



THE COUNCIL
 THE CITY OF NEW YORK
 LAND USE DIVISION
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RECEIVED
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October 25, 2012

BY HAND

Honorable Amanda M. Burden, *FAICP*, Chair
 City Planning Commission
 22 Reade Street, 2nd Flr. - 2W
 New York, New York 10007-1216

**RE: Application No.: N 120142 ZRM
 Related Application No.: C 120143 ZMM**

Dear Chairperson Burden:

On October 25, 2012, the Land Use Committee of the City Council, by a vote of 17-1-2 recommended modifications of the City Planning Commission's decision in the above-referenced matter.

Pursuant to Section 197-d(d) of the City Charter and Section 11.70 of the Rules of the Council, I hereby file the proposed modifications with the Commission:

N 120142 ZRM

- Matter in underline is new, to be added;
- Matter in ~~strikeout~~ is old, to be deleted;
- Matter in [] is deleted by City Council;
- Matter in **bold double underline** is new, added by City Council;
- Matter within # # is defined in Section 12-10;
- * * * indicate where unchanged text appears in the Zoning Resolution

Article IX – Special Purpose Districts

**Chapter 8
 Special West Chelsea District**

* * *

98-03

District Plans and Maps

The regulations of this Chapter are designed to implement the #Special West Chelsea# Plan.

The District Plan includes the following maps and illustrative diagrams in Appendices A, B and C and the special regulations in Appendices D, ~~and E~~ and F:

* * *

Appendix E – Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus and Located Partially Within Subareas D, E and G, or within Subarea I

Appendix F - Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus Within Subarea J

* * *

98-04

Subareas and High Line Transfer Corridor

In order to carry out the provisions of this Chapter, ~~nine~~ ten Subareas (A through ~~I~~ J), and a #High Line Transfer Corridor# are established within the #Special West Chelsea District#.

Within each of the Subareas and the #High Line Transfer Corridor#, certain special regulations apply within the remainder of the #Special West Chelsea District#. The locations of the ~~nine~~ ten Subareas are shown in Appendix A of this Chapter.

* * *

98-14

Ground Floor Use and Transparency Requirements on Tenth Avenue

Except in Subarea J, the ~~The~~ special ground floor #use# and glazing regulations of this Section apply to that portion of a #building# or other #structure# fronting on Tenth Avenue in the #Special West Chelsea District#. Ground floor #uses# in Subarea J shall be governed by the underlying #use# regulations as modified by Section 98-13 (Modification of Use Regulations in M1 Districts).

* * *

98-142
High Line Level Wall Requirements Within Subarea J

Any additions to the windows or other glazing located on the wall separating the #High Line# from any #building# located on a #zoning lot# within Subarea J at the #High Line# level shall be designed to provide for a minimum of 30 dBA noise attenuation, and any general illumination fixtures in the adjoining interior portion of the #building# shall not exceed 50 foot-candles of illumination within four feet of such window or glazing and shall not be pointed directly at the #High Line#.

* * *

98-21
Maximum Floor Area Ratio outside of Subareas

For all #zoning lots#, or portions thereof, located outside of Subareas A through I J, the maximum #floor area ratios# of the applicable underlying districts shall apply.

* * *

98-22
Maximum Floor Area Ratio and Lot Coverage in Subareas

For all #zoning lots#, or portions thereof, located in Subareas A through I J, the maximum #floor area ratios#, #open space ratios# and #lot coverages# of the applicable underlying zoning districts shall not apply.

