, withholding and backup withholding obligations.

(e) Independent Investigation. No representations or warranties have been made to such Member by the Association, any agent, employee, Manager or affiliate of the Association, any agents of any the foregoing or any other Member and, in entering into the transactions contemplated by this Agreement, such Member is not relying upon any information other than the results of its, his or her own independent investigation.

(f) Assessment and Charges. Such Member understands that it will be required to make on-going Capital Contributions to the Association in the form of Association

Charges and Special Assessments and it is possible that the distributions, if any, made by the Association will be less, and may be substantially less, than the amount of the Association Charges and Special Assessments that such Member will be required to contribute.

(g) Tax Obligations. Such Member understands that the federal, state, local and foreign tax liability of such Member with respect to the taxable income and gain allocated to such Member hereunder for any year may exceed the cash distributions from the Association to such Member and such Member may have to look to sources other than distributions from the Association to pay such tax.

ARTICLE XI

EVENT OF DEFAULT

Section 11.1 Result of Event of Default. Upon the occurrence of an Event of Default by a Member and for so long as such Event of Default is continuing:

(a) pursuant to Section 2.3(a)(iv), such Member shall not be permitted to designate a Manager and any Manager previously designated to the Board by such Member shall not be permitted to vote any matter presented to the Board for consideration;

(b) such Member shall not be permitted to vote on any matter presented to the Members for their approval, call any special meetings of the Members or otherwise participate in Association matters;

(c) such Member shall have no right to receive distributions from the Association in respect of its Interest; and

(d) such Member shall have no right to inspect the books and records of the Association or to any information or accounting of the affairs of the Association.

ARTICLE XII

EXCULPATION AND INDEMNIFICATION

Section 12.1 Exculpation. No Covered Person (including a Person serving in more than one such capacity), shall be liable, responsible or accountable in damages for (a) any losses, debts, obligations, claims, expenses or liabilities (collectively, "Liabilities") of the Association, whether arising in tort, contract or otherwise, solely by reason of being a Covered Person or acting (or omitting to act) in such capacities or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the Association and in a manner reasonably believed to be within the scope of the authority conferred on such Person by this Agreement or (b) any Liabilities to the Association, its Members, or any of their respective successors or assigns; except that the foregoing shall not eliminate or limit the liability of such Covered Person (i) for acts or omissions that involve gross negligence, intentional misconduct, fraud or an intentional violation of law or (ii) for acts or omissions that are in material breach of this Agreement. The failure of the Association to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this

Agreement or the Act shall not be a ground for imposing personal liability on any Member or Manager with respect to any claim made by a third party against the Association, a Member or a Manager. If the Act is amended to authorize further elimination of or limitations on the liability of Persons serving in the capacity as Covered Persons, then the liability of each such Covered Person shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of this Section 12.1 shall not adversely affect the right or protection of such Covered Person existing at the time of such repeal or modification.

Section 12.2 Indemnification.

(a) Each Covered Person shall, to the fullest extent permitted or required by the Act, or other applicable law, be indemnified and defended by the Association against, and held harmless from, any liability, loss, damage, penalty, action, claim, judgment, settlement, cost or expense paid in settlement of whatever kind or nature (including all reasonable out-of-pocket attorneys' fees and other costs of defense) (collectively, "Indemnifiable Losses") that in any way relates to or arises out of, or is alleged to relate to or arise out of, any action or inaction on the part of the Association or such Covered Person acting on behalf of the Association and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except and to the extent such Indemnifiable Losses were caused by such Covered Person's gross negligence, intentional misconduct, fraud or an intentional violation of law. The Association shall advance expenses incurred by such Covered Person upon the receipt by the Association of the signed statement of such Covered Person agreeing to reimburse the Association for such advance in the event it is ultimately determined by a court of competent jurisdiction that such Covered Person is not entitled to be indemnified by the Association for such expenses.

(b) To the fullest extent permitted by applicable law, if any portion of this Section 12.2 shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify each Covered Person and may indemnify each employee of the Association as to costs, charges and expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Association, in each case to the fullest extent permitted by applicable law.

(c) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 12.2 shall not be deemed exclusive of any other rights to which a Covered Person may be entitled at law or in equity, including common law rights to indemnification and/or contribution (if any). Nothing in this Section 12.2 shall affect the rights or obligations of any Covered Person (or the limitations on those rights or obligations) under any other agreement or instrument to which such Covered Person is a party.

Section 12.3 Survival. The indemnification obligations of the Association pursuant to this Article XII shall survive any termination of this Agreement and shall continue as to a Person who has ceased to be a Covered Person and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of such Covered Person.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Notices. All notices, requests or other communications required or desired to be given hereunder (except for a notice of a meeting under Sections 2.4(a), 2.4(b) and/or 4.5) shall be sent by registered or certified mail, return receipt requested, or by national overnight courier that provides a receipt, postage prepaid addressed:

(a) if to the Association, to the Association at its principal office as set forth in Section 1.5 (with a photocopy sent in like manner to any managing agent appointed by the Board pursuant to the terms of Section 2.1(c) hereof at its principal office address);

(b) if to a Member, to such Member at his or her FAS Parcel as set forth on Schedule A hereto; or

(c) if to Ground Lease Tenant, at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023.

Any of the foregoing parties may change the address to which notices are to be sent, or may designate not more than two (2) additional addresses for the giving of notice, by sending written notice to the other parties as aforesaid. All notices sent pursuant to the terms of this Section 13.1 shall be deemed given when deposited in a branch or general post office or depository maintained by the United States Postal Service located in the State of New York or when delivered to a national overnight courier service enclosed in a sealed, postage prepaid wrapper, addressed as aforesaid; provided that notices of changes of address, notices designating additional addresses and notices deposited in a United States Postal Service depository located outside of the State of New York shall be deemed to have been given when received.

Section 13.2 Entire Agreement. This Agreement, together with the Certificate and the other Association Documents, constitute the complete and exclusive statement of the agreement among the parties hereto with respect to the subject matter contained herein and therein. This Agreement, together with the Certificate and the other Association Documents, replace and supersede all prior agreements by and among the Members with respect to the subject matter contained herein and therein.

Section 13.3 Amendments.

(a) Amendments Generally. Subject to Section 12.1 and Article 19 of the Association Declaration, this Agreement may be amended by the Board by a sixty-six and two-thirds percent (66 2/3%) vote of the Board, taken in accordance with the terms of this Agreement. The Association shall promptly provide a copy of any amendment to each Member.

(b) Amendments in Connection with Contributions of Property. Notwithstanding the provisions of Section 13.3(a) to the contrary, this Agreement shall be amended by the Board in the event property is contributed to the Association by one or more Members to the extent necessary so as to properly reflect the economic understanding of the

parties with respect to the contribution of such property, including amendments to Articles V, VIII and IX, as appropriate.

(c) Amendments in Connection with Ownership Requirements. Notwithstanding the provisions of Section 13.3(a) to the contrary, this Agreement shall be amended by the Board to the extent necessary to address any financial reporting, tax or regulatory requirements applicable to a FASP Owner, a Person who in the future shall become a FASP Owner or a Person who holds or acquires an interest in a FASP Owner pursuant to the transactions contemplated by the Association Declaration in order to permit such FASP Owner's Interest to be held through a wholly-owned subsidiary of such FASP Owner, which subsidiary shall become the Member hereunder in respect of such FASP Owner's FAS Parcel.

(d) Restrictions on Amendments. Notwithstanding anything contained in this Agreement to the contrary, but subject to any limitation imposed by law, no amendment to this Agreement shall be adopted without the prior written consent of Ground Lease Tenant during the Development Period, if such amendment would:

(i) interfere with the sale, lease, financing, development or other disposition of any of the Balance Parcel;

(ii) abridge, modify, suspend, eliminate, or otherwise affect any right, power, privilege, or benefit reserved to Ground Lease Tenant in this Agreement; or

(iii) impose any discriminatory charge or fee against Ground Lease Tenant.

(e) Yards Parcel Owner Rights. Notwithstanding anything to the contrary herein and without limiting any of the rights of the Yards Parcel Owner as set forth in the Master Declaration or the Association Declaration, (i) the Yards Parcel Owner shall be a third-party beneficiary of the provisions of the Association Documents which affect the obligations of the Association or the FASP Owners to the Yards Parcel Owner pursuant to the Master Declaration, the Association Declaration or this Agreement, including without limitation the determination of Association Shares, Master Declaration Obligations, YP Obligation Assessments (as defined in the Association Declaration), and the rights and remedies of the Association and the Yards Parcel Owner in connection therewith, including without limitation the enforcement mechanisms set forth in the Association Declaration or herein on the part of the Association and/or the Yards Parcel Owner with respect to Master Declaration Obligations and/or YP Obligation Assessments, the breach of which would otherwise have a material adverse effect on the Yards Parcel, (ii) the Yards Parcel Owner shall be entitled, subject to the terms and conditions herein and in the Master Declaration and the Association Declaration, to enforce such provisions against the Association and/or the FASP Owners, as the case may be, and (iii) subject to and as more particularly provided in Section 19.2 of the Association Declaration, in no event shall any such provisions be amended without the prior written consent of the Yards Parcel Owner. Without limitation of the foregoing, to the extent that a Condominium Board or the Association has rights enforceable against any Individual Unit Owner (as defined in the Association Declaration) with respect to Master Declaration Obligations and/or YP Obligation Assessments, then the Yards Parcel Owner shall be a third party beneficiary of any such rights.

Section 13.4 Confidentiality.

(a) Each Member shall, and shall cause its affiliates to, keep confidential and not to disclose any Confidential Information regarding the Association and any activity and business conducted or proposed to be conducted by the Association. Each Member hereby agrees that such Member shall use all information provided by the Association or the Board exclusively in connection with the business of the Association, and that such information shall be kept confidential and shall not be disclosed to any Person; provided that (i) such information and the information described in the first sentence of this Section 13.4 may be disclosed to a party's directors, officers, employees, advisors, attorneys and accountants (hereinafter collectively "Representatives") who need to know such information in connection with such Member's ownership of its Interest (it being understood that prior to such disclosure such Representatives shall agree to be bound by the provisions set forth herein), (ii) for any FAS Parcel that is a Condominium, the Member may disclose such Confidential Information to the members of the applicable Condominium Board to the extent necessary in connection with the operations of the Condominium, (iii) disclosure of certain Confidential Information may be made if the Board has given its prior written consent and (iv) disclosure of certain Confidential Information may be made to the extent required (x) by any federal, state, local or foreign laws, (y) by any rules or regulations of the United States Securities and Exchange Commission (or its equivalent in any foreign country) or any domestic or foreign public stock exchange or stock quotation system that may be applicable to a Member or any affiliate, parent or subsidiary or (z) to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or any other administrative or legal process, in each case after notice of such requirement has been given to the Association and, except with respect to clause (y), the Association has had a reasonable opportunity to oppose such disclosure. Subject to the foregoing, each Member shall not, and shall cause their respective affiliates not to, make any announcement or declaration regarding any Confidential Information without the prior written consent of the Board.

(b) In the event that a Member or an affiliate therefore shall receive a request to disclose any Confidential Information or any of the information under a subpoena or order, it shall (i) promptly notify the Board, (ii) consult with the Board on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is required or deemed advisable, cooperate with the Board, at the expense of the Association, in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded the Confidential Information that is disclosed.

(c) For the purpose of this Section 13.4, the term "Confidential Information" shall include all data, reports, interpretations, forecasts and records, financial or otherwise, including or reflecting information about or concerning the Association and the business of the Association, in each case which is not available to the general public (whether received before or after the Effective Date and whether transmitted orally or in writing), including this Agreement and all agreements and documents related hereto or thereto on the terms of any of the foregoing. The term "Confidential Information" does not include information that: (i) is or becomes generally available to the public other than as a result of a disclosure by any Member or its Representatives in violation of this Agreement; or (ii) was or becomes available on a non-confidential basis from a source other than the Association or any officer or Manager; provided

that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Association or any other Person with respect to such information.

Section 13.5 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provisions contained herein.

Section 13.6 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be deemed invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable. Such provision shall, to the maximum extent allowable by law, be modified by such court so that it becomes enforceable, and, as modified, shall be enforced as any other provision hereof, all the other provisions hereof continuing in full force and effect.

Section 13.7 Counterparts. This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart. Any counterpart may be executed by facsimile signature or PDF or other electronic transmission and such facsimile or electronic signature shall be deemed an original.

Section 13.8 Governing Law. The laws of the State of Delaware, without reference to conflict of laws principles, shall govern the validity, construction and interpretation of this Agreement.

Section 13.9 Jurisdiction. Each party hereto irrevocably agrees that any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby shall be brought and determined exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan or, if such legal action or proceeding may not be brought in such courts for jurisdictional purposes, exclusively in the United States District Court for the Southern District of New York. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 13.10 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING, WHETHER AT LAW OR EQUITY, BROUGHT BY ANY OF THEM IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.11 No Third Party Beneficiaries. Subject to Section 13.3(e), the provisions of this Agreement are not intended to be for the benefit of any creditor or other Person (other than the Members and any Covered Person in its capacities as such and their respective successors and assigns), and no such creditor or other Person shall obtain any rights under any of such provisions (whether as a third party beneficiary or otherwise) or shall by reason of any such provisions make any claim in respect to any debt, liability or obligation (or otherwise), against the Association or the Members.

Section 13.12 Rights and Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 13.13 Successors and Assigns; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective heirs, personal representatives, executors, successors and permitted assigns. No party to this Agreement may assign or transfer this Agreement or any interest in this Agreement or any right, remedy, duty or obligation under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise, except to the extent specifically provided in Article VII with respect to the Transfer of Interests.

Section 13.14 Specific Performance.

(a) Each Member agrees that the Association would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the Association may be entitled, at law or in equity, they shall be entitled to injunctive relief to prevent or remedy breaches of the provisions of this Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of competent jurisdiction (without the requirement of posting a bond or indemnity).

(b) Nothing in this Agreement shall be deemed to limit the right of any Member to obtain from a court provisional or ancillary remedies, including temporary restraining orders, preliminary injunctive relief, or the appointment of a receiver. The institution or maintenance of an action for provisional or ancillary remedies shall not constitute a waiver of the right of any Member.

Section 13.15 Waiver. No consent or waiver, express or implied, by any party hereto to or of any breach or default by any other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligation of such other party hereunder. Failure on the part of a party to complain of any act or failure to act of any other party or to declare such other party in default, irrespective of how long such failure or default continues, shall not constitute a waiver by such party of its rights hereunder.

Section 13.16 Interpretation. Any reference to any statutes, laws or regulations, forms or schedules shall include any amendments, modifications, or replacements thereof. Unless the context otherwise requires, (a) “or” is disjunctive but not necessarily exclusive, (b) a reference in this Agreement to any one gender, masculine, feminine, or neuter, includes the other two, and the singular includes the plural, and vice-versa, unless the context otherwise requires, and (c) the word “including” shall mean “including without limitation.” Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified. Whenever any action must be taken hereunder on or by a day that is not a business day, then such action may be validly taken on or by the next day that is a business day. Any reference to a Person includes its permitted successors and assigns (whether or not so stated). All exhibits, schedules, instruments and other documents referred to herein, and as the same may be amended from time to time, are by this reference made a part hereof as though fully set forth herein.

Section 13.17 Further Assurances. Each party, upon the request of the Board, agrees to perform all further acts and execute, acknowledge, or deliver any instruments or documents and to perform such additional acts as may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

Section 13.18 Outside Activities; Opportunities. Notwithstanding anything contained herein to the contrary, (a) the Members, Managers and any of their respective affiliates may have other business interests or may engage in other business ventures, transactions or activities of any nature or description whatsoever, whether currently existing or hereafter created and (b) neither the Members, the Managers nor any of their affiliates shall incur any liability to the Association or any other Member as a result of their pursuit of, or engaging in, such other business interests or ventures, transactions or activities. Without limiting the generality of the foregoing, no Member or Manager shall be obligated to present any particular business or investment opportunity to the Association, even if such opportunity is of a character which, if presented to the Association, could be taken by the Association, and each Member and Manager shall have the right to take for its own account, or to recommend to others, any such particular investment opportunity without notice or accounting to the Association or any other Person.

Section 13.19 Survival of Certain Provisions. This Article XIII and the obligations of the Members pursuant to Section 13.4 shall survive the termination or expiration of this Agreement and the termination, dissolution and winding up of the Association.

Section 13.20 Press Release and Publicity. No Member shall issue any press release or make any public statement concerning the Association, its business or this Agreement without the prior written approval of the Board.

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IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

BALANCE PARCEL OWNER

ERY TENANT LLC

By: _____

Name: Amy Arentowicz

Title: Authorized Signatory

SEVERED PARCEL OWNER

LEGACY YARDS TENANT LLC

By: _____

Name: Amy Arentowicz

Title: Authorized Signatory

SCHEDULE A

| Member | Capital Contributions | Association Share |
|----------------|------------------------------|--------------------------|
| ERY Tenant LLC | \$100 | 100% |

c/o The Related Companies, L.P.
60 Columbus Avenue
New York, New York 10023
Attention: L. Jay Cross

c/o The Related Companies, L.P.
60 Columbus Avenue
New York, New York 10023
Attention: Amy Arentowicz

with copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Jonathan H. Canter

| | | |
|-------------------------|-----|----|
| Legacy Yards Tenant LLC | \$0 | 0% |
|-------------------------|-----|----|

c/o The Related Companies, L.P.
60 Columbus Avenue
New York, New York 10023
Attention: L. Jay Cross

c/o The Related Companies, L.P.
60 Columbus Avenue
New York, New York 10023
Attention: Amy Arentowicz

with copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Jonathan H. Canter

SCHEDULE B

DEFINITIONS

“Act” means the Delaware Limited Liability Company Act, Del. Code Ann. tit. 6. §§18-101 to 18-1109.

“Adjusted Capital Account Deficit” means the deficit balance, if any, in a Member’s Capital Account as of the end of a fiscal year (or other applicable period), after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts (i) described in Regulations Section 1.704-1(b)(2)(ii)(c) which such Member is unconditionally obligated to contribute to the Association pursuant to this Agreement or applicable law or (ii) which such Member is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

“Agreement” is defined in the preamble.

“Approved Severed Parcel Plan” has the meaning set forth in the Master Declaration.

“Assignee” is defined in Section 7.4.

“Association” is defined in the preamble.

“Association Charges” is defined in Section 5.3(a)(ii).

“Association Declaration” is defined in Section 1.3(a).

“Association Documents” has the meaning set forth in the Association Declaration.

“Association Expenses” is defined in Section 5.3(a)(ii).

“Association Lien” has the meaning set forth in the Association Declaration.

“Association Matters” has the meaning set forth in the Association Declaration.

“Association Property” has the meaning set forth in the Association Declaration.

“Association Share” has the meaning set forth in the Association Declaration.

“Available Cash” means, as determined by the Board, all cash funds of the Association from operations, re-financings and other loans, asset sales or other sources, at any particular time available for distribution after the Board makes reasonable provision for (a)

payment of all operating expenses of the Association as of such time, (b) payment of all outstanding and unpaid current obligations of the Association as of such time, (c) reserve or similar funds or amounts set aside or otherwise allocated for working capital and to pay taxes, insurance, debt service and future, anticipated, potential or contingent obligations, and all of the other costs and expenses incident to the Association's operations or ownership of its assets as determined by the Board and (d) any other purpose authorized by the Board.

“Balance Parcel” has the meaning set forth in the Association Declaration.

“Balance Parcel Owner” shall have the meaning set forth in the Association Declaration.

“Board” is defined in Section 2.1.

“Capital Account” is defined in Section 5.10(a).

“Capital Contribution” means, with respect to each Interest, the amount of cash and the Gross Asset Value of any assets other than cash contributed to the capital of the Association.

“Certificate” is defined in Section 1.1(a).

“Chairman” means chairman of the Board.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Facilities” has the meaning set forth in the Association Declaration.

“Condominium” has the meaning set forth in the Association Declaration.

“Condominium Act” has the meaning set forth in the Association Declaration.

“Condominium Board” has the meaning set forth in the Association Declaration.

“Confidential Information” is defined in Section 13.4(c).

“Covered Person” means a current or former Manager, officer or Managing Agent of the Association.

“CPI Adjustment” has the meaning set forth in the Association Declaration.

“Declarant” has the meaning set forth in the Association Declaration.

“Default Amount” is defined in Section 5.2(b).

“Default Funding Notice” is defined in Section 5.2(b).

“Defaulting Member” is defined in Section 5.2(b).

“Development Period” is defined in Section 2.3(a)(iii).

“Effective Date” is defined in the preamble.

“Embargoed Person” is defined in Section 10.1(c).

“ERY” has the meaning set forth in the Association Declaration.

“ERY Project” has the meaning set forth in the Association Declaration.

“ERY Project Documents” has the meaning set forth in the Association Declaration.

“ERY Roof Component” has the meaning set forth in the Association Declaration.

“ERY Roof Maintenance Reserve Fund” has the meaning set forth in the Master Declaration.

“ERY Tenant” shall mean ERY Tenant LLC, a Delaware limited liability company.

“Event of Default” has the meaning set forth in the Association Declaration.

“Facility Airspace Improvement” has the meaning set forth in the Association Declaration.

“Facility Airspace Parcel” has the meaning set forth in the Association Declaration.

“FAS Parcel” has the meaning set forth in the Association Declaration.

“FASP Owner” has the meaning set forth in the Association Declaration.

“FASP Owner Roof Repairs” has the meaning set forth in the Association Declaration.

“Funding Member” is defined in Section 5.2(b).

“Gross Asset Value” means, with respect to any Association asset, the asset’s adjusted basis for U.S. federal income tax purposes, except that Gross Asset Values of all Association assets shall be adjusted to equal their respective fair market values (as determined by the Board), in accordance with the rules set forth in Regulations Section 1.704-1(b)(2)(iv)(f), except as otherwise provided herein, immediately prior to the date of issuance of any additional Interest to any new or existing Member for more than a *de minimis* Capital Contribution or the date of the distribution of more than a *de minimis* amount of Association property (other than a *pro rata* distribution) to a Member, or at such other times as is required or permitted by Regulations Section 1.704-1; provided that such adjustments be made only if the Board reasonable determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. The Gross Asset Value of any Association asset shall

further be adjusted by applicable depreciation. The initial Gross Asset Value of any asset contributed by a Member to the Association shall be the fair market value of such asset, as determined by the Board. The Gross Asset Values of the Association's assets shall be increased or decreased to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m).

“Ground Lease Tenant” has the meaning set forth in the Master Declaration.

“Governmental Authority” means the government of any nation, state, city, locality or other political subdivision of any of the foregoing, any entity exercising executive, legislative, individual, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Indemnifiable Losses” is defined in Section 12.2(a).

“Individual Association Share” has the meaning set forth in the Association Declaration.

“Interest” shall mean of any Member at any time the entire ownership interest of such Member in the Association at such time, including all benefits to which the owner of such Interest is entitled under this Agreement and applicable law, together with all obligations of such Member under this Agreement and applicable law.

“Joinder Agreement” is defined in Section 7.1.

“Legal Requirements” has the meaning set forth in the Association Declaration.

“Liabilities” is defined in Section 12.1.

“Manager” means an individual serving on the Board.

“Managing Agent” has the meaning set forth in the Association Declaration.

“Master Declaration” has the meaning set forth in the Association Declaration.

“Member” is defined in the preamble.

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” in Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Deductions” has the same meaning as the term “partner nonrecourse deductions” in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

“Members Meeting” is defined in Section 4.2.

“Net Income” and “Net Losses” as appropriate, means, for any fiscal year or other applicable period, the taxable income or tax loss of the Association for such period for U.S. federal income tax purposes taking into account any separately stated items, increased by the

amount of any tax-exempt income of the Association during such period and decreased by the amount of any Section 705(a)(2)(B) of the Code expenditures (within the meaning of Regulations Section 1.704-1(b)(2)(iv)(i)) of the Association; provided that (a) adjustments to the Gross Asset Value of Association assets shall be treated as items of gain or loss, as applicable, and (b) other than for income tax purposes, depreciation with respect to, and gain and loss from the disposition of, Association assets shall be determined by reference to their adjusted Gross Asset Value, rather than adjusted tax basis.

“Note” shall mean a promissory note of the Association delivered to a Funding Member pursuant to Section 5.2(b) in form acceptable to the Board and which shall contain the following terms: (a) the note shall be subordinated to all other indebtedness of the Association, (b) the note shall be payable on a schedule determined by the Board, but in any event shall be repaid in full within two (2) years of the issuance of the note, (c) the note shall accrue interest on a quarterly basis at a variable rate based on the rates of interest published, from time to time, by *The Wall Street Journal*, as the “prime rate” at large U.S. money center banks, plus three hundred (300) basis points and (d) there shall be no penalty for prepayment of the Note’s outstanding principal.

“Occupant” has the meaning set forth in the Association Declaration.

“OFAC” is defined in Section 10.1(c).

“Person” means any natural person, corporation, partnership, joint venture or enterprise, limited liability company, unincorporated association, trust, estate, governmental entity or other entity or organization.

“Project Standards” has the meaning set forth in the Association Declaration.

“Registered Mortgagees” has the meaning set forth in the Association Declaration.

“Regulations” means the final and temporary regulations of the U.S. Department of the Treasury promulgated under the Code.

“Representatives” is defined in Section 13.4(a).

“Rules and Regulations” has the meaning set forth in the Association Declaration.

“Secretary of State” is defined in the recitals.

“Severance” has the meaning set forth in the Association Declaration.

“Severed Parcel Lease” has the meaning set forth in the Association Declaration.

“Signage Guidelines” has the meaning set forth in the Association Declaration.

“Special Assessments” has the meaning set forth in the Association Declaration.

“Subsidiary” means any Person in which the Association or a Subsidiary thereof owns or controls, directly or indirectly, either fifty percent (50%) or more of the outstanding equity or beneficial interests or other equity securities determined on a fully diluted basis.

“Tax Matters Partner” is defined in Section 6.1.

“Transfer” is defined in Section 7.2.

“Unauthorized Transfer” is defined in Section 7.4.

“Unit Owner” has the meaning set forth in the Association Declaration.

“Yards Parcel” has the meaning set forth in the Association Declaration.

“Yards Parcel Owner” has the meaning set forth in the Association Declaration.

SCHEDULE C

Capitalized terms used but not defined in this Schedule C shall have the meanings given to those terms in the Association Declaration.

Association Charges shall be allocated to each Member *pro rata* and *pari passu* in accordance with such Member's Association Share at such time, except:

A. Association Expenses related to the Loading Dock shall be based on usage as follows:

(1) All "variable costs" (i.e., overtime labor and other costs incurred due to "off-hour" use (as described below) of the Loading Dock) shall be paid by the Member that requested the "off-hour" use, with a pro rata sharing of such costs if two or more Members requested overlapping "off-hour" use. As used herein, "off-hour" use of the Loading Dock means any use of the Loading Dock outside of the base hours of Loading Dock operations, as such base hours are determined by the Association.

(2) The allocation of "fixed costs" (i.e., costs not affected by "off-hour" use) shall initially be in accordance with such Member's proportionate ERY Adjusted GSF as determined at the time pursuant to the Association Declaration. Commencing six (6) months after commencement of Loading Dock operation by the Association for the benefit of the Loading Dock Beneficiaries and every three (3) months thereafter, such allocation shall be adjusted to equal each Member's Loading Dock Use Percentage, as calculated in accordance with paragraph 4 below, during the preceding three (3) month period (or, with respect to such first adjustment, the preceding six (6) months).