* * *

Maximum Floor Area Ratio by Subarea

Sub-area	Basic #floor area ratio# (max)	Increase in FAR from #High Line Transfer Corridor# (98-30)	Increase in FAR with #High Line# Improvement Bonuses (98-25)	Inclusionary Housing		Permitted #floor area ratio# (max)
				FAR required to be transferred (minimum)	Increase in FAR for Inclusionary Housing Program (98-26)	
* * *						
I ⁴	5.0	NA	2.5	NA	NA	7.5
J ⁶	<u>5.0</u>	<u>NA</u>	<u>2.5</u>	<u>NA</u>	<u>NA</u>	<u>7.5</u>

6- Bonus contribution subject to provisions of 98-25 governing first contribution to Affordable Housing Fund

* * *

98-23

Special Floor Area and Lot Coverage Rules for Zoning Lots Over Which the High Line Passes

* * *

However, at or above the level of the #High Line bed#, #lot coverage# requirements shall apply to the entire #zoning lot#.

Within Subarea J, any easement volumes and improvements located within such volumes dedicated or granted to the City in accordance with the provisions of Appendix F of this Chapter in connection with an increase in the basic maximum #floor area ratio# of a #zoning lot#, pursuant to Section 98-25 (High Line Improvement Bonus), shall not be considered #floor area#.

98-25

High Line Improvement Bonus

For #zoning lots# located between West 16th 15th and West 19th Streets over which the #High Line# passes, the applicable maximum #floor area ratio# of the #zoning lot# may be increased up to the

amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), provided that:

(a) Prior to issuing a building permit for any #development# or #enlargement# on such #zoning lot# that anticipates using #floor area# that would increase the applicable basic maximum #floor area ratio# by up to an amount specified in Section 98-22, or within Subarea J would cause the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [INSERT EFFECTIVE DATE OF THE TEXT AMENDMENT], the Department of Buildings shall be furnished with a certification by the Chairperson of the City Planning Commission that:

- (1) a contribution has been deposited into an escrow account or similar fund established by the City (the High Line Improvement Fund), or such contribution is secured by letter of credit or other cash equivalent instrument in a form acceptable to the City. For subareas other than Subarea J, such contribution shall be used at the direction of the Chairperson solely for improvements to the #High Line# within the #High Line# improvement area applicable to such #zoning lot#, with such contribution being first used for improvements within that portion of the #High Line# improvement area on such #zoning lot#. For #developments# or #enlargements# within Subarea J, such contribution shall be used for any use with respect to the improvement, maintenance and operation of the #High Line# or the #High Line# Support Easement Volumes provided for under Appendix F, at the Chairperson's direction, provided that, in lieu of deposit to the High Line Improvement Fund, the contribution for the first 80,000 square feet of #floor area#, shall be deposited to the Affordable Housing Fund established under Section 98-262, paragraph (c), for use in accordance with the provisions of that section. Such contribution shall be made in accordance with the provisions of Appendix D, ~~or~~ E or F of this Chapter, as applicable;

* * *

- (3) all additional requirements of Appendix D, ~~or~~ E or F, as applicable with respect to issuance of a building permit, have been met.

* * *

- (d) Prior to issuing a certificate of occupancy for any portion of a #development# or #enlargement# on a #zoning lot# located within Subarea J over which the #High Line# passes that incorporates #floor area# that would cause the #floor area ratio# of a #zoning lot#

to exceed the #floor area ratio# of such #zoning lot# on [INSERT EFFECTIVE DATE OF THE TEXT AMENDMENT], the Department of Buildings shall be furnished a certification by the Chairperson, that

- (1) #High Line# Support Work has been performed on such #zoning lot#, in accordance with and to the extent required by Appendix F; and
- (2) all other applicable requirements of Appendix F have been met.

For temporary certificates of occupancy, certification with respect to performance of work shall be of substantial completion of the work as determined by the Chairperson. For permanent certificates of occupancy, certification with respect to performance of work shall be final completion of the work, as determined by the Chairperson.

* * *

**98-33
Transfer of Development Rights from the High Line Transfer Corridor**

In the #Special West Chelsea District#, a “granting site” shall mean a #zoning lot#, or portion thereof, in the #High Line Transfer Corridor#. A “receiving site” shall mean a #zoning lot#, or portion thereof, in any subarea other than Subareas F, ~~and H,~~ and J. #Floor area# from a granting site may be transferred to a receiving site in accordance with the provisions of this Section.

* * *

**98-421
Obstruction over the High Line**

Within the #Special West Chelsea District#, the #High Line# shall remain open and unobstructed from the #High Line bed# to the sky, except for improvements constructed on the #High Line# in connection with the use of the #High Line# as a public open space, and except where the #High Line# passes through and is covered by a #building# existing on [INSERT EFFECTIVE DATE OF THE ZONING TEXT AMENDMENT].

* * *

98-423
Street wall location, minimum and maximum base heights and maximum building heights

The provisions set forth in paragraph (a) of this Section shall apply to all #developments# and #enlargements#. Such provisions are modified for certain subareas as set forth in paragraphs (b) through (f) (g) of this Section.

* * *

(g) Subarea J

The provisions set forth in paragraph (a) of this Section shall not apply to any #development# or #enlargement# developed pursuant to the provisions of Section 98-25. In lieu thereof, the provisions of this paragraph, (g), shall apply.

(i) Midblock Zone.

The Midblock Zone shall be that portion of Subarea J located more than 150 feet west of the Ninth Avenue #street line# and more than 200 feet east of the Tenth Avenue #street line#. Within the Midblock Zone, a #building# shall have a maximum #street wall# height before setback of 110 feet, and shall have a maximum #building# height of 130 feet.

(ii) Ninth Avenue Zone.

The Ninth Avenue Zone shall be that portion of Subarea J within 150 feet of the Ninth Avenue #street line#. Within the Ninth Avenue Zone, any portion of a #building# shall have a maximum #street wall# height of 130 feet before setback and a maximum #building# height of 135 feet. Any #building# located above a height of 130 feet shall be set back at least five feet from the Ninth Avenue #street wall# and at least 15 feet from the West 15th Street and West 16th Street #street walls#.

(iii) Tenth Avenue Zone.

The Tenth Avenue Zone shall be that portion of a #zoning lot# within 200 feet of the

Tenth Avenue #street line#. Within the Tenth Avenue Zone, any portion of a #building# shall have a maximum #street wall# height of 185 feet before setback and a maximum #building# height of 230 feet, provided that any portion of a #building# located above a height of 90 feet shall be set back not less than 15 feet from the Tenth Avenue #street line#. Any portion of a #building# located above a height of 185 feet shall be set back at least 10 feet from the West 15th and West 16th Street #street lines#, and at least 25 feet from the Tenth Avenue #street line#. Any portion of a #building# above a height of 200 feet shall be set back at least 25 feet from the West 15th and West 16th Street #street lines#, and at least 35 feet from the Tenth Avenue #street lines#, and any portion of a building located above a height of 215 feet shall be set back at least 75 feet from the Tenth Avenue #street line#. Permitted obstructions allowed pursuant to Section 33-42 shall be permitted.

MINIMUM AND MAXIMUM BASE HEIGHT AND MAXIMUM BUILDING HEIGHT BY DISTRICT OR SUBAREA

District or Subarea	Minimum Base Height (in feet)	Maximum Base Height (in feet)	Maximum Building Height (in feet)
* * *			
<u>Subarea J Midblock Zone</u>	<u>NA</u>	<u>110⁶</u>	<u>130⁶</u>
<u>Subarea J Ninth Avenue Zone</u>	<u>NA</u>	<u>130⁶</u>	<u>135⁶</u>
<u>Subarea J Tenth Avenue Zone</u>	<u>NA</u>	<u>185⁶</u>	<u>230⁶</u>

* * *

⁶ see Section 98-423, paragraph (g)

* * *

98-55

Requirements for Non-Transparent Surfaces on the East Side of the High Line

Except in Subarea J, any Any portion of such #High Line frontage# that is 40 feet or more in length and contains no transparent element between the level of the High Line bed# and an elevation of 12 feet above the level of the #High Line bed#, shall be planted with vines or other plantings or contain artwork.