(3) Each adjustment of "fixed cost" allocations pursuant to paragraph 2 above (x) shall be deemed to retroactively apply to the period as to which the Loading Dock Use Percentages were calculated, and (y) shall also apply to the succeeding three month period, subject to retroactive adjustment in accordance with clause (x) of this sentence. The Association shall make appropriate adjustments to the Association Charges payable by each Member to give effect to the preceding sentence, but without any adjustment to take into account the time value of money.

(4) Each Member's Loading Dock Use Percentage during the applicable time period shall be calculated as follows:

(a) First, count the number of tickets (i.e., the number of truck pull-ups) during such time period. The percentage of such tickets that relates to any Dedicated Loading Dock User's use of its Dedicated Loading Dock is referred to herein as the "Special Dedicated Loading Dock Percentage," and the percentage of such tickets that relates to all other uses of the Loading Dock (including uses by any Dedicated Loading Dock User's use of portions of the Loading Dock other than Dedicated Loading Dock) is referred to herein as the "Remaining Percentage."

(b) The Remaining Percentage shall be allocated among the Members based on the number of "units" of use of the Loading Dock by each such Member (excluding the use by

Dedicated Loading Dock Users of their Dedicated Loading Docks) during such time period. “Units” shall be calculated as follows: One bay used by one truck for one hour (or portion thereof) is 1 unit. As an example, 1 truck taking up 2 bays for 1½ hours represents 4 “units” of Loading Dock use.

(c) The Loading Dock Use Percentage of each Member (other than a Dedicated Loading Dock User’s use of its Dedicated Loading Dock) shall be its applicable portion of the Remaining Percentage in accordance with subparagraph 4(b) above.

(d) The Loading Dock Use Percentage of any Dedicated Loading Dock User shall be the sum of (x) such Member’s Special Loading Dock Percentage and (y) such Member’s allocable portion of the Remaining Percentage in accordance with subparagraph 4(b) above.

(e) For purposes of all calculations in subparagraphs 4(a) and 4(b) above, both base hour use and off-hour use of the Loading Dock shall be included.

EXHIBIT A

FORM OF JOINDER AGREEMENT

This is a JOINDER AGREEMENT (“Joinder”) to that certain Limited Liability Company Agreement of ERY Facility Airspace Parcel Owners’ Association LLC (the “Agreement”), dated as of April 10, 2013 by and among the Members of the Association. Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Agreement.

WHEREAS, pursuant to Sections 7.1 and 7.3 of the Agreement, no Interests shall be Transferred, issued or granted by the Association or any Member unless the transferee or recipient of such Interests delivers to the Association a duly executed Joinder;

WHEREAS the undersigned (a) is a transferee or recipient of Interests and (b) desires to become a Member, with all of the rights and obligations provided in the Agreement; and

WHEREAS, the undersigned agrees to become a party to the Agreement in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Joinder hereby agree as follows:

1. Agreement to be Bound. The undersigned hereby acknowledges (i) receipt of a copy of the Agreement, (ii) having had an opportunity to review and consider the Agreement and (iii) having had an opportunity to consult with counsel selected by the undersigned regarding the Agreement and this Joinder. Upon execution of this Joinder and the satisfaction or waiver of all of the required conditions contained in the Agreement, the undersigned shall become a party to the Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Agreement as though an original party thereto and as a Member thereunder.
2. Successors and Assigns. Except as otherwise provided herein, this Joinder shall bind and inure to the benefit of and be enforceable by the Association, its other Members and the Association’s successors and assigns.
3. Counterparts. This Joinder may be executed in separate counterparts (by facsimile, photo or other electronic means), each of which shall be an original and all of which taken together shall constitute one and the same agreement.
4. Governing Law. This Joinder shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any rules, principles or provisions of choice of law or conflicts of laws.

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IN WITNESS WHEREOF, the undersigned has executed this Joinder as of this _____ day of _____.

[Name]

Residence or Principal Place of Business:

Acknowledged and Agreed:

ERY Facility Airspace Parcel Owners' Association LLC

By: _____
Name:
Title:

EXHIBIT E

TABLE OF DEFINITIONS

1. “**Access Conduct Standards**” has the meaning set forth in Section 7.4 of this Declaration.
2. “**Allocable Share Excluded Parcel**” has the meaning set forth in Section 12.1 of this Declaration.
3. “**Ancillary Construction Easement**” has the meaning set forth in Section 7.1(c) of this Declaration.
4. “**Annex re Site Specific Easements**” has the meaning set forth in Section 7.1(l) of this Declaration.
5. “**Arbitrable Claim**” has the meaning set forth in Section 22.18(a) of this Declaration.
6. “**Arbitration**” has the meaning set forth in Section 22.18(a) of this Declaration.
7. “**Arbitrator**” has the meaning set forth in Section 22.18(c)(A) of this Declaration.
8. “**Associated Portion of the LIRR Roof and Facilities**” has the meaning set forth in Section 4.1(a) of this Declaration.
9. “**Association**” means the ERY Facility Airspace Parcel Owners’ Association, a limited liability company established and existing under the Delaware Limited Liability Company Act and qualified to transact business as a limited liability company in the State of New York.
10. “**Association Board**” means the Board of Managers of the Association as designated in accordance with the terms of the LLC Agreement.
11. “**Association Charges**” means, collectively, Association Matter Charges and Horizontal Association Matter Charges.
12. “**Association Documents**” means the Declaration, the Certificate, the LLC Agreement and the Rules and Regulations.
13. “**Association Expenses**” has the meaning set forth in Section 12.2 of this Declaration.
14. “**Association Indemnified Parties**” has the meaning set forth in Section 20.1 of this Declaration.
15. “**Association Lien**” has the meaning set forth in Section 16.3 of this Declaration.

16. “**Association Matter Charges**” means the charges allocated and assessed by the Association to the FASP Owners or any of them, as provided in the Declaration and the LLC Agreement (including, without limitation, in Article 12 of the Declaration and in Article 2 of the LLC Agreement) and including each FASP Owner’s Association Share of Association Matter Expenses and Association Matter Special Assessments.
17. “**Association Matter Expenses**” has the meaning set forth in Section 12.2 of this Declaration.
18. “**Association Matters**” has the meaning set forth in Article 3 of the Declaration.
19. “**Association Matter Special Assessments**” means the special assessments relating to Horizontal Association Matters allocated and assessed by the Association to the FASP Owners or any of the same, as provided in the Declaration and/or the LLC Agreement (including, without limitation, in Article 12 of the Declaration and in Article 2 of the LLC Agreement).
20. “**Association Negligence Claim**” has the meaning set forth in Section 20.3(a) of this Declaration.
21. “**Association Property**” has the meaning set forth in the introductory paragraphs hereof.
22. “**Association Roof Component**” has the meaning set forth in Section 3.1(b) of this Declaration.
23. “**Balance Lease**” has the meaning set forth in the introductory paragraphs hereof.
24. “**Balance Lease Tenant**” has the meaning set forth in the introductory paragraphs hereof.
25. “**Balance Parcel**” has the meaning set forth in the introductory paragraphs hereof.
26. “**Balance Parcel Owner**” means (a) the tenant under the Balance Lease, or (b) following the expiration or earlier termination of the Balance Lease the fee owner of the Balance Parcel.
27. “**Certificate**” means the Certificate of Formation of the Association, which is reproduced as Exhibit C to the Declaration.
28. “**City**” means the City of New York.
29. “**Clerk’s Office**” has the meaning set forth in the introductory paragraphs hereof.
30. “**Common Facilities**” has the meaning set forth in Section 5.1 of this Declaration.
31. “**Condominium**” has the meaning set forth in Section 13.1(a) of this Declaration.

32. “**Condominium Act**” has the meaning set forth in Section 13.1(a) of this Declaration.
33. “**Condominium Board**” has the meaning set forth in Section 13.1(a) of this Declaration.
34. “**Condominium Formation Date**” has the meaning set forth in Section 13.1(a) of this Declaration.
35. “**Contest**” has the meaning set forth in Section 22.26 of this Declaration.
36. “**Contest Conditions**” has the meaning set forth in Section 22.26 of this Declaration.
37. “**CPI Adjustment**” means an increase proportionate to any increase in the cost of living from the date of the initial recording of this Declaration, as reflected by the change in the Consumer Price Index (CPI-U; All Items; 1982-84 = 100 standard reference base period) for New York, New York (or the smallest measured area including New York, New York), as published by the Bureau of Labor Statistics, United States Department of Labor or, if the same ceases to be published, a commonly used substitute therefor reasonably selected by the Association Board. Each CPI Adjustment shall be performed, wherever a CPI Adjustment is required under this Declaration, on the fifth (5th) annual anniversary date of the date of this Declaration and on each succeeding fifth (5th) annual anniversary date thereafter occurring.
38. “**Curing FASP Owner**” has the meaning set forth in Section 16.9 of this Declaration.
39. “**Declarant**” has the meaning set forth in the preamble to the Declaration. The term “Declarant” shall be deemed to include any successor to Declarant. A successor to Declarant is any individual, corporation or other entity which through amalgamation, consolidation, or other legal succession, becomes invested with the rights and assumes the obligations of the landlord under the ERY Ground Lease.
40. “**Declarant Indemnitees**” has the meaning set forth in Section 23.2 of this Declaration.
41. “**Declaration**” means the Declaration Establishing the ERY Facility Airspace Parcel Owners’ Association and of Covenants, Conditions, Easements and Restrictions to which this Table of Definitions is annexed as an exhibit.
42. “**Default Notice**” has the meaning set forth in Section 15.1(e) of this Declaration.
43. “**Developer**” means ERY Developer LLC, a Delaware limited liability company, or its successors or assigns as Developer pursuant to the ERY Construction Agreement.
44. “**Emergency**” means a condition, event or occurrence (including, without limitation, leaks or cracks, structural problems or defects) requiring repair, alteration or abatement immediately and specifically necessary for the preservation or safety of the Facility

Airspace Parcel or any part thereof, or for the health or safety (but not the general comfort or welfare) of Occupants of the Facility Airspace Parcel or other persons, or required to avoid the suspension of any necessary services in the Facility Airspace Parcel.

45. “**Encumbered Owner**” has the meaning set forth in Section 8.2 of this Declaration.

46. “**Encumbering Owner**” has the meaning set forth in Section 8.2 of this Declaration.

47. “**ERY Adjusted GSF**” means the sum of the following areas for all FAS Parcels: (i) the gross square footage of all office space; (ii) the gross square footage of all retail space, multiplied by 60%; (iii) the gross square footage of all residential space; (iv) the gross square footage of all hotel space; and (v) the gross square footage of any other type of space constructed within a FAS Parcel that cannot be classified as office, retail, residential or hotel, but excluding (w) any Allocable Share Excluded Parcel, (x) (subject to Section 12.1 hereof) any gross square footage attributable to the Cultural Facility, (y) any open space, and (z) any gross square footage attributable to the Parking Component (as defined in the Master Declaration), all as the same shall be adjusted and reallocated by the Association from time to time in connection with each Severance in accordance with the provisions of Article 12 of this Declaration.

48. “**ERY**” has the meaning set forth in the introductory paragraphs hereof.

49. “**ERY Project Documents**” has the meaning set forth in the Master Declaration.

50. “**Event of Default**” has the meaning set forth in Section 16.1 of this Declaration.

51. “**Facility Airspace Improvement**” means the improvements constructed as part of the ERY Project and shall include without limitation the residential, commercial, community facility, accessory uses and open space improvements, the High Line Component (as applicable) and the Cultural Facility (as applicable), but shall exclude the LIRR Roof and Facilities.

52. “**Facility Airspace Improvements Construction Easement**” has the meaning set forth in Section 7.1(a) of this Declaration.

53. “**Facility Airspace Parcel Owner**” has the meaning set forth in the introductory paragraphs hereof.

54. “**Facility Airspace Parcel Terra Firma**” has the meaning set forth in the introductory paragraphs hereof.

55. “**Facility Airspace Parcel**” has the meaning set forth in the introductory paragraphs hereof.

56. “**FAS Parcel C**” means that portion of the Facility Airspace Parcel more particularly described and depicted on Exhibit G annexed hereto.

57. “**FAS Parcel C Condominium Documents**” means that certain Declaration of Tower C Condominium and the By-Laws of Tower C Condominium annexed thereto, intended to be recorded following the recordation of this Declaration.
58. “**FAS Parcel D**” means that portion of the Facility Airspace Parcel more particularly described and depicted on Exhibit H annexed hereto.
59. “**FAS Parcel C Owner**” means the FASP Owner of FAS Parcel C.
60. “**FAS Parcel D Owner**” means the FASP Owner of FAS Parcel D.
61. “**FAS Parcel Roof Component**” has the meaning set forth in Section 9.1 of this Declaration.
62. “**FAS Parcel Roof Component**” has the meaning set forth in Section 9.1 of this Declaration.
63. “**FAS Parcel**” and “**FAS Parcels**” has the meaning set forth in the introductory paragraphs of this Declaration.
64. “**FASP Improvement**” means any structure or improvement situated on a FAS Parcel.
65. “**FASP Owner**” and “**FASP Owners**” has the meaning set forth in the introductory paragraphs of this Declaration.
66. “**FASP Owner Indemnified Parties**” has the meaning set forth in Section 20.2 of this Declaration.
67. “**FASP Owner Negligence Claim**” has the meaning set forth in Section 20.3(a) of this Declaration.
68. “**FASP Owner Roof Repairs**” has the meaning set forth in Section 9.1 of this Declaration.
69. “**Fee Conversion**” has the meaning set forth in the introductory paragraphs hereof.
70. “**Force Majeure**” shall mean a delay incurred by a FASP Owner, an Occupant or the Association (any of the foregoing, the “**Delayed Party**”) in the performance of any non-monetary obligation under this Declaration as a direct and proximate result of (a) an act of God, (b) inability to obtain labor, equipment, supplies or materials due to extraordinary governmental action, (c) enemy action, terrorism, civil commotion, earthquake, flood, extreme weather (consisting of a hurricane, or a snow storm at a predicted level of Level 2 or above, per the classification of the LIRR), major fire, casualty, war, hostilities, invasion, insurrection, riot, mob violence, malicious mischief, or sabotage, (d) a strike of any labor union or a lockout, in both cases which generally affects all or a substantial portion of the applicable industry, (e) the unreasonable withholding of consent or approval by a FASP Owner or the Association hereunder

to the extent that this Declaration expressly provides that such consent or approval cannot be unreasonably withheld, (g) other similar cause beyond the reasonable control of the Delayed Party (not including the Delayed Party's insolvency or financial condition or a delay arising as a result of the actions or inactions of a Delayed Party and/or its Affiliates), which has the effect of delaying or preventing the Delayed Party's performance of its obligations hereunder (other than any obligation of the Delayed Party involving the payment of money), but only (i) to the extent (if any) such delay cannot be offset or eliminated by the exercise of reasonable, good-faith curative efforts on the part of the Delayed Party, and without giving duplicative effect to concurrent delays and (ii) provided that the Delayed Party (x) notifies the Association and the other FASP Owner(s) in writing of the occurrence of any event constituting a Force Majeure condition promptly after commencement thereof, and (y) throughout the pendency of such Force Majeure condition, utilizes good-faith efforts to minimize the impact and delays caused by such Force Majeure condition.

71. “**Gas Equipment**” has the meaning set forth in Section 5.1 of this Declaration.

72. “**Governmental Authority**” shall mean any federal, state, and/or local or regional government or any department, subdivision, bureau, agency or office thereof, or any governmental, public or quasi-public authority, including the Metropolitan Transit Authority (in its capacity as a capacity as a Governmental Authority and not in its proprietary capacity), or any insurance rating or underwriting bureau, including the New York Board of Fire Underwriters or the New York Fire Insurance Rating Organization, or any other similar bodies performing the same or similar functions, now existing or hereafter created, having or asserting jurisdiction over the Facility Airspace Parcel or any portion thereof.

73. “**Horizontal Association Matter Charges**” means the charges allocated and assessed by the Association to the FASP Owners or any of them, as provided herein and in the LLC Agreement (including, without limitation, Article 2 of the LLC Agreement) and including each FASP Owner's Association Share of Horizontal Association Matter Expenses and Horizontal Matter Special Assessments.

74. “**Horizontal Association Matter Expenses**” has the meaning set forth in Section 12.2 of this Declaration.

75. “**Horizontal Association Matter Lien**” has the meaning set forth in Section 16.3 of this Declaration.

76. “**Horizontal Association Matter Special Assessments**” means the special assessments relating to Horizontal Association Matters allocated and assessed by the Association to the FASP Owners or any of the same, as provided in the Declaration and/or the LLC Agreement (including, without limitation, in Article 12 of the Declaration and in Article 2 of the LLC Agreement).

77. “**Individual Association Share**” has the meaning set forth in Section 13.1(b) of this Declaration.

78. “**Individual Parcel Matters**” has the meaning set forth in Section 4.1 of this Declaration.

79. “**Initial Construction of the Improvements**” shall mean, as applicable, the initial construction of the Open Space Component, the High Line Component, the Cultural Facility and the other Facility Airspace Improvements in accordance with the provisions of the ERY Ground Lease, the applicable Severed Lease, the Master Declaration and the Approved Facility Airspace Improvement Plans and Specifications.

80. “**Involuntary Rate**” shall mean the Prime Rate plus two percent (2%) per annum, but in no event in excess of the maximum permissible interest rate then in effect in the State of New York.

81. “**Legal Compliance**” shall mean compliance with Legal Requirements.

82. “**Legal Requirements**” shall mean any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, environmental statutes, codes and executive orders of all Governmental Authorities now existing or hereafter created, of all their departments and bureaus, including the zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Facility Airspace Parcel, or any portion thereof, or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same.

83. “**LIRR**” means the Long Island Rail Road Company, a subsidiary of the MTA.

84. “**LLC Agreement**” means the Limited Liability Company Agreement of the Association, which are annexed as Exhibit D to the Declaration, as such Limited Liability Company Agreement may be amended from time to time pursuant to the terms thereof.

85. “**Loading Dock**” means the areas intended to constitute, or, as applicable, following the creation of a condominium regime on FAS Parcel C, constituting the “Loading Dock Unit” within such condominium regime, together with any rights and easements appurtenant to such space or condominium unit under the Severed Parcel Lease covering FAS Parcel C or the applicable portion thereof and/or the condominium documents governing such FAS Parcel.

86. “**Loading Dock Beneficiaries**” has the meaning set forth in Section 7.1(h) of this Declaration.

87. “**Loading Dock Guidelines**” has the meaning set forth in Section 7.1(h) of this Declaration.

88. “**Lower Limiting Plane**” has the meaning set forth in the introductory paragraphs hereof.

89. “**Maintain**” has the meaning set forth in Section 3.2 of this Declaration.

90. “**Manager**” has the meaning set forth in the LLC Agreement.

91. “**Managing Agent**” means a Person employed by the Association who shall undertake to perform the duties and services that the Association shall direct, and who shall have

whatever powers the Association shall delegate, both subject to the limitations contained in the LLC Agreement.

92. “**Master Declaration**” has the meaning set forth in the introductory paragraphs hereof.

93. “**Master Declaration Obligations**” means all of the obligations of Facility Airspace Parcel Owner under the Master Declaration.

94. “**Material Violation**” has the meaning set forth in Section 8.3 of this Declaration.

95. “**Member**” has the meaning set forth in the introductory paragraphs of this Declaration.

96. “**Monetary Events of Default**” has the meaning set forth in Section 16.1 of this Declaration.

97. “**Mortgage Representative**” has the meaning set forth in Section 15.1(a) of this Declaration.

98. “**Mortgage**” shall mean (a) any mortgage, deed of trust or similar instrument including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on the fee or any leasehold interest in any FAS Parcel, and (b) any pledge of a direct or indirect equity interest in any FASP Owner as security for a loan; provided, that such mortgage, deed of trust or other instrument or pledge is held by an Institutional Lender (as defined in the Master Declaration) (except for mortgages encumbering individual residential condominium units).

99. “**Mortgagee**” means the holder of a Mortgage.

100. “**Mortgagee**” shall mean the mortgagee under a Mortgage.

101. “**MTA**” has the meaning set forth in the preamble to the Declaration.

102. “**93-70 Declaration**” has the meaning set forth in the introductory paragraphs to this Declaration.

103. “**Non-Commercial Unit**” has the meaning set forth in Section 13.1 of this Declaration.

104. “**Non-Disturbance Agreement**” has the meaning set forth in Section 22.27 of this Declaration.

105. “**Non-Monetary Events of Default**” has the meaning set forth in Section 16.1 of this Declaration.

106. “**Occupant**” shall mean both (a) any FASP Owner, if actually occupying such FAS Parcel or any portion thereof, and (b) any Person lawfully occupying a FAS Parcel (or any

portion of an FAS Parcel) pursuant to a lease, sublease or license granted by the applicable FASP Owner.

107. “**Parcel C Tenant**” means Legacy Yards Tenant LLC, and any of its successors and assigns from time to time, as tenant under the Severed Parcel Lease covering FAS Parcel C.

108. “**Parking Garage**” means the parking garage for the Facility Airspace Parcel, which garage shall be a part of FAS Parcel C, and which shall include, without limitation, 39 dedicated spaces for LIRR employees.

109. “**Paying Party**” has the meaning set forth in Section 16.10 of this Declaration.

110. “**Person**” means any natural person, partnership, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, government or any department or agency thereof, or any other entity.

111. “**Personnel**” means, with respect to any Person, the respective officers, directors, agents, employees, contractors, licensees and invitees of such Person.

112. “**PILOST**” means payments in lieu of sales and use taxes that would otherwise have been levied under the New York State Tax Law on the tangible materials and equipment incorporated into the FAS Parcel(s) and/ or the Association Property but for the exemption therefrom arising on account of the ownership of the FAS Parcels and/or the Association Property by Declarant.

113. “**PILOT**” means payments in lieu of Taxes that are payable to Hudson Yards Infrastructure Corporation, the New York City Industrial Development Authority or any other applicable party on the Facility Airspace Parcel.

114. “**Prime Rate**” shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred sixty (360) day year with twelve (12) months of thirty (30) days each.

115. “**Project Standards**” means standards appropriate for a high-quality, mixed-use project containing: (i) luxury residential accommodations; (ii) Class”A” office space; (iii) a first class hotel; and (iv) high-quality retail space.

116. “**Public Safety**” shall mean, in the context of Master Declaration Obligations, the safety of the Yards Parcel Operator’s or any other Yards Parcel Occupant’s Personnel and passengers, and of the general public.

117. “**Registered Mortgage**” has the meaning set forth in Section 15.1(a) of this Declaration.

118. “**Registered Mortgagee**” has the meaning set forth in Section 15.1(a) of this Declaration.

119. **Repair**” has the meaning set forth in Section 3.2 of this Declaration.
120. **“RM Notice”** has the meaning set forth in Section 15.1(b) of this Declaration.
121. **“Rules and Regulations”** means the rules and regulations of the Association, which are annexed to this Declaration as Exhibit E, as any of the same may be amended, modified, added to, or deleted from time to time pursuant to the terms of this Declaration and the LLC Agreement.
122. **“Senior RM”** has the meaning set forth in Section 15.1(c) of this Declaration.
123. **“Service Reliability”** shall mean, in the context of Master Declaration Obligations, the ability of LIRR, and/or any successor Yards Parcel Operator, reliably to provide rail or other transportation services consistent with its then-prevailing schedules and service levels.
124. **“Severance”** has the meaning set forth in the introductory paragraphs hereof.
125. **“Severed Parcel”** has the meaning set forth in the introductory paragraphs hereof.
126. **“Severed Parcel Lease”** has the meaning set forth in the introductory paragraphs hereof.
127. **“Severed Parcel Owner”** means, with respect to each Severed Parcel, (a) the tenant under the applicable Severed Parcel Lease, or (b) following the expiration or earlier termination of such Severed Parcel Lease or following a Fee Conversion of such Severed Parcel, the fee owner of such Severed Parcel.
128. **“Signage Guidelines”** has the meaning set forth in Section 7.1(i) of this Declaration.
129. **“Special Assessments”** means, collectively, Association Matter Special Assessments and Horizontal Association Matter Special Assessments.
130. **“Special Monetary Event of Default”** has the meaning set forth in Section 16.14 of this Declaration.
131. **“Taxes”** means the real property taxes or any taxes or other payments substituted in lieu thereof of any kind or nature that are, or would be but for any applicable exemption or abatement, assessed, levied or imposed by any Governmental Authority against the Facility Airspace Parcel or an individual FAS Parcel or any part thereof including, without limitation, any PILOT or PILOST payments.
132. **“Unit Owner”** has the meaning set forth in Section 13.1(b) of this Declaration.
133. **“Work Notice”** has the meaning set forth in Section 9.2(c) of this Declaration.

134. **“Work Rules”** means those rules relating to construction, restoration, alterations and repairs of Facility Airspace Improvements as are applicable under the Master Declaration.

135. **“WSY”** has the meaning set forth in Exhibit A of this Declaration.

136. **“Yards Parcel”** has the meaning set forth in the introductory paragraphs hereof.

137. **“YP Obligation Assessments”** means Association Charges and Special Assessments to the extent imposed in respect of Master Declaration Obligations.

EXHIBIT F

RULES AND REGULATIONS

[As may be adopted pursuant to Section 2.4 of the within Declaration]

EXHIBIT G

LEGAL DESCRIPTION OF FAS PARCEL C

[See Attached]

Basement level and below:

All of the lands at or below an upper limiting plane of elevation 12.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 589.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 77.67 feet to a point; thence
3. North 89°56'53" West, a distance of 112.00 feet to a point; thence
4. North 00°03'07" East, a distance of 104.83 feet to a point; thence
5. South 89°56'53" East, a distance of 22.37 feet to a point; thence
6. North 78°45'38" East, a distance of 49.37 feet to a point; thence
7. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 125,640 Square Feet/2.884 acres, more or less.

Street Level:

All of the lands above a lower limiting plane of elevation 12.00 feet and at or below an upper limiting plane of elevation 29.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 579.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 20.06 feet to a point; thence
3. South 89°56'53" East, a distance of 8.37 feet to a point; thence
4. North 00°03'07" East, a distance of 30.67 feet to a point; thence
5. North 89°56'53" West, a distance of 1.80 feet to a point; thence

6. North 00°03'07" East, a distance of 5.03 feet to a point; thence
7. North 89°56'53" West, a distance of 0.50 feet to a point; thence
8. North 00°03'07" East, a distance of 6.60 feet to a point; thence
9. South 89°56'53" East, a distance of 2.33 feet to a point; thence
10. North 00°03'07" East, a distance of 18.31 feet to a point; thence
11. North 36°42'17" West, a distance of 27.85 feet to a point; thence
12. North 89°56'53" West, a distance of 10.32 feet to a point; thence
13. North 00°03'07" East, a distance of 31.86 feet to a point; thence
14. North 89°56'53" West, a distance of 45.42 feet to a point; thence
15. North 00°03'07" East, a distance of 12.90 feet to a point; thence
16. North 89°56'53" West, a distance of 37.04 feet to a point; thence
17. North 00°03'07" East, a distance of 34.75 feet to a point; thence
18. South 89°56'53" East, a distance of 1.41 feet to a point; thence
19. North 78°45'38" East, a distance of 49.37 feet to a point; thence
20. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
21. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 116,517 Square Feet/2.675 acres, more or less.