* * *

98-61

High Line Access Or Support Easement Volumes Requirement

For all #developments# or #enlargements# within the #Special West Chelsea District#, an easement volume to facilitate public pedestrian access to the #High Line# via stairway and elevator (hereinafter referred to as “primary access”), shall be provided on any #zoning lot# over which the #High Line# passes that, on or after December 20, 2004, has more than 5,000 square feet of #lot area#. For all #developments# or #enlargements# within Subareas H, I and J that are developed pursuant to Section 98-25, this provision does not apply.

* * *

98-62

High Line Access Easement Regulations

The provisions of this Section shall apply to any #zoning lot# providing an access easement volume other than a #zoning lot# developed pursuant to Section 98-25, as follows:

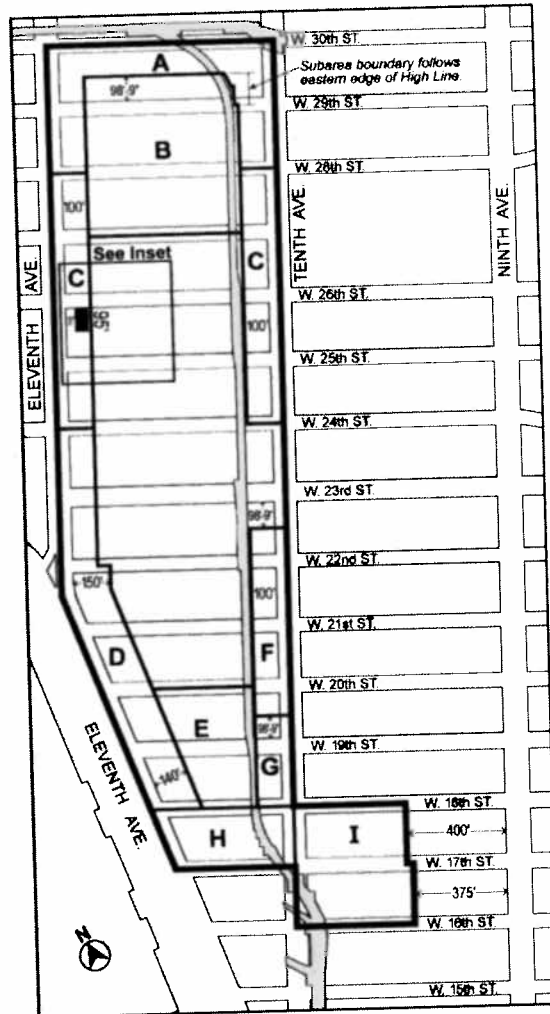
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Appendix A

Special West Chelsea District and Subareas

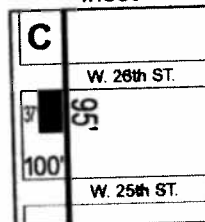
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EXISTING
 (TO BE DELETED)



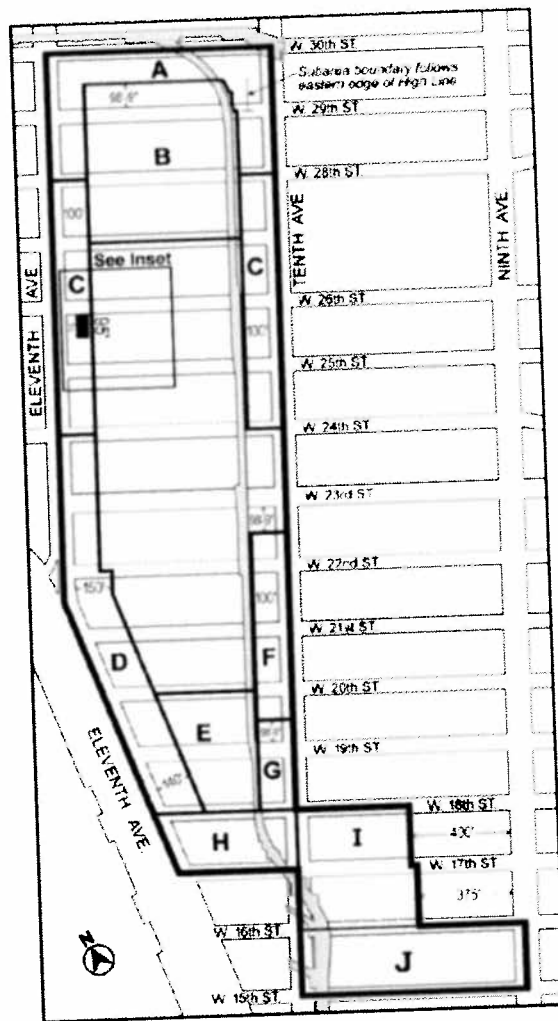
- Special West Chelsea District boundary
- Subarea boundary
- High Line
- Transit Facility