Mezzanine Level:

All of the lands above a lower limiting plane of elevation 29.00 feet and at or below an upper limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North $89^{\circ}56'53''$ West, a distance of 579.42 feet to a point; thence
2. Leaving West 30th Street, North $00^{\circ}03'07''$ East, a distance of 20.06 feet to a point; thence
3. South $89^{\circ}56'53''$ East, a distance of 8.37 feet to a point; thence
4. North $00^{\circ}03'07''$ East, a distance of 35.70 feet to a point; thence
5. South $89^{\circ}56'53''$ East, a distance of 3.21 feet to a point; thence
6. North $00^{\circ}03'07''$ East, a distance of 136.41 feet to a point; thence
7. South $89^{\circ}56'53''$ East, a distance of 567.83 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 109,465 Square Feet/2.513 acres, more or less.

Plaza level and above:

All of the lands above a lower limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North $89^{\circ}56'53''$ West, a distance of 416.00 feet to a point; thence
2. Leaving West 30th Street, North $00^{\circ}03'07''$ East, a distance of 192.17 feet to a point; thence
3. South $89^{\circ}56'53''$ East, a distance of 416.00 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
4. Along said westerly line of Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 79,941 Square Feet/1.835 acres, more or less.

EXHIBIT H

LEGAL DESCRIPTION OF FAS PARCEL D

[See Attached]

Basement Level and Below:

All of the lands at or below an upper limiting plane of elevation 12.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the easterly line of Eleventh Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 182.50 feet to a point; thence
2. Leaving Eleventh Avenue, South 89°56'53" East, a distance of 98.58 feet to a point; thence
3. South 00°03'07" West, a distance of 104.83 feet to a point; thence
4. South 89°56'53" East, a distance of 112.00 feet to a point; thence
5. South 00°03'07" West, a distance of 77.67 feet to a point on the aforementioned northerly line of West 30th Street; thence
6. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 210.58 feet to the Point of Beginning.

Encompassing an area of 26,690 Square Feet/0.613 acres, more or less.

Street Level: All of the lands above a lower limiting plane of elevation 12.00 feet and at or below an upper limiting plane of elevation 29.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the easterly line of Eleventh Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 182.50 feet to a point; thence
2. Leaving Eleventh Avenue, South 89°56'53" East, a distance of 119.54 feet to a point; thence
3. South 00°03'07" West, a distance of 34.75 feet to a point; thence
4. South 89°56'53" East, a distance of 37.04 feet to a point; thence
5. South 00°03'07" West, a distance of 12.90 feet to a point; thence
6. South 89°56'53" East, a distance of 45.42 feet to a point; thence

7. South 00°03'07" West, a distance of 31.86 feet to a point; thence
8. South 89°56'53" East, a distance of 10.32 feet to a point; thence
9. South 36°42'17" East, a distance of 27.85 feet to a point; thence
10. South 00°03'07" West, a distance of 18.31 feet to a point; thence
11. North 89°56'53" West, a distance of 2.33 feet to a point; thence
12. South 00°03'07" West, a distance of 6.60 feet to a point; thence
13. South 89°56'53" East, a distance of 0.50 feet to a point; thence
14. South 00°03'07" West, a distance of 5.03 feet to a point; thence
15. South 89°56'53" East, a distance of 1.80 feet to a point; thence
16. South 00°03'07" West, a distance of 30.67 feet to a point; thence
17. North 89°56'53" West, a distance of 8.37 feet to a point; thence
18. South 00°03'07" West, a distance of 20.06 feet to a point on the aforementioned northerly line of West 30th Street; thence
19. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 220.58 feet to the Point of Beginning.

Encompassing an area of 35,813 Square Feet/0.822 acres, more or less.

Mezzanine Level:

All of the lands above a lower limiting plane of elevation 29.00 feet and at or below an upper limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the easterly line of Eleventh Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 182.50 feet to a point; thence
2. Leaving Eleventh Avenue, South 89°56'53" East, a distance of 120.95 feet to a point; thence
3. North 78°45'38" East, a distance of 49.37 feet to a point; thence
4. South 89°56'53" East, a distance of 62.81 feet to a point; thence

5. South 00°03'07" West, a distance of 136.41 feet to a point; thence
6. North 89°56'53" West, a distance of 3.21 feet to a point; thence
7. South 00°03'07" West, a distance of 35.70 feet to a point; thence
8. North 89°56'53" West, a distance of 8.37 feet to a point; thence
9. South 00°03'07" West, a distance of 20.06 feet to a point on the aforementioned northerly line of West 30th Street; thence
10. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 220.58 feet to the Point of Beginning.

Encompassing an area of 42,865 Square Feet/0.984 acres, more or less.

Plaza Level and Above:

All of the lands above a lower limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the easterly line of Eleventh Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said easterly line of Eleventh Avenue, North 00°03'07" East, a distance of 182.50 feet to a point; thence
2. Leaving Eleventh Avenue, South 89°56'53" East, a distance of 120.95 feet to a point; thence
3. North 78°45'38" East, a distance of 49.37 feet to a point; thence
4. South 89°56'53" East, a distance of 214.64 feet to a point; thence
5. South 00°03'07" West, a distance of 192.17 feet to a point on the aforementioned northerly line of West 30th Street; thence
6. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 384.00 feet to the Point of Beginning.

Encompassing an area of 72,389 Square Feet/1.662 acres, more or less.

EXHIBIT 1

ANNEX RE SITE SPECIFIC EASEMENTS

ANNEX

SITE SPECIFIC EASEMENTS

Section A-1 General.

(a) In addition to the easements granted in Article 7 of this Declaration, Declarant hereby declares the following site-specific easements (collectively, the “**Easements**”) on, in, through and over the portions of the Facility Airspace Parcel (such portions, collectively, the “**Easement Areas**”) as set forth below, each of which is intended to be binding upon the applicable Parcel burdened by any Easements (as such, a “**Burdened Parcel**”), and inure to the benefit of, the applicable benefited Parcel (as such, a “**Benefited Parcel**”) as and when such additional Parcels are Severed. Prior to the creation of additional Severed Parcels, the respective rights and obligations under this Article are the rights and obligations of the Parcel C Owner (as defined in Section A-14) and the Balance Parcel Owner. Upon the creation of additional Severed Parcels, the rights and obligations of the Balance Parcel Owner will become the rights and obligations of the applicable FASP Owners, and the Balance Parcel Owner will be released from all liability with respect thereto thereafter arising. Upon the formation of condominium regimes for any Severed Parcels, the rights and obligations of the FASP Owners will become the rights and obligations of the applicable Condominium Boards, except to the extent specifically otherwise provided herein, and such rights and obligations shall be incorporated in the respective documents governing such condominiums (the “**Condominium Documents**”). Such Condominium Boards shall have the right to delegate the right to enforce certain obligations to any Unit Owners and/or their respective tenants pursuant to its Condominium Documents.

With respect to all provisions in this Annex providing for confirmations, amendments, modifications and/or an relocations of any Easements, if a Facility Airspace Parcel has not yet been created and Severed, the Balance Parcel Owner shall execute and deliver any documents and instruments setting forth such confirmations, amendments, modifications and/or an relocations on behalf of the Parcel Owners referenced in such provisions, which shall be binding upon the applicable future FASP Owners upon the Severance of such Parcel.

(b) Casualty and Condemnation. In the event of a casualty or condemnation affecting a Burdened Parcel, a Benefited Parcel or any portion thereof, the following shall apply:

- (i) Following a casualty affecting a Burdened Parcel or a Benefited Parcel, the Owner of the Parcel affected by the casualty shall promptly restore the applicable Easement Area, in accordance with the requirements of the applicable Severed Parcel Lease and this Declaration. To the extent a given Easement Area remains usable or is restored, the easements affecting such area shall remain in full force and effect.
- (ii) Following a condemnation of an entire Burdened Parcel, the Easements relating thereto shall terminate.
- (iii) In the event such condemnation only affects a portion of a Burdened Parcel, the Easements shall terminate to the extent the applicable areas are rendered unusable

by the condemnation and are not restored pursuant to the requirements of the applicable Severed Parcel Lease and this Declaration. The Benefited Parcel Owner (as defined in Section A-14) shall have the right to make a claim to such portion of any award that is allocable to the Easement. To the extent a relocation of the Easement to another portion of a Burdened Parcel is reasonably possible, the Burdened Parcel Owner (as defined in Section A-14) shall so relocate the Easement.

(c) Insurance. Each of the Burdened Parcel Owner and the Benefited Parcel Owner shall obtain and maintain, in connection with its respective use of the Easement Areas, the applicable insurance coverage required under the Severed Parcel Lease to which such Owner is a party (or if such Severed Parcel has been submitted to a condominium regime, the applicable Condominium Documents) and the Master Declaration, to the extent such coverage is applicable, to the easements being granted herein (which coverage shall include, without limitation, commercial general liability insurance, property insurance and workers compensation insurance in such amounts and coverages as such Burdened Parcel Owner carries on its FASP Improvements.

(d) Indemnification.

- (i) Each Owner of a Benefited Parcel (the “**Indemnifying Owner**”) shall to the extent permitted by law, indemnify, defend and hold harmless the Owner of the Burdened Parcel and such Burdened Parcel Owner’s affiliates and the agents, employees, members, principals, officers, directors, lenders, successors and assigns of each of them (collectively, the “**Indemnitees**”), from and against any and all losses, damages, suits, actions, proceedings, fines, penalties, judgments, amounts paid in settlement, claims, demands, costs and expenses, including, without limitation, reasonable attorneys’ fees and disbursements (collectively, “**Claims**”), arising from the use of the Easements herein granted to the Indemnifying Owner as contemplated herein, except to the extent of the gross negligence or willful misconduct of an Indemnitee. The foregoing indemnification shall include any claim arising out of, or in any way related to the presence, discovery, storage, transportation, disposal, release or threatened release of any Hazardous Substances (as defined in Section A-14) over, under, in, on, from or affecting the Burdened Parcel, or any persons, real property, personal property, or natural substances thereon affected thereby, including any such Claims imposed upon, incurred by or asserted against any Indemnitee under any Environmental Law.
- (ii) The Indemnifying Owner shall defend the applicable Indemnitee with counsel reasonably satisfactory to such Indemnitee (unless the indemnified claim is covered by insurance, in which event counsel shall be attorneys for, or approved by, the insurance carrier), shall keep the Indemnitee apprised of all legal proceedings and shall not enter into any settlement without the Indemnitee’s prior written consent, which shall not be unreasonably withheld (provided that an Indemnitee shall not be required to consent to any settlement of any claim which requires payment of all or any portion of a claim by an Indemnitee, or otherwise

imposes liability or obligations on the Indemnitee or the Burdened Parcel). Notwithstanding anything to the contrary contained herein, any Indemnitee seeking indemnification under any provision of this Declaration shall provide the Indemnifying Owner with prompt notice of such claim within a reasonable time after the Indemnitee first becomes aware of the existence thereof, and shall reasonably cooperate with the Indemnifying Owner in connection with defending or settling such claim.

(e) Arbitration; Costs.

- (i) Any disputes under this Annex shall be conducted in accordance with the provisions of this Section A-1(e) (an “**Arbitration**”). Any Arbitration shall be conducted before three arbitrators in New York City by the American Arbitration Association or any successor organization thereof, in accordance with its rules for the real estate industry and expedited procedures then in effect and the decision rendered in such Arbitration shall be binding upon the parties and may be entered in any court having jurisdiction. In the event that the American Arbitration Association is not then in existence and has no successor, any Arbitration hereunder shall be conducted in New York City before three arbitrators appointed, on application of any party, by any justice of the highest court of appellate jurisdiction located in the County of New York. The decision of the arbitrators so chosen shall be given within ten (10) days after such arbitrator’s appointment. Any arbitrator appointed or selected in connection with any Arbitration under this Section A-1(e) shall be (i) a lawyer or real estate owner, developer, or manager familiar with comparable buildings and having general legal or real estate experience, as the case may be, of not less than fifteen years and (ii) neutral, unaffiliated and independent of the Owners. Any Registered Mortgagee and/or Ground Lessor shall have the right to appear in any proceeding under this Section A-1(e) to the extent permitted under any Registered Mortgage or Ground Lease, Severed Parcel Lease or Balance Lease, as applicable.
- (ii) The fees, costs and expenses of the arbitrator will be borne by the losing party in the Arbitration or, if the position of neither party to the dispute is substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the disputants. Each disputing Owner shall also bear the fees and expenses of its counsel and expert witnesses.
- (iii) The parties to any dispute required or permitted to be submitted to Arbitration hereunder may, by mutual agreement between them, vary any of the provisions of this Section A-1(e) with respect to the Arbitration of such dispute, or may agree to resolve their dispute in any other manner, including, without limitation, the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as the “New York Simplified Procedure for Court Determination of Disputes”.

(f) Access by Benefitted Parcel Owners. Access by Benefitted Parcel Owners to the extent required under the provisions of this Annex shall be in accordance with and subject to the

terms and provisions of the Severed Parcel Leases (such as, to the extent applicable, provisions regarding hours of access, required prior notice, and the right to have a representative present during such access).

(g) All construction, maintenance and repair performed under this Annex shall be performed in accordance with all Legal Requirements and good construction practice.

Section A-2 Connectivity Easements Between Parcel C and Parcel D

(a) Easement for Support Columns.

(i) Grant. An exclusive, permanent and perpetual right and easement (the “**Parcel D Support Element Easement**”) for the benefit of and as an appurtenance to Parcel D (as defined in Section A-14) and burdening Parcel C (as defined in Section A-14), to construct, install, use, operate, maintain, repair and access columns and related structural members, footings, piles, foundations and connections (collectively, “**Support Elements**”) through the subsurface portions of the Parcel C Building (as defined in Section A-14), the general locations of which are shown as Area 1 on the easement diagram annexed hereto as **Exhibit 1** (the “**Easement Diagram**”) and to be shown on the Plans and Specifications (as defined in Section A-14) for the Parcel C Building (such portions, the “**Parcel D Support Element Easement Area**”), for the purpose of providing structural support for the portion of the Parcel D Building (as defined in Section A-14) to be located above the Parcel D Support Easement Area (the “**Culture Shed Portion**”), together with a non-exclusive easement and right-of-way for access to the Support Elements for purposes of construction, inspection, maintenance and repair thereof, subject to the terms and conditions of this Declaration. Upon the determination by Parcel C Owner of the actual location of the Support Elements (to be shown on the as-built plans for the Parcel C Building), Parcel C Owner and Parcel D Owner (as defined in Section A-14) shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Support Easement shall be effective from and after the later of (i) the Severance of Parcel D, and (ii) the commencement of construction of the Culture Shed Portion.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Support Elements. Parcel C Owner shall construct the Support Elements substantially in accordance with such Plans and Specifications, at the sole cost and expense of Parcel C Owner.

(iv) Maintenance and Repair. Parcel D Owner shall be responsible for the maintenance and repair of the Support Elements, at its sole cost and expense. Notwithstanding the foregoing, if such maintenance and repair cannot be performed without materially affecting the Parcel C Building, Parcel C Owner shall perform such maintenance and repair, at the sole cost and expense of Parcel D Owner. Such

maintenance and repair shall be in compliance with (i) all applicable Legal Requirements, good construction practice and the applicable provisions of the Parcel C Condominium Declaration (as defined in Section A-14) and this Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building, the Parcel D Building and the Culture Shed Portion (it being understood that in no event shall such maintenance or repair of the Support Elements affect the structural integrity of the Parcel C Building, the Parcel D Building or the Culture Shed Portion).

(b) Easement for Parcel D Utility Conduits.

(i) Grant. A permanent and perpetual right and easement (the “**Parcel D Utility Conduit Easement**”) for the benefit of and as an appurtenance to Parcel D and burdening Parcel C, to install, use, operate, maintain and access risers, conduits, lines, and other equipment necessary to provide utility services (including, without limitation, mechanical, electrical, plumbing, life-safety services and other related equipment) (collectively, the “**Parcel D Utility Conduits**”) to the Parcel D Building to be located in and through the subsurface portions of the Parcel C Building, the general locations of which are shown as Area 2 on the Easement Diagram, and to be shown on the Plans and Specifications for the Parcel C Building (such portions, the “**Parcel D Utility Conduit Easement Area**”), together with the right to access the Parcel D Utility Conduits for purposes of inspection, maintenance, repair and replacement thereof, subject to the terms and conditions of this Declaration. Parcel D Owner shall determine whether (and the extent) the use of Parcel D Owner shall be exclusive or non-exclusive to Parcel D Owner depending on the capacity of the Parcel D Utility Conduits. Upon the determination by Parcel C Owner of the actual location of the Parcel D Utility Conduits (to be shown on the as-built plans for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Utility Conduit Easement shall be effective from and after the later of (i) the Severance of Parcel D, and (ii) the commencement of construction of the Culture Shed Portion.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel D Utility Conduits. Parcel C Owner shall construct the Parcel D Utility Conduits substantially in accordance with such Plans and Specifications, at the sole cost and expense of Parcel C Owner.

(iv) Maintenance and Repair. Parcel D Owner and Parcel C Owner shall agree, prior to the completion of the construction of the Parcel D Utility Conduits, which party shall be responsible for the maintenance and repair thereof. Notwithstanding the foregoing, if such maintenance and repair cannot be performed without materially affecting the Parcel C Building, Parcel C Owner shall perform such maintenance and

repair, at the sole cost and expense of Parcel D Owner. Such maintenance and repair shall be in compliance with (i) all applicable Legal Requirements, good construction practice and the applicable provisions of the Parcel C Condominium Declaration and this Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building, the Parcel D Building and the Culture Shed Portion (it being understood that in no event shall such maintenance or repair of the Parcel D Utility Equipment affect the structural integrity of the Parcel C Building, the Parcel D Building or the Culture Shed Portion). With respect to any portions of the Parcel D Utility Conduit Easement Areas that are for the exclusive use of the Parcel D Building, Parcel D Owner shall be solely responsible for the cost of such maintenance and repair. Upon the Severance of Parcel D, Parcel C Owner and Parcel D Owner shall agree to an equitable allocation of the cost of such maintenance and repair with respect to any non-exclusive portions and Parcel D Owner shall reimburse Parcel C Owner for the costs allocated to it.

(v) Relocation. Parcel C Owner shall have the right, at its election, and at its sole cost and expense, to relocate the Parcel D Utility Conduits to any other location within the Parcel C Building, provided that such relocated Parcel D Utility Conduits shall provide Parcel D with substantially the same benefits and so long as utility service is not interrupted without the reasonable prior consent of the Parcel D Owner. In the event such relocation is made at the request of Parcel D Owner and is agreed to by Parcel C Owner, the requesting party shall be responsible for the costs and expense thereof and if the request is from the Parcel D Owner, the costs and expenses shall be shared by such parties pursuant to an agreed-upon cost allocation methodology.

(c) Easement for Stormwater Retention.

(i) Grant. A non-exclusive, permanent and perpetual right and easement (the “**Stormwater Easement**”) for the benefit of and as an appurtenance to (A) Parcel D, and (B) the portion of the Open Space Component (the “**Designated Plaza Area**”), the general location of which is shown as Area 3 on the Easement Diagram, and burdening Parcel C, to use, operate, maintain and access such pipelines and related connections (the “**Stormwater Connections**”) from the surface of Parcel D or the Designated Plaza Area, as the case may be, to the storm water retention system and related pump rooms, suction System and other related systems located in portions of the sub-subcellar, subcellar and cellar levels of the Parcel C Building, the general locations of which are shown as Area 4 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building (collectively, the “**Stormwater Retention System**”), together with the right to access the Stormwater Connections for purposes of inspection, maintenance, repair and replacement thereof, subject to the terms and conditions of this Declaration. Upon the determination by Parcel C Owner of the actual location of the Stormwater Retention System and the Stormwater Connections (to be shown on as-built plans for the Parcel C Building), Parcel C Owner, the Association and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each

describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Stormwater Easement shall be effective from and after the completion of the Stormwater Connections and the Stormwater Retention System.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Stormwater Retention System and the Stormwater Connections. Parcel C Owner shall construct the Stormwater Retention System and the Stormwater Connections substantially in accordance with such Plans and Specifications. Parcel C Owner shall construct the Stormwater Connections and the Stormwater Retention System.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Stormwater Connections and Stormwater Retention System. Subsequent to the Severance of Parcel D, Parcel D Owner shall reimburse Parcel C Owner for a percentage of the cost of maintaining and repairing the Stormwater Connections and of the cost of maintaining and repairing the Stormwater Retention System (which percentage shall be based on the number of drains and pathways servicing Parcel D), and the Association shall reimburse Parcel C Owner for a percentage of the cost of maintaining and repairing the Stormwater Connection and of the cost of maintaining and repairing the Stormwater Retention System (which percentage shall be based on the number of drains and pathways servicing the Open Space Component). Such maintenance and repair shall be in compliance with (i) this Declaration and the applicable provisions of the Parcel C Condominium Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building, the Parcel D Building (when constructed) and the Designated Plaza Area.

(v) Use. (a) The Stormwater Easement is granted for the sole purpose of storm water drainage. Parcel D Owner shall comply with all applicable Legal Requirements so as to prevent the amount of storm water drainage through the Stormwater Connections from Parcel D and the Culture Shed Portion and into the Stormwater Retention System to exceed the design capacity thereof allocated to Parcel D and the Culture Shed Portion. The Association shall comply with all Legal Requirement so as to prevent the amount of storm water drainage through the Stormwater Connections from the Association Property and into the Stormwater Retention System to exceed the design capacity thereof allocated to the Designated Plaza Area. Parcel C Owner covenants that the Stormwater Retention System will be designed to have sufficient capacity to handle storm water draining from Parcel C, Parcel D and the Designated Plaza Area, resulting from a 10-year and 100-year storm event in accordance with all applicable Legal Requirements (including the New York City Building Code).

(vi) Relocation. Parcel C Owner shall have the right, at its election and cost, to relocate the Stormwater Connections and the Stormwater Retention System to any other location within Parcel C, provided that such relocated Stormwater Connections

and Stormwater Retention System shall provide Parcel D Owner and the Association with substantially the same benefits and so long as the stormwater drainage is not interrupted without the reasonable prior consent of Parcel D Owner and the Association.

(d) Parking Garage Access Door.

(i) Grant. An non-exclusive right and easement and right-of-way (the “**Garage Access Easement**”) for the benefit of and as an appurtenance to the Parcel D, and burdening the Parcel C, for pedestrian access, ingress and egress to and from the cellar level of the Parcel D Building to the Parking Garage through a door (the “**Parking Garage Door**”), the general location of which is shown as Area 5 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Parking Garage Door (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Garage Access Easement shall be effective from and after the completion of construction of the Parcel C Building and the Parcel D Building.

(iii) Use. The Garage Access Easement may be used by Parcel D Owner and its guests, employees, invitees and representatives solely for pedestrian ingress and egress and for no other purpose.

(iv) Maintenance and Repair. Parcel D Owner shall be responsible, at Parcel D Owner’s sole costs and expense, for the operation, maintenance and repair of the Parking Garage Door.

(v) Operation. Parcel C Owner shall have the right control access through the Parking Garage Door, including the right to impose reasonable rules and regulations on the use thereof and the hours of operation and closure.

(vi) Relocation. Parcel C Owner shall have the right, at its election, to relocate the Parking Garage Door to any other location within the wall connecting the cellar level of the Parcel D Building and the Parking Garage, provided that such relocated Parking Garage Door shall provide Parcel D Owner with substantially the same benefits and so long as access is not materially interrupted without the reasonable prior consent of Parcel D Owner.

(vii) Conveyance of Parcel C Parking Garage Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Parking Garage Unit (as defined in Section A-14) shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-2(d).

(e) Parcel C Parking Garage Access Easement.

(i) Grant. An non-exclusive right and easement and right-of-way (the “**Parcel C Parking Garage Access Easement**”) for the benefit of and as an appurtenance to Parcel C, and burdening Parcel D, for pedestrian access, ingress and egress over a access area connecting the Parking Garage to West 30th Street (the “**Parcel C Parking Garage Access Area**”), the general location of which is shown as Area 6 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Parcel C Parking Garage Access Area (to be shown on the as-built drawings for the Parcel C Building), Parcel D Owner and Parcel C Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel C Parking Garage Access Easement shall be effective from and after the completion of construction of the Parking Garage.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel C Parking Garage Access Area. Parcel C Owner shall construct the core and shell of the Parcel C Parking Garage Access Area substantially in accordance with such Plans and Specifications.

(iv) Use. The Parcel C Parking Garage Access Area may be used by Parcel C Owner and its guests, employees, invitees and representatives solely for pedestrian ingress and egress and for no other purpose.

(v) Maintenance and Repair. Parcel D Owner shall be responsible, at Parcel C Owner’s sole costs and expense, for the operation, maintenance and repair of the Parcel C Parking Garage Access Area.

(vi) Operation. Parcel C Owner shall have the right control access through the Parcel C Parking Garage Access Area, including the right to impose reasonable rules and regulations on the use thereof and the hours of operation and closure.

(vii) Conveyance of Parcel C Parking Garage Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Parking Garage Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-2(e).

Section A-3 Loading Dock Easements.

(a) Parcel C Loading Dock Unit. At such time as Parcel C shall be subject to the Parcel C Condominium Declaration, the loading dock unit (the “**Parcel C Loading Dock Unit**”), which comprises the loading dock located on the ground floor level of the Parcel C Building as shown as Area 7 on the Easement Diagram

(the “**Parcel C Loading Dock**”) shall be conveyed in fee or leased to the Association as more particularly set forth in this Declaration.

Wherever in this Section A-3 there is an allocation of costs to the Association, Parcel D Owner and/or Destination Retail Owner (as defined in Section A-14) based on their proportionate usage of the Parcel C Loading Dock, such usage shall be determined as follows:

- (i) Until such time as the Parcel D Building and the Destination Retail Building (as defined in Section A-14) are completed, Parcel C Owner (and upon the conveyance of the Parcel C Loading Dock Unit to the Association, the Association) shall pay 100% of such costs (the “**Parcel C Share**”);
- (ii) At such time as the Parcel D Building has been completed and Parcel D Owner commences to use the Parcel C Loading Dock, Parcel D Owner shall pay the portion of such costs based on Parcel D Owner’s actual usage of the Parcel C Loading Dock (such portion, the “**Parcel D Share**”) and the Parcel C Share shall be reduced by the Parcel D Share; and
- (iii) At such time as the Destination Retail Building has been completed and Destination Retail Owner commences to use the Parcel C Loading Dock, Destination Retail Owner shall pay the portion of such costs based on Destination Retail Owner’s actual usage of the Parcel C Loading Dock (such portion, the “**Destination Retail Share**”) and the Parcel C Share and the Parcel D Share shall be reduced by the Destination Retail Share.

Wherever in this Section A-3 there is an allocation of costs to Parcel D or Destination Retail (as defined in Section A-14), the Association shall provide a breakdown to each of Parcel D Owner and Destination Retail Owner of the proportionate usage by Parcel D Owner and Destination Retail Owner in such detail as they may reasonably request. The Association shall have the right to impose reasonable rules, regulations and operating procedures on the use of the Parcel C Loading Dock Unit, including the right to coordinate the times of freight and other deliveries and limitation of hours of operation and times of closure and security and such systems and usage charges as the Association may impose.

(b) Parcel D Westerly Loading Dock Access Easement

- (i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Parcel D Westerly Loading Dock Access Easement**”) for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, for purposes of vehicular access, ingress and egress over the portion of the Parcel C Loading Dock from West 30th Street to the Parcel D Loading Dock (such portion, the “**Parcel D Westerly Loading Dock Access Easement Area**”), the general location of which Parcel D Westerly Loading Dock Access Easement Area is shown as Area 8 on the Easement Diagram

and to be shown on the Plans and Specifications for the Parcel C Building for purposes of ingress and egress to and from the ground floor level of the Parcel D Building and West 30th Street. Upon the determination by Parcel C Owner of the actual location of the Parcel D Westerly Loading Dock Access Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Westerly Loading Dock Access Easement shall be effective from and after the commencement of construction of the Parcel D Building. In the event the Culture Shed Portion is constructed independently of the remainder of the Parcel D Building, the Parcel D Westerly Loading Dock Access Easement shall be effective from and after the completion of construction of the Culture Shed Portion.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel D Westerly Loading Dock Access Easement Area. Parcel C Owner shall construct the core and shell of the Parcel D Westerly Loading Dock Access Easement Area substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance, repair and restoration of the Parcel D Westerly Loading Dock Access Easement Area. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such maintenance, repair and restoration, which allocation shall be based on Parcel D Owner's usage of the Parcel D Westerly Loading Dock Access Easement Area (to the extent such use is non-exclusive) and Parcel D Owner shall reimburse Parcel C Owner for all costs of such maintenance, repair and restoration to the extent such use is exclusive. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel C Condominium Declaration.

(v) Operating Expenses. Parcel C Owner shall be responsible, at its sole cost and expense, for all utilities, personnel and other services as may be necessary for the operation of the Parcel D Westerly Loading Dock Access Easement Area. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such operating expenses, which allocation shall be based on Parcel D Owner's usage of the Parcel D Westerly Loading Dock Access Easement Area (to the extent such use is non-exclusive) and Parcel D Owner shall reimburse Parcel C Owner for all costs of such operating expenses to the extent such use is exclusive.

(vi) Temporary Closure. Upon reasonable prior written notice to Parcel D Owner, Parcel C Owner shall have the right to close access to the Parcel D Westerly Loading Dock Access Easement Area from time to time for reasonable periods of time, as may

be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(vii) Relocation of the Parcel D Westerly Loading Dock Access Easement. Parcel C Owner shall have the right, at its election, to relocate the Parcel D Westerly Loading Dock Access Easement Area to any other location within the ground floor level of the Parcel C Building, provided that such relocated Parcel D Westerly Loading Dock Access Easement Area shall provide Parcel D Owner with substantially the same benefits and so long as access is not materially interrupted without the reasonable prior consent of Parcel D Owner.

(viii) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(b).

(c) Parcel D Loading Dock Access Door.

(i) Grant. A non-exclusive right and easement and right-of-way (the “**Parcel D Loading Dock Door Access Easement**”) for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, for access, ingress and egress to and from the cellar level of the Parcel D Building to the Parcel D Loading Dock Access Easement Area through a door (the “**Parcel D Loading Dock Access Door**”) if such Parcel D Loading Dock Access Door is required by Legal Requirements, the general location of which is shown as Area 9 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Parcel D Loading Dock Access Door (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Loading Dock Door Access Easement shall be effective from and after the completion of construction of the Parcel C Building and the Parcel D Building.

(iii) Use. The Parcel D Loading Dock Door Access Easement may be used by Parcel D Owner and its employees and representatives solely for moving freight and other deliveries to and from the Parcel D Loading Dock Access Easement Area to Parcel D.

(iv) Maintenance and Repair. Parcel D Owner shall be responsible, at Parcel D Owner’s sole costs and expense, for the operation, maintenance and repair of the Parcel D Loading Dock Access Door.

(v) Operation. Parcel C Owner shall have the right to control access through the Parcel D Loading Dock Access Door, including the right to impose reasonable rules and regulations on the use thereof and the hours of operation and closure.

(vi) Relocation. Parcel C Owner shall have the right, at its election, to relocate the Parcel D Loading Dock Access Door to any other location within the wall connecting the cellar level of the Parcel D Building and the Parcel D Loading Dock Access Easement Area, provided that such relocated Parcel D Loading Dock Access Door shall provide Parcel D Owner with substantially the same benefits and so long as access is not materially interrupted without the reasonable prior consent of Parcel D Owner.

(vii) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(c).

(d) Parcel D Easterly Loading Bay Easement.

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Parcel D Easterly Loading Bay Easement**”) for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, for purposes of loading and unloading of trucks and other vehicles at two (2) non-designated loading docks of the 10 loading docks (the “**Parcel C Loading Bays**”) in the Parcel C Loading Dock, the general locations of which are shown as Area 10 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building (any of such two (2) loading docks, the “**Parcel D Easterly Loading Bay Easement Area**”). Upon the determination by Parcel C Owner of the actual locations of the Parcel C Loading Bays (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Easterly Loading Bay Easement shall be effective from and after the completion of construction of both the Parcel D Building and the Parcel C Loading Bays. In the event the Culture Shed Building is constructed independently of the remainder of the Parcel D Building, the Parcel D Easterly Loading Bay Easement shall be effective from and after the completion of construction of the Culture Shed Building.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel D Loading Bay Easement Area and the Parcel C Loading Bays. Parcel C Owner shall construct the Parcel C Loading Bays substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Parcel C Loading Bays. Such maintenance and repair shall be in compliance with all applicable Legal Requirements, good construction practice and the applicable provisions of the Parcel C Condominium Declaration. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such maintenance and repair, which allocation shall be based on Parcel D Owner's usage of the Parcel C Loading Bays and Parcel D Owner shall reimburse Parcel C Owner for such costs.

(v) Operating Expenses. Parcel C Owner shall be responsible to provide all utilities, personnel and other services as may be necessary for the operation of the Parcel C Loading Bays. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such operating expenses (including, without limitation, paving, lighting and security), which allocation shall be based on Parcel D Owner's usage of the Parcel C Loading Bays and Parcel D Owner shall reimburse Parcel C Owner for such costs.

(vi) Operation. Parcel C Owner shall have the right to impose reasonable rules, regulations and operating procedures on the use of the Parcel C Loading Bays, including the right to coordinate the times of freight and other deliveries and limitation of hours of operation and times of closure and such systems and usage charges as Parcel C Owner may impose.

(vii) Temporary Closure. Upon reasonable prior written notice to Parcel D Owner, Parcel C Owner shall have the right to close access to the Parcel C Loading Bays from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(e) Parcel D Easterly Loading Bays Access Easement

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the "**Parcel D Easterly Loading Bay Access Easement**") for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, for purposes of vehicular access, ingress and egress over the portion of the Parcel C Loading Dock from West 30th Street to the Parcel C Loading Bays (such portion, the "**Parcel D Easterly Loading Bay Access Easement Area**") located on the ground floor of the Parcel C Building, the general location of which Parcel D Easterly Loading Bay Access Easement Area is shown as Area 11 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building for purposes of ingress and egress to and from the Parcel C Loading Bays and West 30th Street. Upon the determination by Parcel C Owner of the actual location of the Parcel D Easterly Loading Bay Access Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing

such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel D Easterly Loading Bay Access Easement shall be effective from and after the commencement of construction of the Parcel D Building. In the event the Culture Shed Portion is constructed independently of the remainder of the Parcel D Building, the Parcel D Easterly Loading Bay Access Easement shall be effective from and after the completion of construction of the Culture Shed Portion.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel D Easterly Loading Bay Access Easement Area. Parcel C Owner shall construct the core and shell of the Parcel D Easterly Loading Bay Access Easement Area substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance, repair and restoration of the Parcel D Easterly Loading Bay Access Easement Area. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such maintenance, repair and restoration, which allocation shall be based on Parcel D Owner's usage of the Parcel D Easterly Loading Bay Access Easement Area and Parcel D Owner shall reimburse Parcel C Owner for such costs. Such maintenance, repair and restoration shall be in compliance with this Declaration, applicable Legal Requirements and the applicable provisions of the Parcel C Condominium Declaration.

(v) Operating Expenses. Parcel C Owner shall be responsible, at its sole cost and expense, for all utilities, personnel and other services as may be necessary for the operation of the Parcel D Easterly Loading Bay Access Easement Area. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such operating expenses, which allocation shall be based on Parcel D's usage of the Parcel D Easterly Loading Bay Access Easement Area and Parcel D Owner shall reimburse Parcel C Owner for such costs.

(vi) Operation. Parcel C Owner shall have the right to impose reasonable rules, regulations and operating procedures on the use of the Parcel D Easterly Loading Bay Access Easement Area, including the right to coordinate the times of freight and other deliveries and limitation of hours of operation and times of closure with respect to the non-exclusive access area and such systems and usage charges as Parcel C Owner may impose.

(vii) Temporary Closure. Upon reasonable prior written notice to Parcel D Owner and Culture Shed Owner, Parcel C Owner shall have the right to close access to the Parcel D Easterly Loading Bay Access Easement Area from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(viii) Relocation of the Parcel D Easterly Loading Bay Access Easement. Parcel C Owner shall have the right, at its election, to relocate the Parcel D Easterly Loading Bay Access Easement Area to any other location within the cellar level of the Parcel C Building, provided that such relocated Parcel D Easterly Loading Bay Access Easement Area shall provide Parcel D Owner with substantially the same benefits and so long as access is not materially interrupted without the reasonable prior consent of Parcel D Owner.

(ix) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(e).

(f) Parcel D Service Elevator; Parcel D Service Elevator Access Area.

(i) Grant. (A) An exclusive permanent and perpetual right and easement and right-of-way (the “**Parcel D Service Elevator Easement**”) for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, for a service elevator located in the Parcel C Building (the “**Parcel D Service Elevator**”), connecting the Parcel D Westerly Loading Dock Access Easement Area, the Parcel C Loading Bays and the Parcel D Easterly Loading Bay Access Easement Area to the mezzanine and other floors of the Parcel D Building, the general location of which Parcel D Service Elevator is shown as **Area 12** on the Easement Diagram; and

(B) a non-exclusive easement and right-of-way (the “**Parcel D Service Elevator Access Easement**”) for access, ingress and egress for access from the Parcel C Loading Bays to the Parcel D Service Elevator over and along such portions of the Parcel C Loading Dock (the “**Parcel D Service Elevator Access Easement Area**”) located between the Parcel D Service Elevator, the Parcel C Loading Bay Access Easement Area, and the Parcel C Loading Bays, the general location of which is shown as **Area 13** on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building (the Parcel D Service Elevator Easement together with the Parcel D Service Elevator Access Easement, the “**Parcel D Service Elevator and Access Easement**”).

(ii) Effective Date. The Parcel D Service Elevator and Access Easement shall be effective upon Substantial Completion (as defined in Section A-14) of both the Parcel C Loading Dock and the Parcel D Building.

(iii) Use. The Parcel D Service Elevator and Access Easement may be used by Parcel D Owner and its employees solely for the delivery of freight and other deliveries, access, ingress and egress to and from the Parcel D Building and the Parcel C Loading Bays and over and along the Parcel D Service Elevator Access Easement Area and for no other purpose.

(iv) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the shaft and elevator pit (the “**Parcel D Service Elevator Shaft**”) for the portion of the Parcel D Service Elevator located in Parcel C and the Parcel D Service Elevator and Access Easement Area. Parcel C Owner shall construct the Parcel D Service Elevator Shaft and the Parcel D Service Elevator and Access Easement Area substantially in accordance with such Plans and Specifications. Parcel D Owner shall be responsible, at its sole cost and expense, for the acquisition and installation of the Parcel D Service Elevator.

(v) Maintenance and Repair. (a) Parcel D Owner shall be responsible, at its sole cost and expense for the maintenance, repair and replacement of the Parcel D Service Elevator. Such maintenance, repair and replacement shall be in compliance with (i) this Declaration, applicable Legal Requirements and the Parcel C Condominium Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building and the Parcel C Loading Dock.

(b) Parcel C Owner shall be responsible for the maintenance and repair of the Parcel D Service Elevator Access Easement Area. Such maintenance and repair shall be in compliance with this Declaration, applicable Legal Requirements and applicable provisions of the Parcel C Condominium Declaration. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such maintenance and repair, which allocation shall be based on Parcel D’s usage of the Parcel D Service Elevator Access Easement Area and Parcel D Owner shall reimburse Parcel C Owner for such costs.

(vi) Utilities; Operating Expenses. (a) Parcel D Owner shall be responsible, at its sole cost and expense, to provide all utilities, personnel and other services as may be necessary for the operation of the Parcel D Service Elevators.

(b) Parcel C Owner shall be responsible to provide all utilities, personnel and other services as may be necessary for the operation of the Parcel D Service Elevator Access Easement Area. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such operation, maintenance and repair, which allocation shall be based on Parcel D’s usage of the Parcel D Service Elevator Access Easement Area and Parcel D Owner shall reimburse Parcel C Owner for such costs.

(vii) Operation. Parcel C Owner shall have the right to impose reasonable rules and regulations on the use of the Parcel D Service Elevator Access Easement Area, including the right to limit the hours of operation and times of closure.

(viii) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(f).

(g) Easement for Compactors.

(i) Grant. A non-exclusive, permanent and perpetual right and easement (the “**Compactor Easement**”) for the benefit of and as an appurtenance to Parcel D, and burdening Parcel C, to use the compactors located in the Parcel C Loading Dock (the “**Compactors**”), the general location of which is shown as Area 14 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building, together with the right to access the Compactors for purposes of disposing of trash, subject to the terms and conditions of this Declaration and any rules and regulations promulgated by the Association as owner and operator of the Parcel C Loading Dock Unit. Upon the determination by Parcel C Owner of the actual location of the Compactors (to be shown on as-built plans for the Parcel C Building), Parcel C Owner and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Compactor Easement shall be effective from and after the completion of the Parcel C Loading Dock and the Compactors.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Compactors. Parcel C Owner shall construct the Compactors substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Compactors. Upon the Severance of Parcel D, Parcel D Owner and Parcel C Owner shall agree on an allocation of the cost of such maintenance and repair, which allocation shall be based on Parcel D’s usage of the Compactors and Parcel D Owner shall reimburse Parcel C Owner for such costs. Such maintenance and repair shall be in compliance with (i) applicable Legal Requirements, this Declaration and the applicable provisions of the Parcel C Condominium Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building, the Parcel D Building (when constructed).

(v) Relocation. Parcel C Owner shall have the right, at its election and cost, to relocate the Compactors to any other location within the Parcel C Loading Dock, provided that such relocated Compactors shall provide Parcel D Owner with substantially the same benefits and so long as compactor service is not interrupted without the reasonable prior consent of Parcel D Owner.

(vi) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(g).

(h) Association Pathway – Parcel D

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Association Pathway Easement – Parcel D**”) for the benefit of and as an appurtenance to the Open Space Component, and burdening Parcel D, for purposes of pedestrian access, ingress and egress over the portion of Parcel D from the Open Space Component to the Highline Component (such portion, the “**Association Pathway Easement Area – Parcel D**”), the general location of which is shown as Area 15 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel D Building. Upon the determination by Parcel D Owner of the actual location of the Association Pathway Easement – Parcel D (to be shown on the as-built drawings for the Parcel D Building), the Association and Parcel D Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Association Pathway Easement – Parcel D shall be effective from and after the completion of construction of the Parcel D Building.

(iii) Construction. The Plans and Specifications for the Parcel D Building shall make provision for the Association Pathway Easement – Parcel D. Parcel D Owner shall construct the Association Pathway Easement – Parcel D substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. The Association shall be responsible, at its sole cost and expense, for the maintenance, repair and restoration of the Association Pathway Easement – Parcel D. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel D Condominium Declaration.

(v) Temporary Closure. Upon reasonable prior written notice to Parcel D Owner, the Association shall have the right to close access to the Association Pathway Easement – Parcel D from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, the Association shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(i) Association Pathway – Parcel C

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Association Pathway Easement – Parcel C**”) for the benefit of and as an appurtenance to the Open Space Component, and burdening Parcel C, for purposes of pedestrian access, ingress and egress over the portion of Parcel C from the Open Space Component to the Highline Component (such portion, the “**Association Pathway Easement Area – Parcel C**”), the general location of which is shown as Area 16 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Association Pathway Easement – Parcel C (to be shown on the as-built

drawings for the Parcel C Building), the Association and Parcel C Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Association Pathway Easement – Parcel C shall be effective from and after the completion of construction of the Parcel C Building.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Association Pathway Easement – Parcel C. Parcel C Owner shall construct the Association Pathway Easement – Parcel C substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. The Association shall be responsible, at its sole cost and expense, for the maintenance, repair and restoration of the Association Pathway Easement – Parcel C. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel C Condominium Declaration.

(v) Temporary Closure. Upon reasonable prior written notice to Parcel C Owner, the Association shall have the right to close access to the Association Pathway Easement – Parcel C from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, the Association shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(j) Parcel C Plaza Egress Area.

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Parcel C Plaza Egress Easement**”) for the benefit of and as an appurtenance to Parcel C, and burdening a portion of Parcel D, for purposes of pedestrian access, ingress and egress over the temporary stair (the “**Parcel C Plaza Egress Stair**”) located at the plaza level of Parcel C to the street (such portion of Parcel D, the “**Parcel C Plaza Egress Easement Area**”), the general location of which is shown as Area 16(a) on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Parcel C Plaza Egress Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel D Owner and Parcel C Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel C Plaza Egress Easement shall be effective from and after the commencement of construction of the Parcel C Building. The Parcel C Plaza Egress Easement shall terminate upon demolition of the Parcel C Plaza Egress Stair by Parcel C Owner when same is no longer necessary for such egress.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel C Plaza Egress Easement. Parcel C Owner shall construct the Parcel C Plaza Egress Stair substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible, at its sole cost and expense, for the maintenance, repair and restoration of the Parcel C Plaza Egress Stair. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel C Condominium Declaration.

(v) Temporary Closure. Parcel C Owner shall have the right to close access to the Parcel C Plaza Egress Stair from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

Section A-4 Hot Water From Cogeneration Plant

(a) It is anticipated that Parcel C will include a cogeneration plant (the “**Cogeneration Plant**”) located in the Parcel C Ancillary Unit, which comprises a portion of the fourth and fifth floors of the Parcel C Building, and which will produce hot water, and high pressure pipelines and related equipment and connections (the “**Parcel D Cogeneration Connections**”), and which will enable a portion of the hot water generated by the Cogeneration Plant to be provided to the Parcel D Building, when constructed. The location of the Parcel D Cogeneration Plant will be substantially as shown on the Plans and Specifications for the Parcel C Building.

(b) The Cogeneration Plant and the Parcel D Cogeneration Connections will be constructed, maintained and repaired by the Parcel C Owner, or after the formation of the Parcel C Condominium, by the owner of the Parcel C Ancillary Unit (the “**Parcel C Ancillary Unit Owner**”).

(c) Parcel C Owner or the Parcel C Ancillary Unit Owner, as the case may be, may provide hot water to Parcel D Owner generated by the Cogeneration Plant pursuant to a separate agreement to be entered into by Parcel C Owner or the Parcel C Ancillary Unit Owner, as the case may be. In such event, Parcel C Owner or the Parcel C Ancillary Unit Owner, as the case may be, shall install and maintain an independent sub-meter for measuring hot water consumption through the Cogeneration Connections.

(d) Parcel C Owner or the Parcel C Ancillary Unit Owner, as the case may be, may provide similar connections to Destination Retail, and may provide hot water to Destination Retail pursuant to a separate written agreement to be entered into with the Destination Retail Owner.

(e) Upon the recording of the Parcel C Condominium Declaration, the owner of the Parcel C Ancillary Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-3(g).

Section A-5 Connectivity Easements Between Parcel C and Destination Retail

(a) Destination Retail Access Elevator and Access Easement

(i) Grant. A non-exclusive permanent and perpetual right and easements and right-of-way (the “**Destination Retail Access Passenger Elevator and Access Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening Parcel C, in, through, over and upon the passenger elevator located in the Parcel C Building and to be known as Elevators P31 and P32, the general location of which is shown as Area 17 on the Easement Diagram (the “**Destination Retail Access Passenger Elevators**”), together with a non-exclusive easement and right-of-way for access, ingress and egress for pedestrians over and along such portions of: (x) the third floor of the Parcel C Building connecting the Destination Retail Access Passenger Elevators and the entrance connecting the Destination Retail to the Parcel C Building on the third floor, the general location of which is shown as Area 18 on the Easement Diagram (the “**Third Floor Entrance**”), (y) the plaza level of the Parcel C Building connecting the Destination Retail Access Passenger Elevators and the entrance connecting Destination Retail to the Parcel C Building on the plaza level, the general location of which is shown as Area 19 on the Easement Diagram (the “**Plaza Level Entrance**”), and (z) the cellar of the Parcel C Building connecting the Destination Retail Access Passenger Elevators to the Parking Garage (the “**Destination Retail Access Passenger Elevator Cellar Area**”), the general location of which is shown as Area 20 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building (all of the foregoing areas, the “**Destination Retail Access Passenger Elevator and Access Easement Areas**”). Upon the determination by Parcel C Owner of the actual location of the Destination Retail Access Passenger Elevators and the Destination Retail Access Passenger Elevator and Access Easement Areas (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Destination Retail Access Passenger Elevator and Access Easement shall be effective upon Substantial Completion of both the Parcel C Building and the Destination Retail.

(iii) Use. The Destination Retail Access Passenger Elevator and Access Easement may be used by Destination Retail Owner and its guests, employees, invitees and representatives solely for pedestrian ingress and egress from the Parking Garage to the Destination Retail and for no other purpose.

(iv) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Destination Retail Access Passenger Elevators, the Plaza Level Entrance, the Third Floor Entrance and the Destination Retail Passenger Elevator and Access Easement Area (collectively, the “**Destination Retail Passenger Elevator Access Elements**”). Parcel C Owner shall construct the Destination Retail Access Passenger Elevators and Destination Retail Passenger Elevator Access Elements substantially in accordance with such Plans and Specifications.

(v) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Destination Retail Passenger Elevator Access Elements. Destination Retail Owner and Parcel C Owner shall agree, prior to the Substantial Completion of the construction of the Destination Retail Passenger Elevator Access Elements on an equitable allocation of the cost of such maintenance and repair (which allocation shall take into account that to the extent the use is exclusive to Destination Retail, Destination Retail Owner shall pay 100% of such maintenance costs). Such maintenance and repair shall be in compliance with (i) all the applicable provisions of this Declaration and the Parcel C Condominium Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building.

(vi) Utilities; Operating Expenses. Parcel C Owner shall be responsible to provide all utilities, personnel and other services as may be necessary for the operation of the Destination Retail Passenger Elevator Access Elements. Destination Retail Owner and Parcel C Owner shall agree, prior to the completion of the construction of the Destination Retail Passenger Elevator Access Elements on an equitable allocation of the cost of such operating expenses (which allocation shall take into account that to the extent the use is exclusive to Destination Retail, Destination Retail Owner shall pay 100% of such operating expenses).

(vii) Temporary Closure. Upon reasonable prior written notice to Destination Retail Owner, Parcel C Owner shall have the right to close access to the Destination Retail Passenger Elevator Access Elements from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(viii) Operation. Parcel C Owner shall have the right to impose reasonable rules and regulations on the use of the Destination Retail Passenger Elevator Access Elements, including the right to limit the hours of operation to such times as both the Parking Garage and the Destination Retail are open to the public.

(viii) Relocation. Parcel C Owner shall have the right, at its election, to relocate any of the Destination Retail Passenger Elevator Access Elements to any other location within the Parcel C Building, provided that such relocated Destination Retail Passenger Elevator Access Elements shall provide the Destination Retail Owner with substantially the same benefits and so long as access from the Parking Garage to the

Destination Retail is not materially interrupted without the reasonable prior consent of Destination Retail Owner.

(b) Destination Retail Service Elevators and Destination Retail Service Elevator Access Area; Stairway Access.

(i) Destination Retail Access Unit. At such time as Parcel C shall be subject to the Parcel C Condominium Declaration, the Association shall be the owner of the condominium unit (the “**Destination Retail Access Unit**”), which comprises the Destination Retail Service Elevators, the Destination Retail Vestibules and the Stairway (each as defined below). Upon the completion of the Destination Retail Building, the Destination Retail Access Unit shall be conveyed to Destination Retail Owner.

(ii) Grant. (A) An exclusive permanent and perpetual right and easement and right-of-way (the “**Destination Retail Service Elevator Easement**”) for the benefit of and as an appurtenance to the Destination Retail, and burdening Parcel C, of two service elevators located in the Parcel C Building and to be known as Elevators 0001-S04 and 0001-S05 (collectively, the “**Destination Retail Service Elevators**”) located within the Destination Retail Access Unit and connecting the street level to the plaza level, the 02 retail level, and the third, fourth and fifth floors of the Parcel C Building, the general locations of which are shown as Area 21 on the Easement Diagram;

(B) An exclusive permanent and perpetual right and easement and right-of-way (the “**Vestibule Access Easement**”) for the benefit of and as an appurtenance to the Destination Retail, and burdening Parcel C, on, over and along the vestibules (the “**Destination Retail Vestibules**”) located in front of the Destination Retail Service Elevators on the street level, the plaza level, the 02 retail level, and the third, fourth and fifth floors of the Parcel C Building, for access, ingress and egress over and along such Destination Retail Vestibules to and from the Destination Retail Service Elevators, the general locations of which are shown as Area 22 on the Easement Diagram;

(C) (i) an exclusive, permanent and perpetual right and easement and right-of-way (the “**Exclusive Stairway Access Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening Parcel C, of a stairway adjacent to the Destination Retail Service Elevators (the “**Stairway**”) and connecting the 02 retail level to the third, fourth and fifth floors of the Parcel C Building for purposes of emergency egress, the general location of which is shown as Area 23 on the Easement Diagram and (ii) an non-exclusive, permanent and perpetual right and easement and right-of-way (the “**Non-Exclusive Stairway Access Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening Parcel C, of a stairway (the “**Non-Exclusive Stairway**”) connecting the 02 retail level to the plaza level of the Parcel C Building for purposes of emergency egress, the general location of which is shown as Area 24 on the Easement Diagram; and

(D) a non-exclusive easement and right-of-way (the “**Destination Retail Service Elevator Street Level Access Easement**”) for access, ingress and egress for over and along such portions of the street level area (the “**Destination Retail Service Elevator Street Level Access Area**”) located between the Destination Retail Service Elevators and the Parcel C Loading Dock, the general locations of which are shown as Area 25 on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building (all of the foregoing easements, collectively, the “**Destination Retail Service Elevator and Access Easement**”; and all of the foregoing easement areas, collectively, the “**Destination Retail Service Elevator and Access Easement Area**”). Upon the determination by Parcel C Owner of the actual location of the Service Elevators and the Destination Retail Service Elevator and Access Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Service Elevator and Access Easement shall be effective upon Substantial Completion of both the Parcel C Building and Destination Retail.

(iii) Use. The Destination Retail Service Elevators, the Destination Retail Vestibules and the Destination Retail Service Elevator Street Level Access Area may be used by Destination Retail Owner and its employees solely for the delivery of freight and other deliveries, access, ingress and egress for over and along such portions of the street level area located between the Destination Retail Service Elevators, the Stairway and the Parcel C Loading Dock to the Destination Retail and for no other purpose. The Stairway may be used by Destination Retail Owner and its employees solely for emergency egress.