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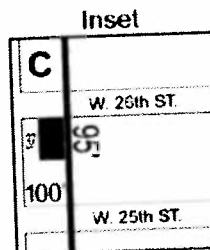


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PROPOSED
 (TO REPLACE EXISTING)



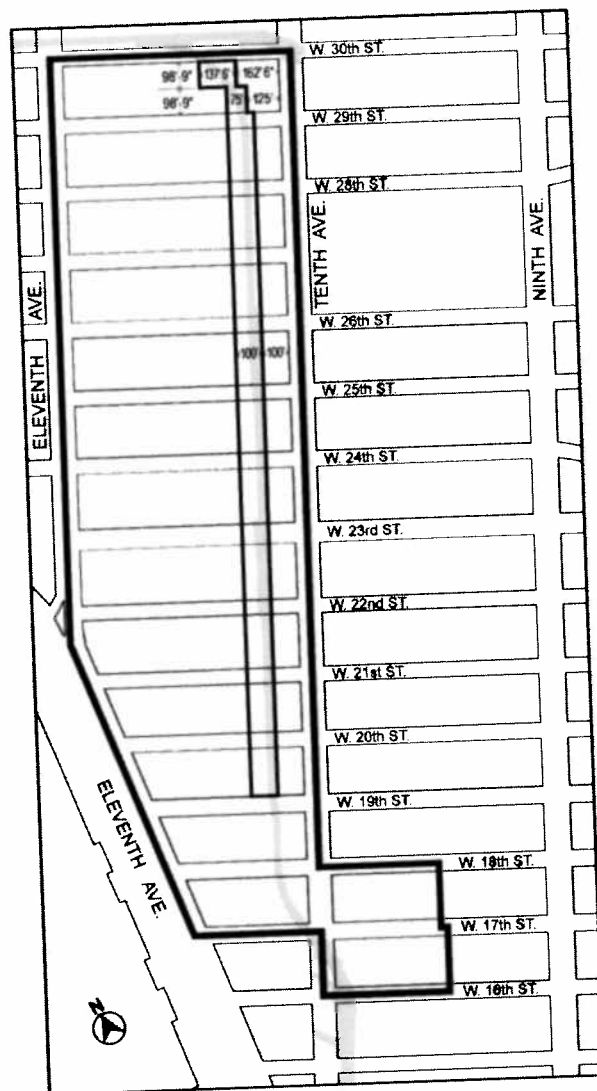
-  Special West Chelsea District boundary
-  Subarea boundary
-  High Line
-  Transit Facility



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Appendix B
High Line Transfer Corridor Location