(iv) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the shaft and bulkhead (the “**Service Elevator Shaft**”) for the Destination Retail Service Elevators, the Stairway and the Destination Retail Service Elevator Access Easement Area. Parcel C Owner shall construct the Destination Retail Service Elevator Shaft, the core and shell of the Destination Retail Vestibules, the Stairway and the Destination Retail Service Elevator Street Level Access Area substantially in accordance with such Plans and Specifications. Destination Retail Owner shall be responsible, at its sole cost and expense, for the acquisition, installation, maintenance, repair and replacement of the Destination Retail Service Elevators.

(v) Maintenance and Repair. (a) Destination Retail Owner shall be responsible, at its sole cost and expense for the maintenance, repair and replacement of the Destination Retail Service Elevators, and the maintenance and repair of the Vestibules and the Stairway. Such maintenance, repair and replacement shall be in compliance with (i) applicable Legal Requirements, this Declaration and the applicable provisions of the

Parcel C Condominium Declaration, and (ii) in such manner as will minimize interference with the maintenance and operation of the Parcel C Building.

(b) Parcel C Owner shall be responsible for the maintenance and repair of the Destination Retail Service Elevators Street Level Access Easement Area. Such maintenance and repair shall be in compliance with applicable Legal Requirements, this Declaration and the applicable provisions of the Parcel C Condominium Declaration. Upon the Severance of the Destination Retail, Destination Retail Owner and Parcel C Owner shall agree on an equitable allocation of the cost of such maintenance and repair and Destination Retail Owner shall reimburse Parcel C Owner for the costs allocated to it.

(vi) Utilities; Operating Expenses. (a) Destination Retail Owner shall be responsible, at its sole cost and expense, to provide all utilities, personnel and other services as may be necessary for the operation of the Destination Retail Service Elevators, the Vestibules and the Stairway.

(b) Parcel C Owner shall be responsible to provide all utilities, personnel and other services as may be necessary for the operation of the Destination Retail Service Elevator Street Level Access Area. Upon the Severance of the Destination Retail, Destination Retail Owner and Parcel C Owner shall agree on an equitable allocation of the cost of such operation, maintenance and repair and Destination Retail Owner shall reimburse Parcel C Owner for the costs allocated to it.

(vii) Operation. Parcel C Owner shall have the right to impose reasonable rules and regulations on the use of the Destination Retail Service Elevator Street Level Access Area, including the right to limit the hours of operation and times of closure.

(viii) Conveyance of the Destination Retail Access Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Destination Retail Access Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-5(b).

(c) Parcel C Escalator Easement.

(i) Grant. A non-exclusive permanent and perpetual right and easement and right-of-way (the “**Parcel C Escalator Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening the Parcel C Retail Unit (as defined in Section A-14) and Parcel C, in, through, over and upon (A) the escalators (the “**Parcel C Escalators**”) located within the Parcel C Building connecting the ground level and mezzanine level of the Parcel C Building with the Destination Retail Building, the general location of which is shown as Area 26 on the Easement Diagram, and (B) a vestibule area (the “**Parcel C Vestibule Area**”) connecting the Parcel C Escalators to Destination Retail, the general location of which Parcel C Vestibule Area is shown as Area 27 on the Easement Diagram (the Parcel C Escalators and the Parcel C

Vestibule Area, collectively, the “**Parcel C Escalator Easement Area**”). Upon the determination by Parcel C Owner of the actual location of the Parcel C Escalator Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Parcel C Escalator Easement shall be effective upon Substantial Completion of both the Parcel C Building and the Destination Retail.

(iii) Use. The Parcel C Escalator Easement Area may be used by Destination Retail Owner and its guests, employees, invitees and representatives solely for pedestrian access, ingress and egress and for no other purpose, subject to the control of Parcel C Owner and/or the owner of the Parcel C Retail Unit.

(iv) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Parcel C Escalator Easement Area. Parcel C Owner shall construct the Parcel C Escalator Easement Area substantially in accordance with such Plans and Specifications.

(v) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Parcel C Escalator Easement Area. Destination Retail Owner and Parcel C Owner shall agree, upon Severance of Destination Retail on an equitable allocation between Parcel C Owner and Destination Retail Owner of the cost of such maintenance and repair. Such maintenance and repair shall be in compliance with applicable Legal Requirements, this Declaration and the applicable provisions of the Parcel C Condominium Declaration.

(vi) Utilities; Operating Expenses. Parcel C Owner shall be responsible (or shall cause the Parcel C Retail Unit Owner (as defined in Section A-14) to be responsible) to provide all utilities and other services as may be necessary for the operation of the Parcel C Escalator Easement Area. Destination Retail Owner and Parcel C Owner shall agree, prior to the completion of the construction of the Parcel C Escalator Easement Area on an equitable allocation between Parcel C Owner and Destination Retail Owner of the cost of such operating expenses and Destination Retail Owner shall reimburse to Parcel C Owner the costs allocated to it.

(vii) Temporary Closure. Upon reasonable prior written notice to Destination Retail Owner, Parcel C Owner shall have the right to close access to the Parcel C Escalator Easement Area from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(viii) Operation. The use and hours of operation and access to the Parcel C Escalators shall be in the sole control of the Parcel C Owner. When the Parcel C Retail Unit is conveyed to the Parcel C Retail Unit Owner, Parcel C Owner and Parcel C Retail Unit Owner shall agree on such use and hours of operation.

(d) Destination Retail Escalator Easement

(i) Grant. A non-exclusive permanent and perpetual right and easement and right-of-way (the “**Destination Retail Escalator Easement**”) for the benefit of and as an appurtenance to Parcel C, and burdening the Destination Retail, in, through, over and upon the escalators (the “**Destination Retail Escalators**”) located within the Destination Retail Building, the general location of which is shown as Area 28 on the Easement Diagram (the “**Destination Retail Escalator Easement Area**”). Upon the determination by Destination Retail Owner of the actual location of the Destination Retail Escalator Easement Area (to be shown on the as-built drawings for the Destination Retail Building), Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Destination Retail Escalator Easement shall be effective upon Substantial Completion of both the Parcel C Building and the Destination Retail.

(iii) Use. The Destination Retail Escalator Easement Area may be used by Parcel C Owner and its guests, employees, invitees and representatives solely for pedestrian access, ingress and egress and for no other purpose, subject to the control of Destination Retail Owner.

(iv) Construction. The Plans and Specifications for the Destination Retail Building shall make provision for the Destination Retail Escalator Easement Area. Destination Retail Owner shall construct the Destination Retail Escalator Easement Area substantially in accordance with such Plans and Specifications.

(v) Maintenance and Repair. Destination Retail Owner shall be responsible for the maintenance and repair of the Destination Retail Escalator Easement Area. Destination Retail Owner and Parcel C Owner shall agree, upon Severance of Destination Retail on an equitable allocation between Parcel C Owner and Destination Retail Owner of the cost of such maintenance and repair. Such maintenance and repair shall be in compliance with applicable Legal Requirements, this Declaration and the applicable provisions of the Destination Retail Condominium Declaration.

(vi) Utilities; Operating Expenses. Destination Retail Owner shall be responsible to provide all utilities and other services as may be necessary for the operation of the Destination Retail Escalator Easement Area. Destination Retail Owner and Parcel C

Owner shall agree, prior to the completion of the construction of the Destination Retail Escalator Easement Area on an equitable allocation between Parcel C Owner and Destination Retail Owner of the cost of such operating expenses and Parcel C Owner shall reimburse to Destination Retail Owner the costs allocated to it.

(vii) Temporary Closure. Upon reasonable prior written notice to Parcel C Owner, Destination Retail Owner shall have the right to close access to the Destination Retail Escalator Easement Area from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Destination Retail Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(viii) Operation. The use and hours of operation and access to the Destination Retail Escalators shall be in the sole control of Destination Retail Owner.

(e) Third Floor Entrance.

(i) Covenant to Maintain. Parcel C Owner shall maintain and repair the Third Floor Entrance (including, without limitation, security doors and other elements required to comply with applicable Legal Requirements) in good order and condition and in compliance with applicable Legal Requirements. Destination Retail Owner and Parcel C Owner shall agree, upon the Severance of Destination Retail on an equitable allocation of the cost between Parcel C Owner and Destination Retail Owner of such maintenance and repair and Destination Retail Owner shall reimburse to Parcel C Owner the costs allocated to it.

(ii) Operation. Parcel C Owner shall have the right to impose reasonable rules and regulations on the hours of operation and closure of the Third Floor Entrance.

(f) Plaza Level Entrance.

(i) Covenant to Maintain. Parcel C Owner shall maintain and repair the Plaza Level Entrance (including, without limitation, security doors and other elements required to comply with applicable Legal Requirements) in good order and condition and in compliance with applicable Legal Requirements. Destination Retail Owner and Parcel C Owner shall agree, upon the Severance of Destination Retail on an equitable allocation of the cost between Parcel C Owner and Destination Retail Owner of such maintenance and repair and Destination Retail Owner shall reimburse to Parcel C Owner the costs allocated to it.

(ii) Operation. Parcel C Owner shall have the right to impose reasonable rules and regulations on the hours of operation and closure of the Plaza Level Entrance.

(g) Destination Retail Loading Dock Easement.

(i) Grant. A non-exclusive, permanent and perpetual right and easement and right-of-way (the “**Destination Retail Loading Dock Easement**”) for the benefit of and as an appurtenance to the Destination Retail, and burdening Parcel C, for purposes of loading and unloading of trucks and other vehicles and for vehicular access, ingress and egress over the portion of the Parcel C Loading Dock, the general location of which is shown as Area 29 on the Easement Diagram (the “**Destination Retail Loading Dock Easement Area**”). Upon the determination by Parcel C Owner of the actual location of the Destination Retail Loading Dock Easement Area (to be shown on the as-built drawings for the Parcel C Building), Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The use of the Destination Retail Loading Dock Easement Area by Destination Retail Owner shall be effective from and after Substantial Completion of construction of the Parcel C Loading Dock, the Destination Retail Service Elevator and Access Easement Area and Destination Retail.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Destination Retail Loading Dock Easement Area. Parcel C Owner shall construct the Destination Retail Loading Dock Easement Area substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Destination Retail Loading Dock Easement Area. Destination Retail Owner and Parcel C Owner shall agree, prior to the Substantial Completion of the construction of the Destination Retail Loading Dock Easement Area and Destination Retail on an equitable allocation of the cost of such maintenance and repair and Destination Retail Owner shall reimburse Parcel C Owner for the costs allocated to it. Such maintenance and repair shall be in compliance with applicable Legal Requirements, this Declaration and the applicable provisions of the Parcel C Condominium Declaration.

(v) Operating Expenses. Parcel C Owner shall be responsible to provide all utilities, personnel and other services as may be necessary for the operation of the Destination Retail Loading Dock Easement Area. Destination Retail Owner and Parcel C Owner shall agree, prior to Substantial Completion of the construction of the Destination Retail Loading Dock Easement Area on an equitable allocation of the cost of such operating expenses and Destination Retail Owner shall reimburse Parcel C Owner for the costs allocated to it.

(vi) Operation. Parcel C Owner shall have the right to impose reasonable rules, regulations and operating procedures on the use of the Destination Retail Loading Dock Easement Area and the Destination Retail Service Elevator Street Level Access Area, including the right to coordinate the times of freight and other deliveries and limitation of hours of operation and times of closure and such systems and usage

charges as Parcel C Owner may impose. The use of the Loading Dock and Destination Retail Service Elevator Street Level Access Area shall be limited to such hours as the Parcel C Loading Dock shall be open.

(vii) Temporary Closure. Upon reasonable prior written notice to Destination Retail Owner, Parcel C Owner shall have the right to close access to the Destination Retail Loading Dock Easement Area and the Destination Retail Service Elevator Street Level Access Area from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(ix) Conveyance of the Parcel C Loading Dock Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Loading Dock Unit shall have all rights and shall be solely liable for all of the obligations of Parcel C Owner under this Section A-5(g).

(h) Destination Retail Tenth Avenue Access Easement

(i) Grant. A non-exclusive, permanent right and easement and right-of-way (the “**Destination Retail Tenth Avenue Access Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening Parcel C, for purposes of pedestrian access, ingress and egress over the portion of Parcel C from West 30th Street to the Destination Retail Building (such portion, the “**Destination Retail Tenth Avenue Access Easement Area**”), the general location of which is shown as Area 29(a) on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building. Upon the determination by Parcel C Owner of the actual location of the Destination Retail Tenth Avenue Easement Area, Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Destination Retail Tenth Avenue Access Easement shall be effective from and after the completion of construction of the Destination Retail Building.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Destination Retail Tenth Avenue Access Easement Area. Parcel C Owner shall construct the Destination Retail Tenth Avenue Access Easement Area substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance, repair and restoration of the Destination Retail Tenth Avenue Access Easement Area. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel D Condominium

Declaration. Upon the Severance of Destination Retail, Parcel C Owner and Destination Retail Owner shall agree on an equitable allocation of the cost of such maintenance and repair and Destination Retail Owner shall reimburse to Parcel C Owner the costs allocated to it.

(v) Temporary Closure. Upon reasonable prior written notice to Destination Retail Owner, Parcel C Owner shall have the right to close access to the Destination Retail Tenth Avenue Access Easement Area from time to time for reasonable periods of time, as may be necessary for any maintenance, repair or replacement thereof. In such event, Parcel C Owner shall complete such maintenance, repair or replacement with commercially reasonable due diligence.

(i) Destination Retail Easement

(i) Grant. If and to the extent the Parcel C Building is not built to the lot line between Parcel C and Destination Retail, an exclusive, permanent right and easement and right-of-way (the “**Destination Retail Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening Parcel C, to use and occupy a portion of Parcel C adjoining the Parcel C Building to the north (such portion, the “**Destination Retail Easement Area**”) and supported by caissons installed by Parcel C Owner, the general location of which is shown as Area 29(b) on the Easement Diagram and to be shown on the Plans and Specifications for the Parcel C Building, for the purpose of constructing a portion of Destination Retail Building that will directly abut the Parcel C Building and for such other purposes as permitted by Legal Requirements, the terms and conditions of this Declaration, the Parcel C Condominium Declaration and the Master Declaration. Upon the determination by Parcel C Owner of the actual location of the Destination Retail Easement Area, Parcel C Owner and Destination Retail Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Destination Retail Easement shall be effective from and after the Severance of Destination Retail.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Destination Retail Easement Area.

(iv) Maintenance and Repair. Balance Parcel Owner shall be responsible for the maintenance and repair of the Destination Retail Easement Area until the Severance of Destination Retail. Such maintenance, repair and restoration shall be in compliance with this Declaration and the applicable provisions of the Parcel C Condominium Declaration. Upon the Severance of Destination Retail, Destination Retail Owner shall be solely responsible for such maintenance and repair, at its sole cost and expense.

(v) Conveyance to Destination Retail Owner. Upon reasonable prior written notice by Destination Retail Owner to Parcel C Owner, Parcel C Owner shall convey fee title to the Destination Retail Easement Area to Destination Retail Owner for no consideration. In connection with such conveyance, Parcel C Owner (with the cooperation of Destination Retail Owner) shall take such actions as shall be necessary to subdivide the tax lot(s) constituting Parcel C so as to create a separate tax lot for the Destination Retail Easement Area that shall not be part of the Parcel C Condominium.

Section A-6 MTA Easements

(a) Yards Utility Equipment; Parcel C Utility Conduit

(i) Grant. (A) In furtherance of, and subject to, Section 5.1(f) of the Master Declaration, and to specify the location for the easement granted therein (the “**Yards Utility Easement**”) in and through the Yards Parcel, the general location of which is shown as Area 30 on the Easement Diagram (such portions, the “**Yards Utility Easement Area**”), for the benefit of and as an appurtenance to each of Parcel C, Destination Retail and Parcel A (as defined in Section A-14), and burdening the Yards Parcel, to install, use, operate, maintain and access electrical feeders and such conduits, lines, and other equipment necessary to provide electrical and other utility services to Parcel C, Destination Retail and Parcel A (collectively, the “**Yards Utility Equipment**”), together with the right to access the Yards Utility Equipment for purposes of installation, inspection, maintenance, repair and replacement thereof, subject to the terms and conditions of this Declaration and the Master Declaration. Upon the determination by Yards Owner and Parcel C Owner of the actual location of the Yards Utility Equipment, Parcel C Owner and Yards Owner shall execute a supplement to this Declaration and the Master Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder and under the Master Declaration.

(B) An exclusive, permanent and perpetual right and easement (the “**Parcel C Utility Conduit Easement**”) for the benefit of and as an appurtenance to Retail Podium and Parcel A, and burdening Parcel C, to use, operate, maintain and access an electrical conduit from the Yards Utility Equipment to Retail Podium and Parcel A to provide electrical and other utility services to Destination Retail and Parcel A (collectively, the “**Parcel C Utility Conduit**”) to be located in and through Parcel C, the general location of which is shown as Area 31 on the Easement Diagram (such portions, the “**Parcel C Utility Conduit Easement Area**”), together with the right to access the Parcel C Utility Conduit for purposes of installation, inspection, maintenance, repair and replacement thereof, subject to the terms and conditions of this Declaration. Upon the determination by Parcel C Owner of the actual location of the Parcel C Utility Conduit, Parcel C Owner, Destination Retail Owner and Parcel A Owner shall execute a supplement to this Declaration in recordable form and otherwise in form

reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. (A) The Yards Utility Equipment Easement shall be effective from and after the date hereof. (B) The Parcel C Utility Conduit Easement shall be effective from and after Substantial Completion of construction of the Parcel C Building.

(iii) Construction. The Plans and Specifications for the Parcel C Building shall make provision for the Yards Utility Equipment and the Parcel C Utility Conduit. Parcel C Owner shall construct and install the Yards Utility Equipment and the Parcel C Utility Conduit substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Parcel C Owner shall be responsible for the maintenance and repair of the Yards Utility Equipment and the Parcel C Utility Conduit. Such maintenance and repair shall (i) be in compliance with applicable Legal Requirements, this Declaration and the applicable provisions of the Parcel C Condominium Declaration (ii) be done in such manner as will minimize interference with the maintenance and operation of the Yards Parcel, and in all events in compliance with the requirements of the Master Declaration. Destination Retail Owner, Parcel A Owner and Parcel C Owner shall agree, upon Severance of Destination Retail and Parcel A on an equitable allocation between Parcel C Owner, Destination Retail Owner and Parcel A Owner of the cost of maintenance and repair of the Yards Utility Equipment. Destination Retail Owner and Parcel A Owner shall be responsible for all of the costs of maintenance and repair of the Parcel C Utility Conduit.

(v) Construction and Maintenance of Destination Retail Building; Indemnification by Destination Retail Owner. Destination Retail Owner agrees that the construction and maintenance of the Destination Retail Building will not interfere with the maintenance and use of the Yards Utility Equipment Easement and the Yards Utility Equipment and Destination Retail Owner hereby indemnifies, defends and holds harmless Parcel C Owner and Parcel A Owner and their respective affiliates and the agents, employees, members, principals, officers, directors, lenders, successors and assigns of each of them (collectively, the “**Parcel C Indemnitees**” and the “**Parcel A Indemnitees**”), from and against any and all losses, damages, suits, actions, proceedings, fines, penalties, judgments, amounts paid in settlement, claims, demands, costs and expenses, including, without limitation, reasonable attorneys’ fees and disbursements (collectively, “**Parcel C Claims**” and the “**Parcel A Claims**”), arising from any such interference by Destination Retail Owner with the maintenance and use of the Yards Utility Equipment Easement and the Yards Utility Equipment, except to the extent of the gross negligence or willful misconduct of a Parcel C Indemnitee or a Parcel A Indemnitee. Destination Retail Owner shall defend the applicable Parcel C Indemnitee or Parcel A Indemnitee with counsel reasonably satisfactory to such Parcel C Indemnitee or Parcel A Indemnitee (unless the indemnified claim is covered by insurance, in which event counsel shall be attorneys

for, or approved by, the insurance carrier), shall keep the Parcel C Indemnatee and Parcel A Indemnatee apprised of all legal proceedings and shall not enter into any settlement without the Parcel C Indemnatee's or Parcel A Indemnatee's prior written consent, which shall not be unreasonably withheld (provided that a Parcel C Indemnatee or a Parcel A Indemnatee shall not be required to consent to any settlement of any claim which requires payment of all or any portion of a claim by a Parcel C Indemnatee or a Parcel A Indemnatee). In the event that a Parcel C Indemnatee or a Parcel A Indemnatee reasonably determines that such legal proceedings do not proceed in a satisfactory manner, such Parcel C Indemnatee or Parcel A Indemnatee may, upon written notice to Destination Retail Owner, request to substitute its counsel, reasonably acceptable to any other Parcel C Indemnitees and Parcel A Indemnitees, any insurance carriers, and Destination Retail Owner in such proceeding, at the cost and expense of Destination Retail Owner. Notwithstanding anything to the contrary contained herein, any Parcel C Indemnatee or Parcel A Indemnatee seeking indemnification under any provision of this Declaration shall provide the Destination Retail Owner with prompt notice of such claim within a reasonable time after the Parcel C Indemnatee or Parcel A Indemnatee first becomes aware of the existence thereof, and shall reasonably cooperate with the Destination Retail Owner in connection with defending or settling such Parcel C Claim or Parcel A Claim.

(b) Parking Spaces.

(i) Grant. In furtherance of, and subject to, Section 4.1 of the Master Declaration, a non-exclusive permanent and perpetual right and easement and right-of way (the "**Parking Spaces Easement**") for the benefit of and as an appurtenance to the Yards Parcel, and burdening the Parcel C Parking Garage Unit, for the Yards Parcel Operator (as defined in the Master Declaration) to utilize in connection with Yards Parcel Operations (as defined in the Master Declaration) thirty-nine (39) non-designated valet parking spaces located within the Parking Garage (the "**Yards Parking Spaces**"), at no charge to Yards Parcel Owner.

(ii) Effective Date. The Parking Spaces Easement shall be effective from and after Substantial Completion of the Parking Garage.

(iii) Operation. Parcel C Owner (or the Parking Unit Owner) may, at any time upon notice to Yards Parcel Owner, retain a parking garage operator for the operation and maintenance of the Parking Garage. Parcel C Owner (or the Parking Unit Owner or the Parking Garage operator) may at any time and from time to time impose reasonable rules, regulations and operating standards as to the use of the Parking Garage and the Yards Parking Spaces, including, without limitation, the retaining of employees to provide valet parking and other services. Parcel C Owner or the Parking Unit Owner or the Parking Garage operator may institute a card reader/pass/validation system for the identification of permitted parkers. Such system may include a system required to identify cars parked in the Parking Garage,

including, without limitation, the registration of vehicles by submitting vehicle license plate information, and contact information.

(iv) Conveyance of Parcel C Parking Garage Unit. Upon the recordation of the Parcel C Condominium Declaration, the owner of the Parcel C Parking Garage Unit will be solely liable for all of the obligations of Parcel C Owner under this Section A-6(b).

(c) LIRR Platform Ventilation.

(iv) Grant. (A) In furtherance of, and subject to, Section 5.1(d) of the Master Declaration, and to specify the location for the exclusive permanent and perpetual right and easement granted therein for the benefit of and as an appurtenance to the Yards Parcel and burdening Parcel C (the “**Yards Parcel Ventilation Easement – Parcel C**”) to install, use, operate, maintain, repair and access intake and exhaust conduits and related equipment and/or utilities (collectively, “**Yards Parcel Ventilation Equipment – Parcel C**”) through the subsurface portions of the Parcel C Building, the general location of which is shown as Area 32 on the Easement Diagram, and to be shown on the Plans and Specifications for the Parcel C Building (such portions on the Parcel C Parcel, the “**Yards Parcel Ventilation Easement Area – Parcel C**”), together with a non-exclusive easement and right-of-way for access to the Yards Parcel Ventilation Equipment – Parcel C for purposes of inspection, maintenance and repair thereof, subject to the terms and conditions of this Declaration and the Master Declaration;

(B) In furtherance of, and subject to, Section 5.1(d) of the Master Declaration, and to specify the location for the exclusive permanent and perpetual right and easement granted therein for the benefit of and as an appurtenance to the Yards Parcel and burdening Parcel D (the “**Yards Parcel Ventilation Easement – Parcel D**”) to install, use, operate, maintain, repair and access intake and exhaust conduits (the “**Yards Parcel Ventilation Conduits – Parcel D**”) through the subsurface portions of the Parcel D Building, the general location of which is shown as Area 33 on the Easement Diagram, and to be shown on the Plans and Specifications for the Parcel D Building (such portions on the Parcel D Parcel, the “**Yards Parcel Ventilation Easement Area – Parcel D**”), together with a non-exclusive easement and right-of-way for access to the Yards Parcel Ventilation Conduits – Parcel D for purposes of inspection, maintenance and repair thereof, subject to the terms and conditions of this Declaration and the Master Declaration;

Upon the determination by Parcel C Owner, Parcel D Owner, respectively, of the actual location of the Yards Parcel Ventilation Equipment – Parcel C and the Yards Parcel Ventilation Conduits – Parcel D, Parcel C Owner, Parcel D Owner and Yards Owner shall execute a supplement to this Declaration and the Master Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Relocation. Notwithstanding anything to the contrary herein, Parcel C Owner and/or Parcel D Owner may require, without the consent of Yards Owner, but subject to the terms and provisions of the Master Declaration, the relocation of the Yards Parcel Ventilation Equipment – Parcel C and the Yards Parcel Ventilation Conduit – Parcel D to any other designated location within Parcel C or Parcel D, respectively, provided that such other location shall provide Yards Owner with substantially the same benefits and so long as there shall be no material interruption in service.

(iii) Effective Date. The Yards Parcel Ventilation Equipment Easement – Parcel C and the Yards Parcel Ventilation Conduit Easement – Parcel D shall be effective upon the commencement of construction of the ERY Roof Component.

(iv) Use. Access for the Yards Parcel Owner to the Yards Parcel Ventilation Equipment – Parcel C and the Yards Parcel Ventilation Conduit – Parcel D shall be permitted as provided in the Master Declaration.

(v) Installation, Maintenance and Repair. The construction, installation, maintenance and repair of the Yards Parcel Ventilation Equipment – Parcel C and the Yards Parcel Ventilation Conduit – Parcel D shall be upon the terms and provisions of the Master Declaration.

(d) Tenth Avenue Escalator Easement.

(i) Grant. In furtherance of, and subject to, Section 5.1(h) of the Master Declaration, a non-exclusive right and easement and right-of-way (the “**Destination Retail Tenth Avenue Access Escalator Easement**”) for the benefit of and as an appurtenance to Destination Retail, and burdening the Yards Parcel, to enter upon and use the escalator to be constructed by Destination Retail Owner and located on a portion of the Yards Parcel adjoining Tenth Avenue (the “**Destination Retail Tenth Avenue Access Escalator**”), to and from the plaza level of the Destination Retail Parcel and Tenth Avenue and an approach to and from Tenth Avenue, the general location of which is shown as Area 34 on the Easement Diagram and the exact location of which is to be approved by Yards Parcel Owner and to be designated on the Approved LIRR Work Project Plans and Specifications (as defined in Section A-14) and/or the Approved Facility Airspace Improvement Plans and Specifications (as defined in Section A-14) (such portion as approved by Yards Parcel Owner, the “**Destination Retail Tenth Avenue Access Escalator Easement Area**”). Upon the determination of the actual location of the Destination Retail Tenth Avenue Access Escalator as herein provided, Destination Retail Owner and Yards Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

(ii) Effective Date. The Destination Retail Tenth Avenue Access Escalator Easement shall be effective from and after the commencement of construction of Destination Retail.

(iii) Use. The Destination Retail Tenth Avenue Access Escalator may be used by Destination Retail Owner and its guests, employees, invitees and representatives solely for pedestrian ingress and egress from Tenth Avenue to the Destination Retail and for no other purpose.

(iv) Construction. The Plans and Specifications for the Destination Retail shall make provision for the Destination Retail Tenth Avenue Access Escalator. Destination Retail Owner shall construct the Destination Retail Tenth Avenue Access Escalator substantially in accordance with such Plans and Specifications.

(iv) Maintenance and Repair. Destination Retail Owner shall be responsible, at its sole cost and expense, for the maintenance and repair of the Destination Retail Tenth Avenue Access Escalator. Such maintenance and repair shall be in compliance with all the applicable provisions of the Severed Destination Retail Lease (as defined in Section A-14) and this Declaration.

(v) Utilities; Operating Expenses. Destination Retail Owner shall be responsible, at its sole cost and expense, to provide all utilities and other services as may be necessary for the operation of the Destination Retail Tenth Avenue Access Escalator.

Section A-7 Light and Air Easements

(a) Parcel D Light and Air Easement.

(i) Grant. A permanent and perpetual easement for unrestricted light and air and unobstructed view (the “**Parcel D Light and Air Easement**”) in favor of Parcel D, and burdening Parcel C over the portion of Parcel C shown as Area 35 on the Easement Diagram (such portion, the “**Parcel D Light and Air Easement Area**”). Parcel C Owner hereby covenants and agrees that no buildings, improvements, alterations or structures of any kind (or any equipment thereon) or any alterations, additions, modifications or replacements of same shall be constructed or allowed to exist so as to encroach into the Parcel D Light and Air Easement Area. In furtherance of the grant of the Parcel D Light and Air Easement, Parcel C Owner shall, within thirty (30) days after a request therefor by Parcel D Owner, execute, acknowledge and deliver a separate light and air easement in the form annexed hereto as **Exhibit 2** or in such other form as may be required by the New York City Department of Buildings (the “**DOB Light and Air Easement**”), to permit openings in the adjacent wall of the Parcel D Building that provide legally required light and air to rooms within the Parcel D Building.

(ii) The Parcel D Light and Air Easement shall be effective upon the Severance of Parcel D.

(b) Parcel C Light and Air Easement.

(i) Grant. (A) A permanent and perpetual easement for unrestricted light and air and unobstructed view (the “**Parcel C Light and Air Easement- Parcel D**”) in favor of Parcel C, and burdening Parcel D, over the portion of Parcel D shown as Area 36 on the Easement Diagram (such portion, the “**Parcel C Light and Air Easement Area – Parcel D**”). Parcel D Owner hereby covenants and agrees that no buildings, improvements, alterations or structures of any kind (or any equipment thereon) or any alterations, additions, modifications or replacements of same shall be constructed or allowed to exist on Parcel D so as to encroach into the Parcel C Light and Air Easement Area – Parcel D. In furtherance of the grant of the Parcel C Light and Air Easement – Parcel D, Parcel D Owner shall, within thirty (30) days after a request therefor by Parcel C Owner, execute, acknowledge and deliver a DOB Light and Air Easement, to permit openings in the adjacent wall of the Parcel C Building that provide legally required light and air to rooms within the Parcel C Building.

(B) A permanent and perpetual easement for unrestricted light and air and unobstructed view (the “**Parcel C Light and Air Easement- Destination Retail**”) in favor of Parcel C, and burdening Destination Retail, over the portion of Destination Retail shown as Area 37 on the Easement Diagram (such portion, the “**Parcel C Light and Air Easement Area – Destination Retail**”). Destination Retail Owner hereby covenants and agrees that no buildings, improvements, alterations or structures of any kind (or any equipment thereon) or any alterations, additions, modifications or replacements of same shall be constructed or allowed to exist on Destination Retail so as to encroach into the Parcel C Light and Air Easement Area – Destination Retail. In furtherance of the grant of the Parcel C Light and Air Easement – Destination Retail, Destination Retail Owner shall, within thirty (30) days after a request therefor by Parcel C Owner, execute, acknowledge and deliver a DOB Light and Air Easement, to permit openings in the adjacent wall of the Parcel C Building that provide legally required light and air to rooms within the Parcel C Building.

(iii) The Parcel C Light and Air Easement – Parcel D and the Parcel C Light and Air Easement – Destination Retail shall each be effective upon the date of this Declaration.

Section A-8 Easement for Satellite Dish

(i) Grant. In the event the Parcel E Building (as defined in Section A-14) is developed and its ultimate positioning, massing or height shall block or otherwise obstruct Coach’s (as defined in Section A-14) reception of any signals from its wireless equipment located Coach’s or a Coach Affiliate’s (as defined in Section A-14) offices in Carlstadt, New Jersey (the “**Carlstadt Offices**”):

(A) an exclusive right and easement (the “**Satellite Dish Easement**”) for the benefit of and as an appurtenance to Parcel C Office Unit 1 (as defined in Section A-14) as long as Parcel C Office Unit 1 shall be owned by Coach, and burdening Parcel E (as defined in Section A-14) or, at the Associations’ election, any other Parcel (the Parcel so burdened, the “**Satellite Dish Parcel**” and any building located thereon, the “**Satellite Dish Building**”) to install, use, operate, maintain, repair and access a communications satellite and other wireless equipment (collectively, the “**Satellite Dish**”) on a structure therefor on a portion of the roof of the Satellite Dish Building (of no more than 10 feet by 10 feet) (such portion, the “**Satellite Dish Area**”) and to run related conduits, lines, cables and/or utilities (collectively, the “**Satellite Dish Infrastructure**”) through conduit space in the Satellite Dish Building in such locations as the Satellite Dish Parcel Owner (as defined in Section A-14) or its affiliated owner or lessee of the Satellite Dish Parcel, as applicable, and Coach may reasonably agree, all as required to enable Coach to maintain an adequate line of sight and communications from the Parcel C Building to the Carlstadt Offices. Connectivity may be provided in the form of conduit between the Satellite Dish Building and the Parcel C Building and dedicated for Coach’s use or the utilization of site-provided common single mode fiber connections between the desired locations equipment locations, as more particularly described in Section A-8(i)(B) hereof. No less than six (6) strands of fiber shall be made available to Coach for this use. In addition, Coach shall have the non-exclusive easement and right-of-way for access to the roof of the Satellite Dish Building, the Satellite Dish and such other areas of the Satellite Dish Building as may be reasonably required for purposes of installation, inspection, maintenance and repair thereof, subject to the terms and conditions of this Declaration. In addition, Coach shall have the non-exclusive easement and right-of-way for access to the roof of the Satellite Dish Building, the Satellite Dish and such other areas of the Satellite Dish Building as may be reasonably required for purposes of installation, inspection, maintenance and repair thereof, subject to the terms and conditions of this Declaration.

(B) an exclusive right and easement (the “**Satellite Conduits Easement**”) for the benefit of and as an appurtenance to Parcel C Office Unit 1 and burdening the Association Property to install, use, operate, maintain, repair and access conduits, lines, cables and/or utilities (the “**Satellite Dish Conduits**”) necessary to connect Parcel C with the installation in the Satellite Dish Parcel described in Section A-8(i)(A) hereof.

Upon the determination by Coach and the Satellite Dish Parcel Owner of the actual location of the Satellite Dish as described in clause (A) above, the Satellite Dish Infrastructure, the Satellite Dish Parcel Owner and Parcel C Owner shall execute a supplement to this Declaration in recordable form and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder. Upon the determination by Coach and the Association of the actual location of the Satellite Dish Conduits, the Association and Parcel C Owner shall execute a supplement to this Declaration in recordable form

and otherwise in form reasonably satisfactory to each describing such location, but the failure to execute the same shall not affect the rights and obligations hereunder.

The foregoing rights and easements are granted to Coach, provided that Coach shall be deemed to have indemnified all of the Indemnitees upon the same terms and conditions as provided in Section A-1(d) of this Declaration.

(ii) Effective Date. The Satellite Dish Easement shall be effective upon Substantial Completion of the Satellite Dish Building and shall continue (i) as long as Coach or any of its affiliates owns nor occupies 60% of the Parcel C Office Unit, or (ii) in the event that Coach or any of its affiliates were to transfer both the Parcel C Office Unit and the Carlstadt Offices together to the same purchaser.

(iii) Construction and Installation. Satellite Dish Parcel Owner shall be responsible, at the sole cost and expense of Coach, for the construction, installation of the portion of the Satellite Dish Infrastructure located in the Satellite Dish Building. Coach shall be responsible, at its sole cost and expense, for the acquisition and installation of the Satellite Dish, the portion of the Satellite Dish Infrastructure located on the roof of the Satellite Dish Building, the connection to the Satellite Dish Infrastructure and the installation of the Satellite Dish Conduits.

(iv) Use. The Satellite Dish Easement may be used solely for the purposes herein stated and for no other purpose.

(v) Maintenance and Repair. Coach shall be responsible, at its sole costs and expense, for the maintenance and repair of the Satellite Dish, the Satellite Dish Infrastructure and the Satellite Dish Conduits. Coach and Satellite Dish Owner shall agree, prior to the completion of the construction of the Satellite Dish Infrastructure, which party shall be responsible for the maintenance and repair thereof, provided that in any event, the cost thereof shall be entirely allocated to Coach. Coach shall be responsible, at its sole cost and expense, for the maintenance and repair of the Satellite Dish Conduits. Such maintenance and repair shall be in compliance with all Legal Requirements and good construction practice.

(vi) Utilities. Satellite Dish Parcel Owner shall be responsible, at the sole cost and expense of Coach, to provide all utilities to the Satellite Dish.

Section A-9 Destination Retail Non-Compete Covenant

(a) Provided L'Oreal (as defined in Section A-14) is a tenant under the L'Oreal Lease (as defined in Section A-14) and is in occupancy of at least 6 full floors of the Parcel C Landlord Unit (as defined below) (collectively, the "**Non-Compete Conditions**"), Destination Retail Owner shall not lease any retail space within the first 75 linear feet of retail frontage outside of the connection between the Parcel C Building and the Destination Retail Building, such retail frontage shown as Area 39 on the Easement Diagram, to a L'Oreal Competitor (as defined in Section A-14); provided, that (1) the foregoing shall not apply to any lease to a person, firm or

corporation which has as one of its businesses or divisions the sale of cosmetics, so long as such cosmetics business or division is not located in the Parcel C Landlord Unit, (2) a retail store such as a supermarket, drug store or clothing store not primarily in the business of selling cosmetics may sell cosmetics in its retail space and the same shall not violate the provisions of this Section A-9(a) and (3) neither Coach, Inc. nor any of its affiliates shall be considered a L'Oreal Competitor, and in no event shall any office or retail lease to Coach, Inc. or any of its affiliates be deemed to violate the provisions of this Section A-9(a). A "**L'Oreal Competitor**" means any person, firm or corporation (excluding Coach, Inc. and its affiliates) a primary business of which is the sale of "cosmetics" (as herein defined). For purposes of this Annex "cosmetics" shall include hair care, skin treatment, make-up and fragrance products. For purposes of this Section A-9, "**Parcel C Landlord Unit**" shall mean the unit(s) of the Condominium owned or leased by Legacy Yards Tenant LLC from time to time, together with the common elements exclusively appurtenant thereto (excluding the Parcel C Retail Unit, the Parcel C Parking Garage Unit, the Parcel C Ancillary Unit and the Parcel C Loading Dock Unit).

(a) (b) If L'Oreal satisfies the Non-Compete Conditions, Destination Retail Owner shall not permit the installation of any signs or monuments (including, without limitation, flags, banners or similar items) identifying any L'Oreal Competitor in either of the two plazas directly adjacent to the lobby of the Parcel C Building.

(b) (c) If at any time Tenant fails to satisfy the Non-Compete Conditions, the provisions of Sections A-9(a) and (b) shall be null and void and of no further force or effect.

(c) (d) In the event of any inconsistency between the terms and provisions of the L'Oreal Lease and this Annex, the terms of the L'Oreal Lease shall control.

Section A-10 Interaction with Master Declaration. In the event of any conflict between the provisions of this Declaration and the Master Declaration, the applicable provisions of the Master Declaration shall control.

Section A-11 Confirmation of Easement Locations. In the event that any Benefited Parcel Owner and Burdened Parcel Owner desire to confirm the location of an applicable Easement as provided in this Annex, no consent of any FASP Owner or its mortgagee, tenant or other party is required. Such confirmation may include a metes and bounds description of the Easement (to the extent possible), which shall be prepared based on the as-built survey (both horizontal and vertical) of the applicable Easement Area. All present and future FASP Owners and their respective mortgagees, tenants or other parties having an interest in the Easement Areas are hereby deemed to have consented to and subordinated their rights to this Declaration, and any and all amendments, the foregoing consent and subordination being automatically effective without any further required actions, documents or instruments.

Section A-12 Modifications or Terminations of Easements. In the event that (x) any easement set forth in this Declaration would expire by its terms, or (y) any Benefited Parcel Owner and Burdened Parcel Owner desire to amend or modify an applicable easement (each, an "**Affected Easement**") herein granted, whether based on a modification of the applicable Plans and Specifications prior to final completion, based on a modification or relocation of such

easement after final completion of an FASP Improvement, or otherwise (any of the foregoing, an “**Easement Modification**”; and the Burdened Parcel Owner and the Benefited Parcel Owner desiring to amend or modify such Easement, the “**Modifying Owners**”), such Benefited Parcel Owner and Burdened Parcel Owner shall have the right to execute a supplement to this Declaration, in recordable form, to reflect such Easement Modification, subject to the following:

(a) Notwithstanding anything to the contrary in this Section A-12, (i) no Easements granted herein that benefit any FASP Parcel that remains subject to the Balance Parcel Lease or a Severed Parcel Lease shall be terminated without the prior written consent of the landlord under each of the Balance Parcel Lease and the Severed Parcel Lease demising the Benefited Parcel, and (ii) the Yards Parcel Owner shall have the right to consent to any Easement Modifications which affect the Easements benefiting and burdening the Yards Parcel pursuant to Section A-6.

(b) No consent of any FASP Owner or its mortgagee, tenant, or landlord under Severed Parcel Lease and/or Balance Lease or other party is required if such FASP Owner, mortgagee, tenant or other party does not have an interest in the Benefited Parcel and/or the Burdened Parcel or if they are not adversely affected by the Easement Modification. All present and future FASP Owner or its mortgagee, tenant or other party are hereby deemed to have consented to and subordinated their rights to this Declaration, and any and all amendments, the foregoing consent and subordination being automatically effective without any further required actions, documents or instruments.

(c) With respect to any FASP Owner, mortgagee, tenant, or landlord under Severed Parcel Lease and/or Balance Lease that have an interest in the Benefited Parcel and/or the Burdened Parcel or are adversely affected by the Easement Modification (the “**Affected Owner**”; and the Parcel(s) affected by the Easement Modification, the “**Affected Parcel**”), all Easement Modifications shall comply with the following provisions. Easement Modifications shall be divided into (i) “**No Action Modifications**” and (ii) “**Consent Modifications**”; and certain Consent Modifications shall be deemed “**Major Modifications**”, all of which terms are defined as follows:

- (i) No Action Modifications with respect to an Affected Parcel shall consist of any Easement Modifications that individually and/or collectively have no or only a *de minimis* adverse effect on such Affected Parcel’s easement area or Improvements, as reasonably determined in good faith by the Modifying Owner based upon either such Modifying Owner’s own determination (where such determination is reasonably within the competence of the Modifying Owner) or upon a written report (a “**Certifying Professional Report**”) of a Certifying Professional (as defined in Section A-14) designated by the Modifying Owner and reasonably satisfactory to such Affected Owner, taking into consideration, without limitation, the following:
 - (I) Any material interruption or interference with such Affected Owner’s use or enjoyment of its Improvements, including the enjoyment of any rights granted by this Declaration; and

- (II) Any increased cost or expense that such Affected Parcel would incur (directly or indirectly) in connection with the maintenance and repair of the Improvements thereon.
- (ii) Consent Modifications with respect to an Affected Parcel shall consist of any Modifications that are not No Action Modifications.
- (iii) Major Modifications with respect to an Affected Parcel shall consist of any Consent Modifications that individually and/or collectively:
 - (I) Adversely affect (including by requiring an increase in the capacity of) any load-bearing structural elements (including, without limitation, foundations, load-bearing columns, slabs, girders, beams, braces, trusses and walls) or systems servicing such Affected Owner's Building; or
 - (II) Will result in a reduction of the leasable or usable square footage of such Affected Owner's Building; or
 - (III) Any adverse effect on the use and functionality of the Affected Easement.
- (iv) If a Modifying Owner intends to perform, with respect to an Affected Parcel:
 - (I) A No Action Modification, then the Modifying Owner shall not be obligated to inform the Affected Owner of or seek its consent for same, except as otherwise provided in this Declaration. If the Modifying Owner is unable to reasonably determine whether an Modification is a No Action Modification with respect to a given Affected Parcel, such Modifying Owner may request any Affected Owner for such information as is reasonably necessary to make such determination by sending written notice to such Affected Owner specifying the nature of the information sought, reasonably detailing the work to be performed and, if required to be obtained pursuant to Section A-12(c)(i), enclosing the Certifying Professional Report. The recipient of any such request shall make commercially reasonable efforts to provide the information requested therein, if readily available, to the Modifying Owner no later than ten (10) Business Days after receipt of the request thereof; or
 - (II) A Consent Modification (other than a Major Modification), then the Modifying Owner shall request the approval of such Affected Owner, which request shall be accompanied by a reasonably detailed description of the work to be performed (as more particularly described in Section A-12(c)(v)) and a certificate from a Certifying Professional experienced in the proposed work giving rise to the notice certifying that the Consent Modification is not a Major Modification with respect to such Affected Parcel. The Modifying Owner may not perform such Consent Modification without such Affected Owner's prior consent, which consent shall not be unreasonably withheld (as more particularly described in Section A-12(c)(v) and Section A-12(c)(vi)); or

- (III) A Major Modification, then the Modifying Owner shall give such Affected Owner the same notice required for a Consent Modification as provided in the preceding clause (II) but accompanied in addition by a certificate from a Certifying Professional experienced in the proposed work giving rise to the notice certifying that the proposed Major Modification will not (A) adversely affect the structural integrity of such Affected Owner's Building, or any system servicing same, (B) reduce the leasable or usable square footage of such Affected Owner's Building or (C) affect the use and functionality of the Affected Easement (or to the extent any of the foregoing is untrue, then describing the scope thereof). The Modifying Owner may not perform any Major Modifications without such Affected Owner's prior consent, which consent may be withheld in such Affected Owner's sole discretion.
- (v) If the Modifying Owner proposes to make a Consent Modification with respect to an Affected Parcel, then, upon requesting such Affected Owner's approval and before commencing or proceeding with such Consent Modification, the Modifying Owner shall deliver to such Affected Owner a copy of the Plans and Specifications showing the proposed Modification for review, to the extent the same are prepared, and, if the same are not prepared, then such other descriptive materials as are reasonably necessary to detail the nature and scope of the Modification for review, and the Modifying Owner shall reimburse the Affected Owner for expenses reasonably incurred in such review. An Affected Owner shall not unreasonably withhold its approval of a Consent Modification (except as expressly provided herein) and no later than ten (10) Business Days after receipt of any such request and the aforesaid information (the "**Modification Request**") (or no later than ten (10) Business Days after receipt of any additional information as may have been reasonably requested by such Affected Owner within such initial ten (10) Business Day period), such Affected Owner shall approve or disapprove the request. In the case of a disapproval of a Consent Modification, an Affected Owner shall specify in reasonable detail the reasons for the disapproval. If, however, the scope or nature of the Modification is sufficiently complex or if such Affected Owner is unable to complete its analysis of the Modification with the ten (10) Business Day period (and provided that such Affected Owner has used reasonably diligent efforts to review the plans or other materials provided), then such Affected Owner shall have the right, upon notice to the Modifying Owner during such ten (10) Business Day period, to an additional ten (10) Business Days to approve or disapprove the request. The aforesaid provisions shall apply to any resubmission of a request addressing the reasons for disapproval specified by an Affected Owner. If each Affected Owner consents to a Modification, then the Modifying Owner may proceed to make its Modification substantially in accordance with said Plans and Specifications (or other description submitted). If an Affected Owner fails to respond to the Modification Request within the above-described time period, the Modifying Owner may send notice of such non-response to such Affected Owner and its Mortgagees, attaching the Modification Request sent to such Affected Owner, which notice of non-response shall specify the same and clearly reference this Section A-12(c)(v), both in **bold, 14-point font**. If such Affected Owner does not reply to the Modification Request within (10) Business

Days after receipt of the non-response notice described in the immediately preceding sentence, then such Affected Owner's consent to the Modification shall be deemed to have been given hereunder. The Modifying Owner shall be obligated to reimburse each Affected Owner for such Affected Parcel's actual, reasonable, out-of-pocket expenses incurred in connection with the review of a proposed Consent Modification with respect to such Affected Owner by third-party architects and/or engineers.

- (vi) If all of the following conditions (the "**Modification Conditions**") are satisfied with respect to a proposed Consent Modification, then it shall be deemed unreasonable for an Affected Parcel to withhold its consent to such proposed Consent Modification if: (A) the proposed Modification will be performed with materials of quality equal to or better than existing materials, (B) the proposed Modification will not affect the appearance of such Affected Parcel's Improvements, (C) the proposed Modification will not interrupt services to such Affected Parcel's Improvements more than to a *de minimis* extent, or if greater than to a *de minimis* extent, an alternate source of such services will be provided during the period of such interruption in order to maintain the original level and convenience of services at the sole cost of the Modifying Owner, (D) the proposed Modification, upon completion, will not impair or diminish the overall function, capacity or utility of any system servicing such Affected Parcel's Improvements below the original design/intention of the system, individually or on a cumulative basis with any previous Modification(s), (E) the proposed Modification will not increase such Affected Owner's cost of maintaining the affected area, (F) the proposed Modification will not adversely affect the structural integrity of such Affected Parcel's Improvements or the systems servicing such Improvements, (G) the proposed Modification does not otherwise violate any other provisions of this Declaration, the Master Declaration or any Legal Requirements or insurance requirements of such Affected Parcel, and (H) if any proposed Modification relates to the siting of an easement for the benefit of the Yards Parcel granted under the Master Declaration, any such Modification will not have an adverse impact on Yards Parcel Owner and consent of Yards Parcel Owner shall be obtained if and to the extent required under the Master Declaration. An Affected Owner may condition any required approval of a Consent Modification upon compliance with commercially reasonable restrictions as to the time and manner of performance of any work that interferes with the use and enjoyment of any of its Improvements or systems (or the use and enjoyment of such Affected Parcel's tenants, subtenants or other occupants). If the Modifying Owner provides a certificate from a Certifying Professional reasonably satisfactory to an Affected Owner to the effect that any of the Modification Conditions are satisfied, then the applicable Modification Condition(s) shall be deemed satisfied with respect to such Affected Parcel, irrespective of such Affected Owner's determination to the contrary, provided, however, that notwithstanding such certification, the Modifying Owner shall remain liable to such Affected Owner for any loss, cost or expense relating to such Modification Conditions on an ongoing basis if it performs the Modification and any of Modification Conditions that were so deemed to be satisfied were not in fact satisfied. Any dispute regarding the reasonableness of an Affected Parcel's withholding any consent pursuant to this Section A-12(c)(vi) shall be resolved by arbitration pursuant to Section A.1(e) hereof.

- (vii) No consent by an Affected Owner whose consent is requested and no review or approval of any Plans and Specifications or other information submitted in connection with a request for consent shall constitute (A) an assumption by such Affected Owner of any liability for the Modification to which the same relates, (B) an acknowledgment of the accuracy, suitability or soundness of such Plans and Specifications or other information or their conformity with Legal Requirements or (C) a limitation on the rights of such Affected Owner or the obligations of the Modifying Owner. The Modifying Owner shall remain solely responsible for such Modification.
- (viii) The Modifying Owner, in making any Consent Modification with respect to an Affected Parcel (A) that is a Major Modification, or (B) for which the Modifying Owner has retained an architect or engineer, shall promptly after completion of the Modifications, deliver to such Affected Owner copies of an accurate set of “as-built” Plans and Specifications, together with a certification of a Certifying Professional that such Modifications substantially conform thereto and to the Plans and Specifications, if any, required to be prepared by Legal Requirements. The Modifying Owner shall, to the extent reasonably practicable, endeavor to make any and all Modifications in such a manner and at such times so as to minimize any noise, odor, vibrations, particulates and dust infiltration or other disturbance which would affect the use and enjoyment of any Parcel other than the Modifying Owner’s in more than a *de minimis* fashion. The Modifying Owner shall not make any Modification that would result in a failure by the Affected Parcel to be in compliance with all Legal Requirements.
- (ix) If, subject to Force Majeure of which the Modifying Owner has given an Affected Owner notice no later than fifteen (15) days after the Modifying Owner knows (or with the exercise of reasonable diligence should have known) of the same, the Modifying Owner interrupts any of such Affected Parcel’s systems and/or services and thereafter (A) fails to prosecute the Modification with due diligence, (B) ceases performing the Modification, or (C) otherwise fails to complete the Modification substantially in accordance with the construction schedule provided by the Modifying Owner, then upon ten (10) days’ prior notice to the Modifying Owner, and provided that the Modifying Owner does not complete the Modification within such ten (10) day period or provide reasonable assurance that it will complete the Modification in an expedited manner, such Affected Owner shall have the right to enter upon the defaulting Modifying Owner’s Parcel, or any exclusive easement benefiting such Parcel, as the case may be, and to proceed to complete the Modification to the extent necessary to restore such Affected Parcel’s Improvements, systems and/or services, and the defaulting Modifying Owner shall promptly reimburse such Affected Owner for the actual costs incurred by such Affected Owner, together with interest thereon from the date of such incurrence at a rate equal to the lesser of (i) the maximum non-usurious interest rate under the laws of the State of New York, and (ii) ten percent (10%), compounded monthly. The defaulting Modifying Owner shall cooperate with, and cause such defaulting Modifying Owner’s architect(s), engineer(s), contractor(s) and subcontractors to

cooperate with any exercise by the Affected Owner of the Affected Owner's rights under this subsection.

Section A-13 Vesting of Future Easement

Notwithstanding anything to the contrary contained in this Annex, in the event that the effective date of any Easement granted herein has not occurred on or prior to the twenty-first (21st) anniversary of the date of death of the last survivor of the lineal descendants now living (some of which descendants are listed in **Exhibit 3** annexed hereto and made a part hereof) of former United States Presidents Gerald Ford, Jimmy Carter, Ronald Reagan, George H. W. Bush and William Clinton, and of former Governors George Pataki, Hugh Carey, Mario Cuomo and Nelson Rockefeller of the State of New York, then such Easement shall be of no force and effect.

Section A-14 Definitions.

For purposes of this Annex, the following defined terms (not already defined elsewhere in this Declaration) shall have the following meanings:

“Affected Easement” shall have the meaning set forth in Section A-12 of this Annex.

“Affected Owner” shall have the meaning set forth in Section A-12 of this Annex.

“Affected Parcel” shall have the meaning set forth in Section A-12 of this Annex.

“Affiliate” means, with respect to any person or entity (except as may be provided more specifically in any instance in the Condominium Documents) a person or entity which directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such person or entity. For purposes hereof, the term “control” (including the related terms “controlled by” and “under common control with”) mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity (whether through the ownership of voting securities or other ownership interest, by contract or otherwise).

“Approved Facility Airspace Improvement Plans and Specifications” shall have the meaning set forth in the Master Declaration.

“Approved LIRR Work Project Plans and Specifications” shall have the meaning set forth in the Master Declaration.

“Arbitration” shall have the meaning set forth in Section A-1(e) of this Annex.

“Association Pathway Easement – Parcel C” shall have the meaning set forth in Section A-3(h) of this Annex.

“Association Pathway Easement – Parcel D” shall have the meaning set forth in Section A-3(h) of this Annex.

“Association Pathway Easement Area – Parcel C” shall have the meaning set forth in Section A-3(i) of this Annex.

“Association Pathway Easement Area – Parcel D” shall have the meaning set forth in Section A-3(h) of this Annex.

“Benefited Parcel” shall have the meaning set forth in Section A-1(a) of this Annex.

“Benefited Parcel Owner” shall mean the owner or tenant of a Benefited Parcel.

“Burdened Parcel” shall have the meaning set forth in Section A-1(a) of this Annex.

“Burdened Parcel Owner” shall mean the owner or tenant of a Burdened Parcel.

“**Carlstadt Offices**” shall have the meaning set forth in Section A-8 of this Annex.

“**Certifying Professional**” shall mean (i) an architect, or (ii) a licensed professional engineer, or (iii) an engineering or construction consulting firm under the direction of an architect and/or licensed professional engineer, that provides engineering and/or architectural services, which has at least ten (10) years’ experience in the design and operation in the City of New York of mixed use buildings and has provided services comparable to those being requested hereunder within not less than three (3) years of the immediately preceding ten (10) years.

“**Certifying Professional Report**” shall have the meaning set forth in Section A-12 of this Annex.

“**Claims**” shall have the meaning set forth in Section A-1(d) of this Annex.

(d) “**Coach**” means Coach, Inc., a Maryland corporation, and its successors whether by way of merger, sale of assets, reincorporation, consolidation, recapitalization, liquidation, amalgamation, business combination or similar transaction, however structured or effectuated.

“**Coach Affiliate**” means Coach or any Affiliate of Coach.

“**Cogeneration Plant**” shall have the meaning set forth in Section A-4(a) of this Annex.

“**Compactor Easement**” shall have the meaning set forth in Section A-3(g) of this Annex.

“**Compactors**” shall have the meaning set forth in Section A-3(g) of this Annex.

“**Condominium Documents**” shall have the meaning set forth in Section A-1(a) of this Annex.

“**Consent Modifications**” shall have the meaning set forth in Section A-12 of this Annex.

“**Culture Shed Portion**” shall have the meaning set forth in Section A-2(a) of this Annex.

“**Designated Plaza Area**” shall have the meaning set forth in Section A-2(c) of this Annex.

“**Destination Retail**” shall mean the FASP Parcel, the general area of which is shown as **Area 40** on the Easement Diagram.

“**Destination Retail Access Passenger Elevator and Access Easement**” shall have the meaning set forth in Section A-5(a) of this Annex.

“**Destination Retail Access Passenger Elevators**” shall have the meaning set forth in Section A-5(a) of this Annex.

“**Destination Retail Access Passenger Elevator Cellar Area**” shall have the meaning set forth in Section A-5(a) of this Annex.

“**Destination Retail Access Unit**” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Building” shall mean the FASP Improvements situated on Destination Retail.

“Destination Retail Easement” shall have the meaning set forth in Section A-5(i) of this Annex.

“Destination Retail Easement Area” shall have the meaning set forth in Section A-5(i) of this Annex.

“Destination Retail Escalator Easement” shall have the meaning set forth in Section A-5(d) of this Annex.

“Destination Retail Escalator Easement Area” shall have the meaning set forth in Section A-5(d) of this Annex.

“Destination Retail Escalators” shall have the meaning set forth in Section A-5(d) of this Annex.

“Destination Retail Loading Dock Easement” shall have the meaning set forth in Section A-5(g) of this Annex.

“Destination Retail Loading Dock Easement Area” shall have the meaning set forth in Section A-5(g) of this Annex.

“Destination Retail Owner” shall mean the FASP Owner of Destination Retail.

“Destination Retail Passenger Elevator Access Elements” shall have the meaning set forth in Section A-5(a) of this Annex.

“Destination Retail Passenger Elevator and Access Easement Areas” shall have the meaning set forth in Section A-5(a) of this Annex.

“Destination Retail Service Elevator and Access Easement” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Service Elevator and Access Easement Area” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Service Elevator Easement” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Service Elevator Street Level Access Area” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Service Elevator Street Level Access Easement” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Service Elevators” shall have the meaning set forth in Section A-5(b) of this Annex.

“Destination Retail Share” shall have the meaning set forth in Section A-3(a) of this Annex.

“Destination Retail Tenth Avenue Access Easement” shall have the meaning set forth in Section A-5(h) of this Annex.

“Destination Retail Tenth Avenue Access Easement Area” shall have the meaning set forth in Section A-5(h) of this Annex.

“Destination Retail Tenth Avenue Access Escalator” shall have the meaning set forth in Section A-6(d) of this Annex.

“Destination Retail Tenth Avenue Access Escalator Easement” shall have the meaning set forth in Section A-6(d) of this Annex.

“Destination Retail Tenth Avenue Access Escalator Easement Area” shall have the meaning set forth in Section A-6(d) of this Annex.

“Destination Retail Vestibules” shall have the meaning set forth in Section A-5(b) of this Annex.

“DOB Light and Air Easement” shall have the meaning set forth in Section A-7(a) of this Annex.

“Easement Areas” shall have the meaning set forth in Section A-1(a) of this Annex.

“Easement Diagram” shall have the meaning set forth in Section A-2(a) of this Annex.

“Easement Modification” shall have the meaning set forth in Section A-12 of this Annex.

“Easements” shall have the meaning set forth in Section A-1(a) of this Annex.

“Environmental Laws” means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, relating to the protection of the environment, including but not limited to those regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances, and CERCLA, currently existing or as amended or adapted in the future which are or become applicable to the Premises.

“Exclusive Stairway Access Easement” shall have the meaning set forth in Section A-5(b) of this Annex.

“Garage Access Easement” shall have the meaning set forth in Section A-2(d) of this Annex.

“Hazardous Substances” means any (i) “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (ii) “hazardous waste” as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (iii) “hazardous materials” as defined under the Hazardous Substances Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (iv)

“hazardous waste” as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (v) “hazardous substance” as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, and (vi) any other chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

“**Indemnifying Owner**” shall have the meaning set forth in Section A-1(d) of this Annex.

“**Indemnitees**” shall have the meaning set forth in Section A-1(d) of this Annex.

“**Loading Dock Permitted Users**” shall have the meaning ascribed thereto pursuant to the applicable Severed Lease or Condominium Documents.

“**L’Oreal**” shall mean L’Oreal USA, Inc., a Delaware corporation.

“**L’Oreal Competitor**” shall have the meaning set forth in Section A-9 of this Annex.

“**L’Oreal Lease**” shall mean that certain lease dated as of April ____, 2013, by and between L’Oreal and Legacy Yards Tenant, LLC, as the same may be amended, modified or supplemented from time to time.

“**Major Modifications**” shall have the meaning set forth in Section A-12 of this Annex.

“**Modification Conditions**” shall have the meaning set forth in Section A-12 of this Annex.

“**Modification Request**” shall have the meaning set forth in Section A-12 of this Annex.

“**Modifying Owners**” shall have the meaning set forth in Section A-12 of this Annex.

“**No Action Modifications**” shall have the meaning set forth in Section A-12 of this Annex.

“**Non-Compete Conditions**” shall have the meaning set forth in Section A-9 of this Annex.

“**Non-Exclusive Stairway**” shall have the meaning set forth in Section A-5(b) of this Annex.

“**Non-Exclusive Stairway Access Easement**” shall have the meaning set forth in Section A-5(b) of this Annex.

“**Parcel A**” shall mean FAS Parcel A, the general area of which is shown as **Area 41** on the Easement Diagram.

“**Parcel A Building**” shall mean the FASP Improvements situated on Parcel A.

“**Parcel A Claims**” shall have the meaning set forth in Section A-6(a) of this Annex.

“**Parcel A Indemnitees**” shall have the meaning set forth in Section A-6(a) of this Annex.

“**Parcel A Owner**” shall mean the FASP Owner of Parcel A.

“**Parcel C**” shall mean FAS Parcel C, the general area of which is shown as Area 42 on the Easement Diagram.

“**Parcel C Ancillary Unit**” shall mean the Ancillary Unit as set forth in the Parcel C Condominium Declaration.

“**Parcel C Ancillary Unit Owner**” shall have the meaning set forth in Section A-4(b) of this Annex.

“**Parcel C Building**” shall mean the FASP Improvements situated on Parcel C.

“**Parcel C Claims**” shall have the meaning set forth in Section A-6(a) of this Annex.

“**Parcel C Condominium**” shall mean the Condominium governing Parcel C.

“**Parcel C Condominium Declaration**” shall mean the Declaration of Parcel C Condominium.

“**Parcel C Escalator Easement**” shall have the meaning set forth in Section A-5(c) of this Annex.

“**Parcel C Escalator Easement Area**” shall have the meaning set forth in Section A-5(c) of this Annex.

“**Parcel C Escalators**” shall have the meaning set forth in Section A-5(c) of this Annex.

“**Parcel C Indemnitees**” shall have the meaning set forth in Section A-6(a) of this Annex.

“**Parcel C Landlord Unit**” shall have the meaning set forth in Section A-9 of this Annex.

“**Parcel C Light and Air Easement – Destination Retail**” shall have the meaning set forth in Section A-7(b) of this Annex.

“**Parcel C Light and Air Easement Area – Destination Retail**” shall have the meaning set forth in Section A-7(b) of this Annex.

“**Parcel C Light and Air Easement – Parcel D**” shall have the meaning set forth in Section A-7(b) of this Annex.

“**Parcel C Light and Air Easement Area – Parcel D**” shall have the meaning set forth in Section A-7(b) of this Annex.

“**Parcel C Loading Bays**” shall have the meaning set forth in Section A-3(d) of this Annex.

“**Parcel C Loading Dock**” shall have the meaning set forth in Section A-3(a) of this Annex.

“**Parcel C Loading Dock Unit**” shall mean the Condominium Unit constituting the Parcel C Loading Dock.

“Parcel C Office Unit 1” shall mean Office Unit 1 as set forth in the Parcel C Condominium Declaration.

“Parcel C Office Unit 3” shall mean Office Unit 3 as set forth in the Parcel C Condominium Declaration.

“Parcel C Owner” shall mean the FASP Owner of Parcel C, including any Parcel C Permitted Users.

“Parcel C Parking Garage Access Area” shall have the meaning set forth in Section A-2(e) of this Annex.

“Parcel C Parking Garage Access Easement” shall have the meaning set forth in Section A-2(e) of this Annex.

“Parcel C Parking Garage Unit” shall mean the Condominium Unit constituting the Parcel C Parking Garage.

“Parcel C Loading Dock Permitted Users” shall mean the Loading Dock Permitted Users (as defined in the Parcel C Condominium Declaration).

“Parcel C Plaza Egress Easement” shall have the meaning set forth in Section A-3(j) of this Annex.

“Parcel C Plaza Egress Easement Area” shall have the meaning set forth in Section A-3(j) of this Annex.

“Parcel C Plaza Egress Stair” shall have the meaning set forth in Section A-3(j) of this Annex.

“Parcel C Retail Unit” shall mean the Retail Unit as set forth in the Parcel C Condominium Annex.

“Parcel C Retail Unit Owner” shall mean the Unit Owner of the Parcel C Retail Unit.

“Parcel C Share” shall have the meaning set forth in Section A-3(a) of this Annex.

“Parcel C Utility Conduit” shall have the meaning set forth in Section A-6(a) of this Annex.

“Parcel C Utility Conduit Easement” shall have the meaning set forth in Section A-6(a) of this Annex.

“Parcel C Utility Conduit Easement Area” shall have the meaning set forth in Section A-6(a) of this Annex.

“Parcel C Vestibule Area” shall have the meaning set forth in Section A-5(c) of this Annex.

“Parcel D” shall mean FAS Parcel D, the general area of which is shown as **Area 43** on the Easement Diagram.

“Parcel D Building” shall mean the FASP Improvement situated on Parcel D.

“Parcel D Cogeneration Connections” shall have the meaning set forth in Section A-4(a) of this Annex.

“Parcel D Easterly Loading Bay Access Easement” shall have the meaning set forth in Section A-3(e) of this Annex.

“Parcel D Easterly Loading Bay Access Easement Area” shall have the meaning set forth in Section A-3(e) of this Annex.

“Parcel D Easterly Loading Bay Easement” shall have the meaning set forth in Section A-3(d) of this Annex.

“Parcel D Easterly Loading Bay Easement Area” shall have the meaning set forth in Section A-3(d) of this Annex.

“Parcel D Light and Air Easement” shall have the meaning set forth in Section A-7(a) of this Annex.

“Parcel D Light and Air Easement Area” shall have the meaning set forth in Section A-7(a) of this Annex.

“Parcel D Loading Dock Access Door” shall have the meaning set forth in Section A-3(c) of this Annex.

“Parcel D Loading Dock Door Access Easement” shall have the meaning set forth in Section A-3(c) of this Annex.

“Parcel D Owner” shall mean the owner of Parcel D.

“Parcel D Service Elevator” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Service Elevator Access Easement” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Service Elevator Access Easement Area” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Service Elevator and Access Easement” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Service Elevator Easement” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Service Elevator Shaft” shall have the meaning set forth in Section A-3(f) of this Annex.

“Parcel D Share” shall have the meaning set forth in Section A-3(a) of this Annex.

“Parcel D Support Element Easement” shall have the meaning set forth in Section A-2(a) of this Annex.

“Parcel D Support Element Easement Area” shall have the meaning set forth in Section A-2(a) of this Annex.

“Parcel D Utility Conduit Easement” shall have the meaning set forth in Section A-2(b) of this Annex.

“Parcel D Utility Conduit Easement Area” shall have the meaning set forth in Section A-2(b) of this Annex.

“Parcel D Utility Conduits” shall have the meaning set forth in Section A-2(b) of this Annex.

“Parcel D Westerly Loading Dock Access Easement” shall have the meaning set forth in Section A-3(b) of this Annex.

“Parcel D Westerly Loading Dock Access Easement Area” shall have the meaning set forth in Section A-3(b) of this Annex.

“Parcel E” shall mean FAS Parcel E, the general area of which is shown as **Area 44** on the Easement Diagram.

“Parcel E Building” shall mean the FASP Improvement situated on Parcel E.

“Parking Garage Door” shall have the meaning set forth in Section A-2(d) of this Annex.

“Parking Garage Unit Owner” shall mean the Unit Owner of the Parking Garage Unit.

“Parking Spaces Easement” shall have the meaning set forth in Section A-6(b) of this Annex.

“Plans and Specifications” shall mean, with respect to each FASP Parcel, the proposed Facility Airspace Improvement Plans and Specifications as defined in the applicable Severed Parcel Lease.

“Plaza Level Entrance” shall have the meaning set forth in Section A-5(a) of this Annex.

“Satellite Conduits Easement” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Area” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Building” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Conduits” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Easement” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Infrastructure” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Parcel” shall have the meaning set forth in Section A-8 of this Annex.

“Satellite Dish Parcel Owner” shall mean the Owner of the Satellite Dish Parcel.

“Service Elevator Shaft” shall have the meaning set forth in Section A-5(b) of this Annex.

“Severed Destination Retail Lease” shall mean the Severed Parcel Lease for the Destination Retail Parcel.

“Severed Parcel Lease” shall have the meaning set forth in the Recitals to this Declaration.

“Severed Parcel C Lease” shall mean the Severed Parcel Lease for Parcel C.

“Severed Parcel D Lease” shall mean the Severed Parcel Lease for Parcel D.

“Stairway” shall have the meaning set forth in Section A-5(b) of this Annex.

“Stormwater Connections” shall have the meaning set forth in Section A-2(c) of this Annex.

“Stormwater Easement” shall have the meaning set forth in Section A-2(c) of this Annex.

“Stormwater Retention System” shall have the meaning set forth in Section A-2(c) of this Annex.

“Substantial Completion” shall have the meaning set forth in the applicable Severed Parcel Lease.

“Support Elements” shall have the meaning set forth in Section A-2(a) of this Annex.

“Third Floor Entrance” shall have the meaning set forth in Section A-5(a) of this Annex.

“Vestibule Access Easement” shall have the meaning set forth in Section A-5(b) of this Annex.

“Yards Parcel Ventilation Conduits – Parcel D” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parcel Ventilation Easement – Parcel C” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parcel Ventilation Easement – Parcel D” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parcel Ventilation Easement Area – Parcel C” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parcel Ventilation Easement Area – Parcel D” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parcel Ventilation Equipment – Parcel C” shall have the meaning set forth in Section A-6(c) of this Annex.

“Yards Parking Spaces” shall have the meaning set forth in Section A-6(b) of this Annex.

“Yards Utility Easement” shall have the meaning set forth in Section A-6(a) of this Annex.

“Yards Utility Equipment” shall have the meaning set forth in Section A-6(a) of this Annex.

“Yards Utility Easement Area” shall have the meaning set forth in Section A-6(a) of this Annex.

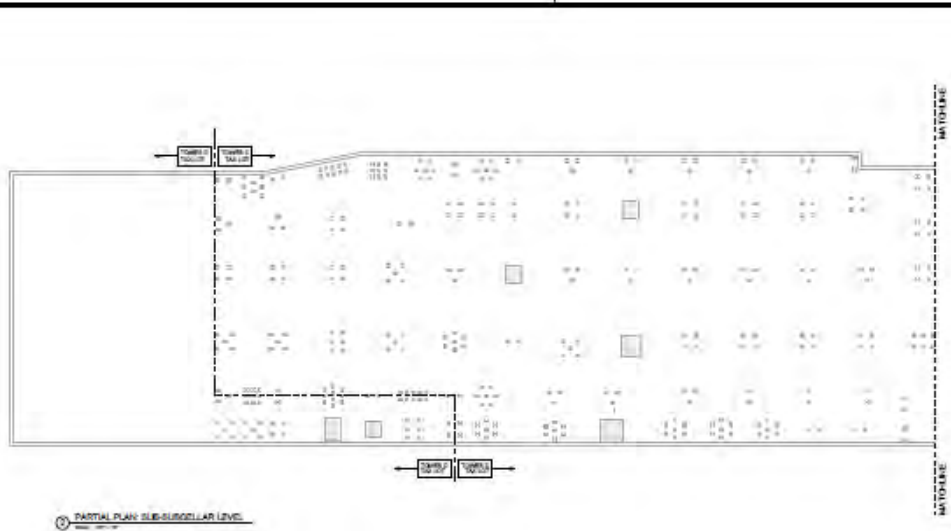
LIST OF EXHIBITS

| Exhibit 1 | Easement Diagram | |
|-------------------|-------------------------|--|
| <i>Area 1</i> | Section A-2(a) | Parcel D Support Element Easement Area |
| <i>Area 2</i> | Section A-2(b) | Parcel D Utility Conduit Easement Area |
| <i>Area 3</i> | Section A-2(c) | Designated Plaza Area |
| <i>Area 4</i> | Section A-2(c) | Stormwater Retention System |
| <i>Area 5</i> | Section A-2(d) | Parking Garage Door |
| <i>Area 6</i> | Section A-2(e) | Parcel C Parking Garage Access Area |
| <i>Area 7</i> | Section A-2(a) | Parcel C Loading Dock |
| <i>Area 8</i> | Section A-3(b) | Parcel D Westerly Loading Dock Access Easement Area |
| <i>Area 9</i> | Section A-3(c) | Parcel D Loading Dock Access Door |
| <i>Area 10</i> | Section A-3(d) | Parcel C Loading Bays |
| <i>Area 11</i> | Section A-3(e) | Parcel D Easterly Loading Bay Access Easement Area |
| <i>Area 12</i> | Section A-3(f)(i)(A) | Parcel D Service Elevator |
| <i>Area 13</i> | Section A-3(f)(i)(B) | Parcel D Service Elevator Access Easement Area |
| <i>Area 14</i> | Section A-3(g) | Compactors |
| <i>Area 15</i> | Section A-3(h) | Association Pathway Easement Area – Parcel D |
| <i>Area 16</i> | Section A-3(i) | Association Pathway Easement Area – Parcel C |
| <i>Area 16(a)</i> | Section A-3(j) | Parcel C Plaza Egress Easement Area |
| <i>Area 17</i> | Section A-5(a) | Destination Retail Access Passenger Elevators |
| <i>Area 18</i> | Section A-5(a) | Third Floor Entrance |
| <i>Area 19</i> | Section A-5(a) | Plaza Level Entrance |
| <i>Area 20</i> | Section A-5(a) | Destination Retail Access Passenger Elevator Cellar Area |
| <i>Area 21</i> | Section A-5(b)(i)(A) | Destination Retail Service Elevators |
| <i>Area 22</i> | Section A-5(b)(i)(B) | Destination Retail Vestibules |

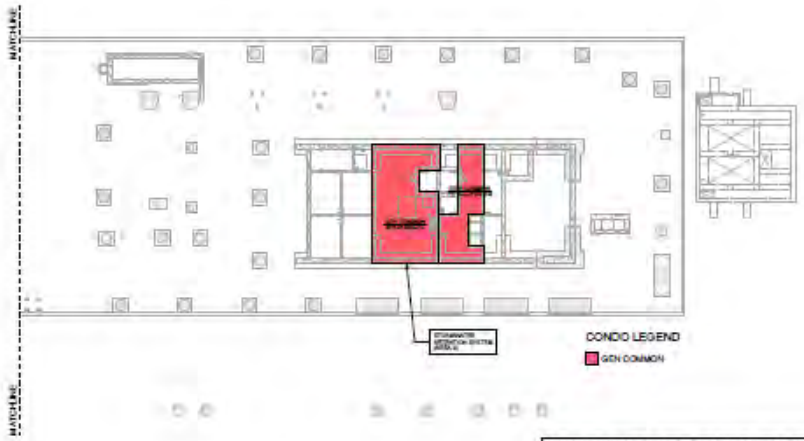
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|-------------------|----------------------|--|
| <i>Area 23</i> | Section A-5(b)(i)(C) | Stairway |
| <i>Area 24</i> | Section A-5(b)(i)(C) | Non-Exclusive Stairway |
| <i>Area 25</i> | Section A-5(b)(i)(D) | Destination Retail Service Elevator Street Level Access Area |
| <i>Area 26</i> | Section A-5(c) | Parcel C Escalators |
| <i>Area 27</i> | Section A-5(c) | Parcel C Vestibule Area |
| <i>Area 28</i> | Section A-5(c) | Destination Retail Escalator Easement Area |
| <i>Area 29</i> | Section A-5(f) | Destination Retail Loading Dock Easement Area |
| <i>Area 29(a)</i> | Section A-5(h) | Destination Retail Tenth Avenue Access Easement Area |
| <i>Area 29(b)</i> | Section A-5(i) | Destination Retail Easement Area |
| <i>Area 30</i> | Section A-6(a) | Yards Utility Easement Area |
| <i>Area 31</i> | Section A-6(a) | Parcel C Utility Conduit Easement Area |
| <i>Area 32</i> | Section A-6(c) | Yards Parcel Ventilation Easement Area – Parcel C |
| <i>Area 33</i> | Section A-6(c) | Yards Parcel Ventilation Easement Area – Parcel D |
| <i>Area 34</i> | Section A-6(d) | Destination Retail Tenth Avenue Access Escalator Easement Area |
| <i>Area 35</i> | Section A-7(a) | Parcel D Light and Air Easement Area |
| <i>Area 36</i> | Section A-7(b) | Parcel C Light and Air Easement Area – Parcel D |
| <i>Area 37</i> | Section A-7(b) | Parcel C Light and Air Easement Area – Destination Retail |
| <i>Area 38</i> | Section A-9(a) | [Intentionally Omitted] |
| <i>Area 39</i> | Section A-9(b) | L’Oreal Non-Compete Area |
| <i>Area 40</i> | Definitions | Destination Retail Lot Area |
| <i>Area 41</i> | Definitions | Parcel A Lot Area |
| <i>Area 42</i> | Definitions | Parcel C Lot Area |
| <i>Area 43</i> | Definitions | Parcel D Lot Area |
| <i>Area 44</i> | Definitions | Parcel E Lot Area |

| | | |
|------------------|-----------------------|--|
| Exhibit 2 | Section A-7(a) | Form DOB Light and Air Easement |
| Exhibit 3 | Section A-13 | List of Lineal Descendants |

Exhibit 1 to Annex
Easement Diagram



PARTIAL PLAN: SUB-SUBCELLAR LEVEL



CONSTRUCTION FLOOR: SUB-SUBCELLAR LEVEL
MARKETING FLOOR: TBD

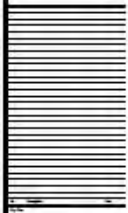
PARTIAL PLAN: SUB-SUBCELLAR LEVEL

SYMBOL LEGEND

| | |
|------------|---------------|
| GEN COMMON | ROOM CATEGORY |
| MECHANICAL | ROOM TYPE |
| AHU | ROOM NAME |
| 3000 SQ FT | ROOM AREA |

311 SOUTH YARBRO - TOWER C

AS PREPARED BY
DATE: 03/20/2013
PROJECT: 311 SOUTH YARBRO - TOWER C
SHEET: 00-01C3
SUB-SUBCELLAR LEVEL
CONSTRUCTION FLOOR: SUB-SUBCELLAR LEVEL
MARKETING FLOOR: TBD

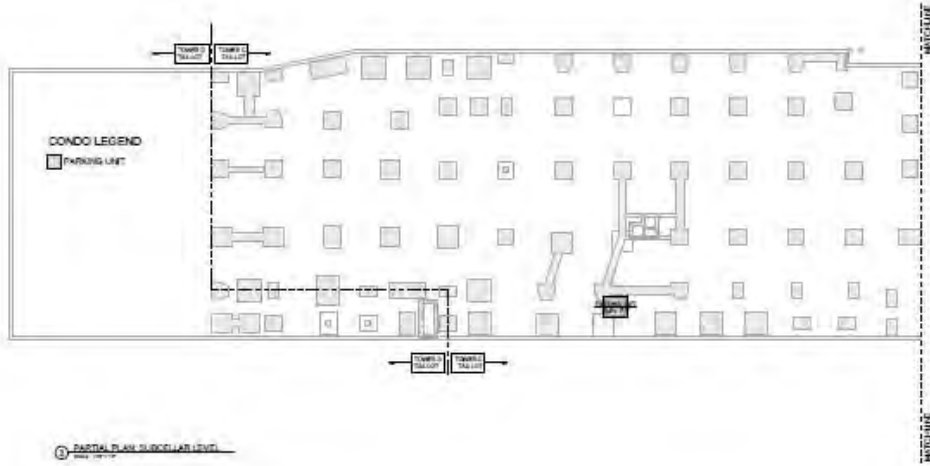


DATE: 03/20/2013
PROJECT: 311 SOUTH YARBRO - TOWER C
SHEET: 00-01C3

SUB-SUBCELLAR LEVEL
00-01C3

**CONDO PLANS
MARCH 20, 2013**





① PARTIAL PLAN SUBCELLAR LEVEL

- SYMBOL LEGEND**
- SITE COMMON
 - MECHANICAL
 - AIR
 - 3000 SQ. FT.
 - ROOM CATEGORY
 - ROOM TYPE
 - ROOM NAME
 - ROOM AREA

STUDY VARIATION FORM

APPROVED BY: [Signature]

DATE: [Date]

PROJECT: [Project Name]

LOCATION: [Location]

SCALE: [Scale]

REVISIONS:

| | | |
|-----|-------------------------|----------|
| NO. | DESCRIPTION | DATE |
| 1 | ISSUED FOR PERMIT | 03/20/13 |
| 2 | ISSUED FOR CONSTRUCTION | 03/20/13 |
| 3 | ISSUED FOR OCCUPANCY | 03/20/13 |
| 4 | ISSUED FOR RECORD | 03/20/13 |



- CONDO LEGEND**
- DESTINATION RETAIL ACCESS UNIT
 - SITE COMMON
 - OFFICE UNIT 1
 - OFFICE UNIT 3

CONSTRUCTION FLOOR: SUBCELLAR LEVEL
MARKETING FLOOR: TED

① PARTIAL PLAN SUBCELLAR LEVEL

CONDO PLANS
MARCH 20, 2013



REVISIONS:

| | | |
|-----|-------------------------|----------|
| NO. | DESCRIPTION | DATE |
| 1 | ISSUED FOR PERMIT | 03/20/13 |
| 2 | ISSUED FOR CONSTRUCTION | 03/20/13 |
| 3 | ISSUED FOR OCCUPANCY | 03/20/13 |
| 4 | ISSUED FOR RECORD | 03/20/13 |

PROJECT: [Project Name]

DATE: [Date]

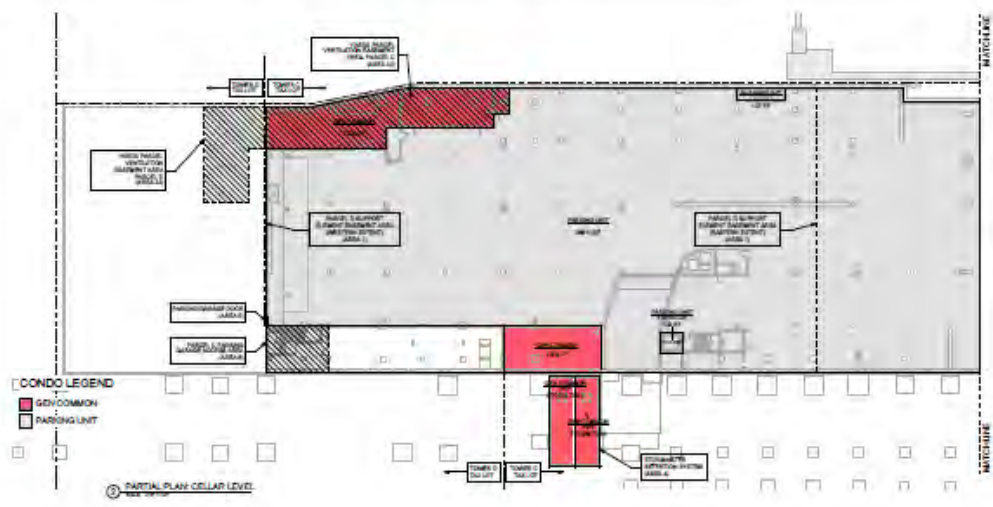
SCALE: [Scale]

REVISIONS:

NO. 00-0102

REVISIONS:

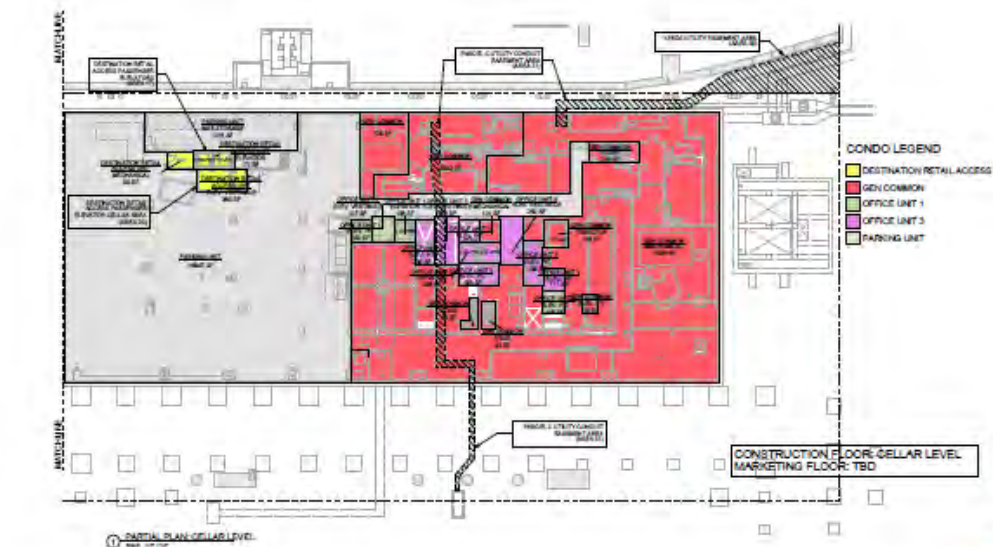
NO. 00-0102



SYMBOL LEGEND

| | |
|------------|---------------|
| GEN COMMON | ROOM CATEGORY |
| MECHANICAL | ROOM TYPE |
| AHU | ROOM NAME |
| 3000 SQ FT | ROOM AREA |

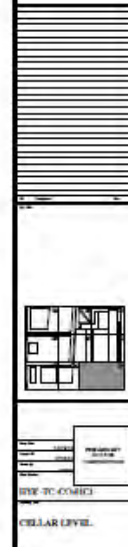
Hudson Yards - Tower C
 300 West Street
 New York, NY 10014
 Project No. 100-1001
 Date: 03/20/2013
 Scale: 1/8" = 1'-0"
 Drawing No. CO-01C1
 Revision: 1
 Designer: [Name]
 Checker: [Name]
 Approver: [Name]



CONDO LEGEND

| |
|--------------------------------|
| DESTINATION RETAIL ACCESS UNIT |
| GEN COMMON |
| OFFICE UNIT 1 |
| OFFICE UNIT 3 |
| PARKING UNIT |

CONDO PLANS
MARCH 20, 2013
 REV 1: APR 3, 2013



CELLAR LEVEL

CO-01C1

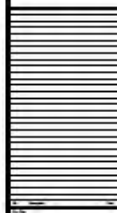
BUDSON VAREW - TOWER C

60 WEST STREET
NEW YORK, NY



PROJECT: BUDSON VAREW - TOWER C
 LOCATION: 60 WEST STREET, NEW YORK, NY
 ARCHITECT: [Faded text]
 DATE: [Faded text]

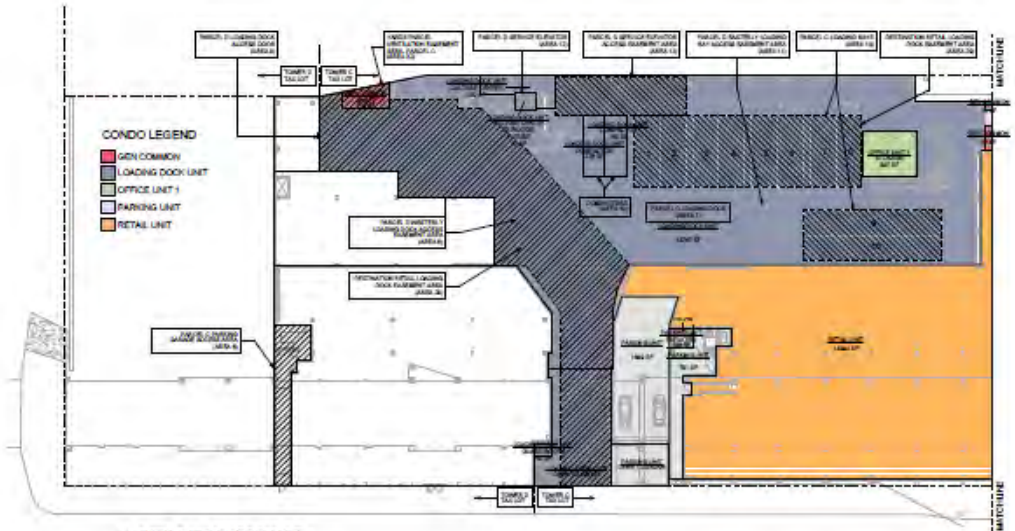
CONSTRUCTION FLOOR: GROUND FLOOR
 MARKETING FLOOR: TBD



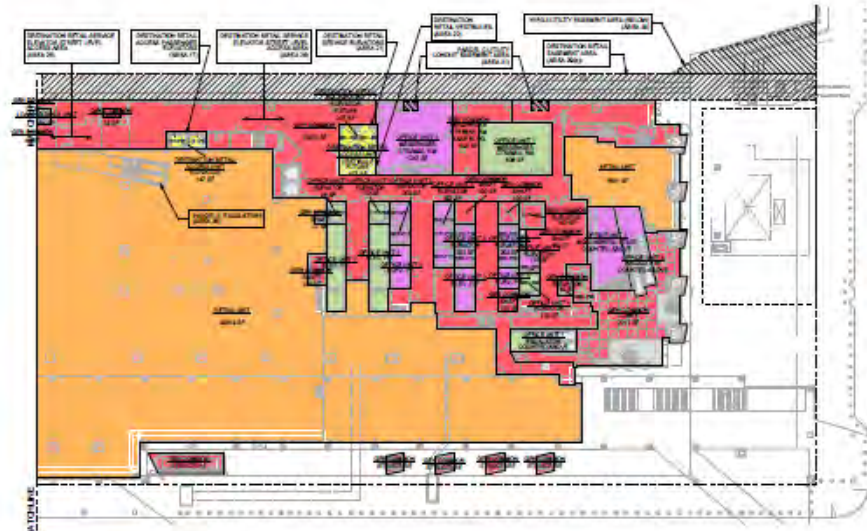
REV: TC-05-000

GROUND FLOOR LEVEL

00-0100



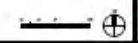
Ⓢ PARTIAL PLAN: GROUND FLOOR LEVEL



Ⓢ PARTIAL PLAN: GROUND FLOOR LEVEL

CONDO PLANS
MARCH 20, 2013

REV 1: APR 8, 2010



DESIGN & CONSTRUCTION TOWER A

AS NOTED OTHERWISE
REVISED BY



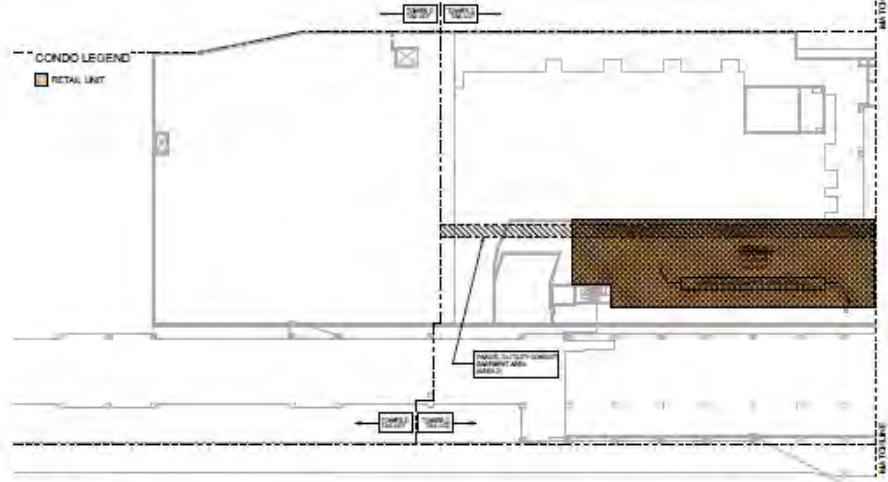
PROJECT: TOWER A
 LOCATION: [REDACTED]
 DATE: [REDACTED]
 DRAWN BY: [REDACTED]
 CHECKED BY: [REDACTED]
 APPROVED BY: [REDACTED]

SYMBOL LEGEND

| | |
|------------|---------------|
| SEV COMMON | ROOM CATEGORY |
| MECHANICAL | ROOM TYPE |
| APU | ROOM NAME |
| 300 SQ FT | ROOM AREA |

CONDO LEGEND

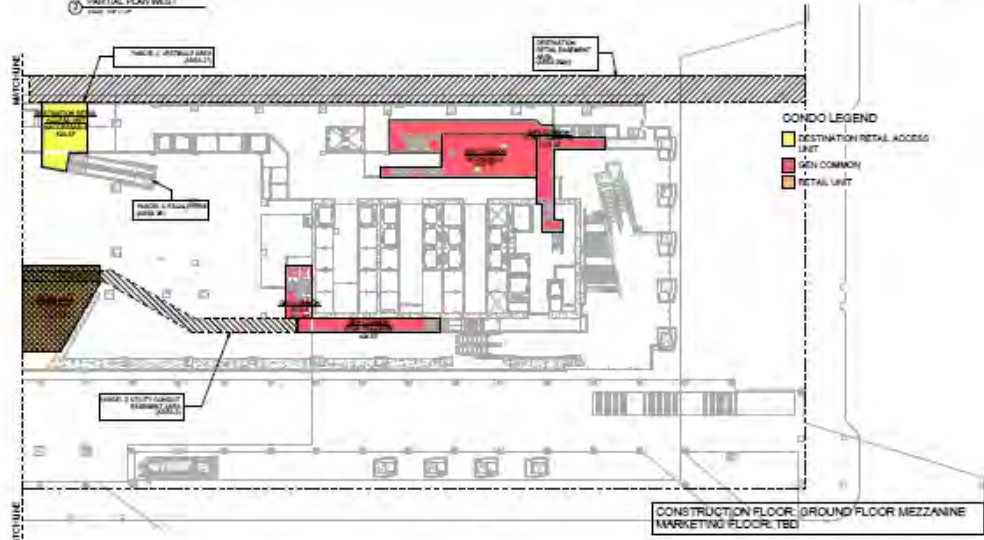
RETAIL UNIT



LEVEL 04 MEZZANINE PLAN

CONDO LEGEND

DESTINATION RETAIL ACCESS UNIT
 SEV COMMON
 RETAIL UNIT



LEVEL 04 MEZZANINE PLAN

CONDO PLANS
MARCH 20, 2013

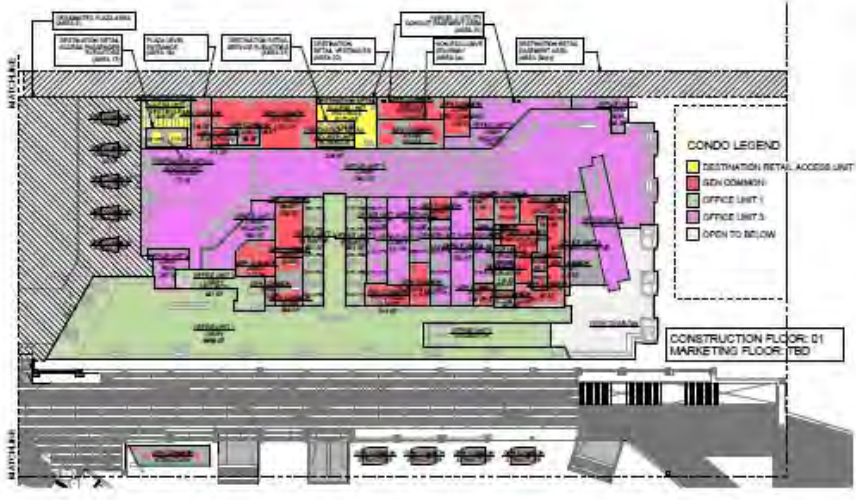
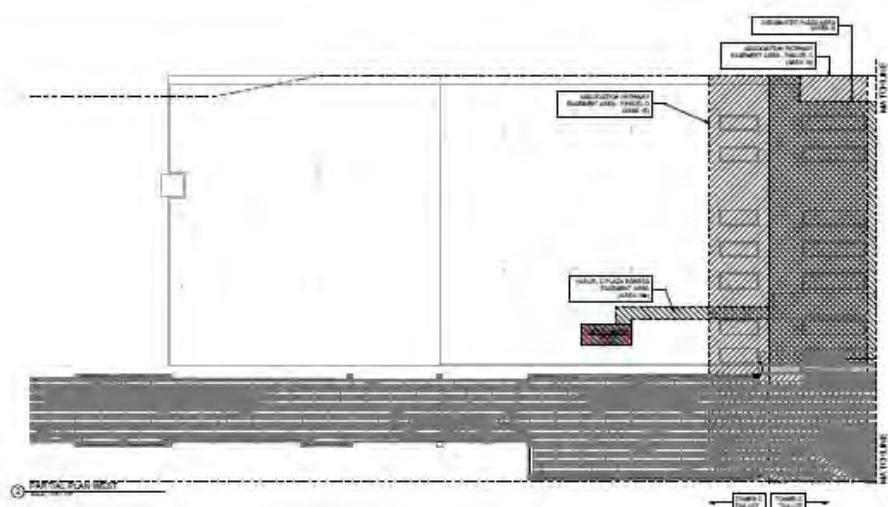
REV 1: APR 8, 2013



DATE: 7-20-10

GROUND FLOOR
 MEZZANINE LEVEL

CO-0100M



STEVENS YAZEN-TOWNS C.

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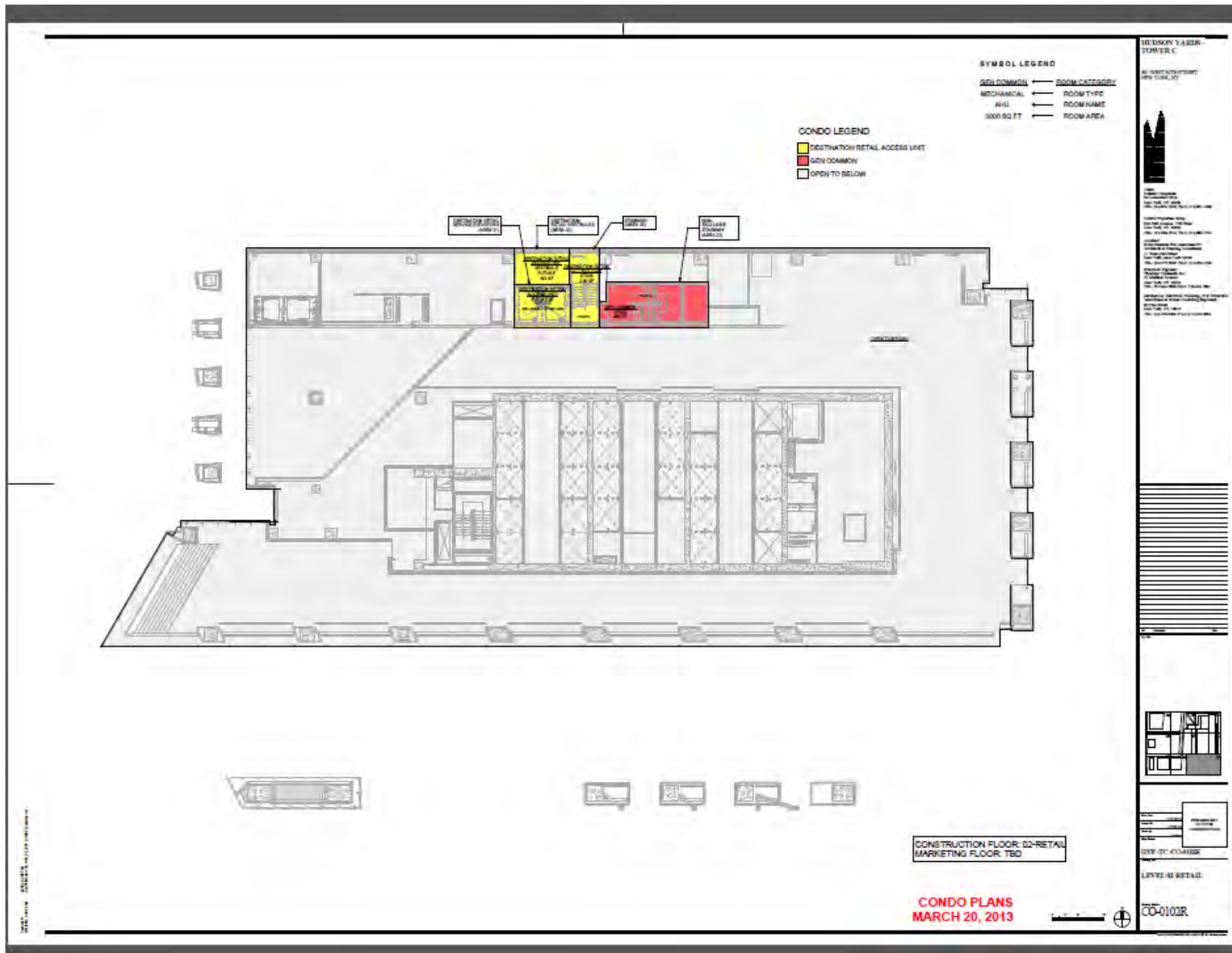
DATE: 03/20/2013
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: AS SHOWN
PROJECT NO: [Number]
SHEET NO: [Number]

PLAZA LEVEL

00-0101

CONDO PLANS
MARCH 20, 2013
REV 1: APR 3, 2015





HUDSON YARDS -
TOWER C
65 WEST STREET
NEW YORK, NY

DATE: 03/20/2013
DRAWN BY: [Name]
CHECKED BY: [Name]
PROJECT: HUDSON YARDS - TOWER C
SHEET: CC-0103
SCALE: AS SHOWN
DESIGNED BY: [Name]
DATE: 03/20/2013
PROJECT: HUDSON YARDS - TOWER C
SHEET: CC-0103
SCALE: AS SHOWN
DESIGNED BY: [Name]
DATE: 03/20/2013

SYMBOL LEGEND

GEN COMMON — ROOM CATEGOR
MECHANICAL — ROOM TYPE
ANSU — ROOM NAME
3000 SQ FT — ROOM AREA

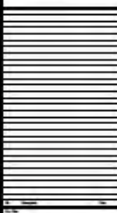
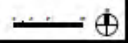
CONDO LEGEND

DESTINATION RETAIL ACCESS UNIT
GEN COMMON
OFFICE UNIT 1
OFFICE UNIT 2



CONSTRUCTION FLOOR: 03
MARKETING FLOOR: TBD

CONDO PLANS
MARCH 20, 2013



LEVEL: 03

LEVEL: 03

CC-0103

10/10/2013 10:00 AM

Exhibit 2 to Annex

Form DOB Light and Air Easement

EASEMENT AGREEMENT made this _____ day of _____, 201__, between _____, hereinafter referred to as the “Grantor,” having an office/residing at _____ and _____ hereinafter referred to as the “Grantee,” having an office/residing at _____.

WHEREAS, the Grantor is the fee owner of certain land located in the City and State of New York, Borough of Manhattan, designated as Block ____ Lot ____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel B and more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, there is an existing/will be constructed a _____-story building on Parcel B;

WHEREAS, Grantee has requested the New York City Department of Buildings (the “Department of Buildings”) to act upon Application No. _____ to construct a new building/to alter floors _____ to _____ for residential use on Parcel B; and

WHEREAS, the Department of Buildings may approve the Application upon the condition, *inter alia*, that Grantor create an easement for light and air for the benefit of the present and future owners of Parcel B in order to comply with the applicable provisions of Sections 27-732 and 27-746 of the 1968 Building Code or Sections BC 1203.4 and BC 1205.2 of the 2008 Building Code, as applicable.¹

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor for her/himself, her/his heirs, legal representatives, successors and assigns hereby makes the

¹ This easement agreement may be entered into as a means of compliance with the 1968 or 2008 Building Codes by permitting such codes’ light and air requirements to be satisfied on an adjacent tax lot. However, this agreement cannot be used to permit the required light and air to be satisfied on an adjacent zoning lot in lieu of compliance with the New York City Zoning Resolution or Section 30 of the Multiple Dwelling Law.

following grant to Grantee, her/his heirs, legal representatives, successors, and assigns and to any future owner of Parcel B:

(e) The right to unrestricted light and air over Parcel A as described herein, such that any construction on Parcel A shall never infringe upon the light and air provided to Parcel B;

(f) This easement agreement may not be modified, amended or terminated without the prior written consent of the Department of Buildings;

(g) The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

(h) Failure to comply with the terms of this easement agreement may result in the revocation of a building permit or certificate of occupancy; and

(i) This easement agreement shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the easement agreement shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Parties have made and executed the foregoing easement agreement as of the date hereinabove written.

Grantor

Grantee

By:

By:

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

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared [Grantor], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared [Grantor] , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Exhibit 3 to Annex

Lineal Descendants, now living, of former U.S. Presidents and N.Y. State Governors

| Name of President or Governor | Total Number of Living Lineal Descendants | Children | Grandchildren (child of) | Great Grand-children |
|--------------------------------------|--|---|--|-----------------------------|
| President William Jefferson Clinton | 1 | Chelsea Victoria | None | |
| President George Herbert Walker Bush | 19 | George W. John E. Neil M. Marvin P. Dorothy W. Koch | Barbara Pierce Bush (George) Jenna Welch Bush (George) George Bush (John) Noelle Bush (John) Jeb Bush (John) Ashley Bush (Neil) Pierce Bush (Neil) Lauren Bush (Neil) Marshall Bush (Marvin) Walker Bush (Marvin) Robert LeBlond (Dorothy) Gigi LeBlond (Dorothy) Sam Koch (Dorothy) Ellie Koch (Dorothy) | |
| President Ronald Wilson Reagan | 2 | Patricia Ronald, Jr. | None | |
| President James Earl Carter, Jr. | 12 | John William James Earl III Donnel Jeffrey Amy Lynn | Jason James (John) Sarah Rosemary (John) James Earl IV (James) Margaret Alicia (James) Joshua Jeffrey (Donnel) Jeremy Davis (Donnel) James Carlton (Donnel) Hugo James Wentzel (Amy) | |
| President Gerald Rudolph Ford, Jr. | 11 | Michael Gerald John Gardner Steven Meigs Susan Elizabeth | Sarah Joyce (Michael) Rebekah Elizabeth (Michael) Hannah Gayle (Michael) Christian Gerald (John) Jonathan August (John) Tyne Mary Vance (Susan) Heather Elizabeth Vance (Susan) | Riley (Sarah Joyce) |
| Governor George E. Pataki | 4 | Emily Teddy Allison George Owen | None | |

| Name of President or Governor | Total Number of Living Lineal Descendants | Children | Grandchildren (child of) | Great Grand-children |
|--------------------------------|---|--|---|-------------------------|
| Governor Mario Matthew Cuomo | 15 | Margaret Cuomo Maier Andrew Maria Cuomo Cole Madeline Cuomo O'Donoghue Christopher | Mariah (Andrew) Cara (Andrew) Michaela (Andrew) Marianna Maier (Margaret) Kerry (Andrew) Emily Cole (Maria) Amanda Cole (Maria) 3 other granddaughters | |
| Governor Hugh L. Carey | 26 | Christopher Susan Dempsey Michael Donald Marianne Hayes Nancy Cassidy Helen O'Neill Bryan Kevin Thomas Alexandria McManus | 15 grandchildren | |
| Governor Nelson D. Rockefeller | 34 | Steven Ann R. Roberts Mary Morgan Callard Mark Nelson A. | Meile Louise (Rodman) Peter (Rodman) Stuart (Rodman) Michael (Rodman) Mary Louise Pierson (Ann) Nolen Rockefeller | 23 great grand-children |