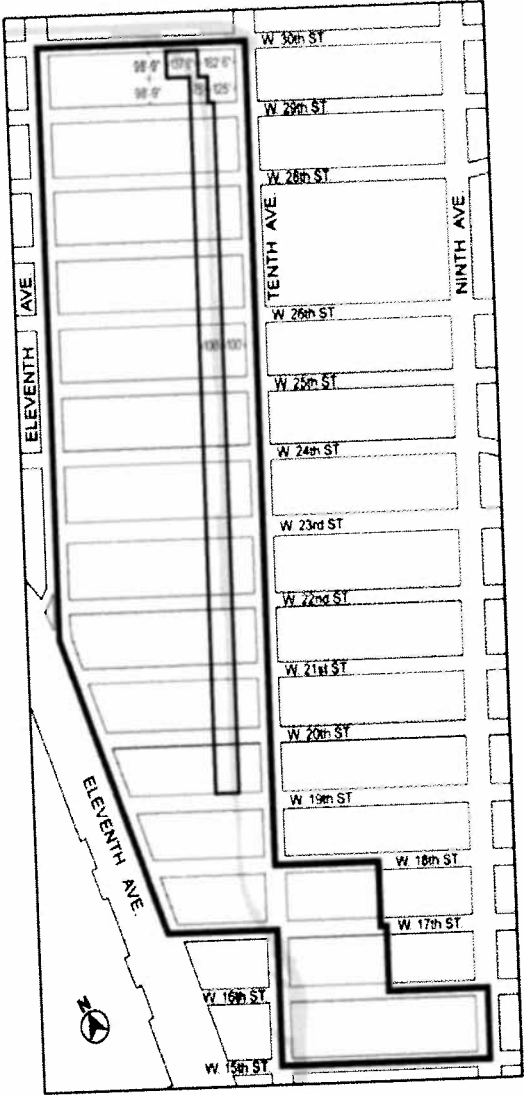
EXISTING
(TO BE DELETED)



- Special West Chelsea District
- High Line Transfer Corridor
- High Line

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PROPOSED
(TO REPLACE EXISTING)



- Special West Chelsea District
- High Line Transfer Corridor
- High Line

* * *

APPENDIX F

Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus and Located Within Subarea J

This Appendix sets forth additional requirements governing #zoning lots# located within Subarea J over which the #High Line# passes for any #development# or #enlargement# which involves an increase in the applicable basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas): The additional requirements are set forth in this Appendix, F, in paragraphs (a), the issuance of a building permit for such #development# or #enlargement# pursuant to paragraph (a) of Section 98-25 (High Line Improvement Bonus); (b), the performance of improvements as a condition of issuance of temporary or permanent certificates of occupancy pursuant to paragraph (d) of Section 98-25; and paragraph (c), the option of the Owner to offer to the City an additional #High Line# Support Easement Volume. The term “parties in interest” as used herein shall mean “parties-in-interest,” as defined in paragraph (f)(4) of the definition of #zoning lot# in Section 12-10.

(a) Requirements for issuance of building permit pursuant to paragraph (a) of Section 98-25

(1) As a condition of certification:

- (i) For each square foot of #floor area# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT], up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), the Owner shall:
 - a. for the first 80,000 square feet of such #floor area#, deposit such contribution to the Affordable Housing Fund established under Section 98-262, paragraph (c), for use in accordance with the provisions of that section; and
 - b. for all such #floor area# which exceeds 80,000 square feet, subject to a deduction pursuant to other provisions of this Appendix, deposit such contribution to the #High Line# Improvement Fund, or secure such contribution by letter of credit or other cash equivalent instrument in a form acceptable to the City.

Such contribution, in each case, shall be \$59.07 per square foot of #floor area# as of [EFFECTIVE DATE OF THE AMENDMENT], which contribution rate shall be adjusted July 1 of the following year and each year thereafter by the percentage change in the Consumer Price Index for all urban consumers as defined by the U.S. Bureau of Labor Statistics;

- (ii) All parties-in-interest shall execute that restrictive declaration, dated [September 5, 2012] **October 25, 2012**, and on file at the Office of the Counsel, Department of City Planning, required in connection with environmental assessment (CEQR #11DCP120M) for the purpose of addressing historic resources and containing other provisions regarding the preservation of certain features of existing buildings and structures and related matters;

- (iii) All parties-in-interest shall execute a restrictive declaration in a form acceptable to the city addressing the terms described in this paragraph, (a)(1)(iii):
 - (a) Hotel Use

No #development# or #enlargement# developed pursuant to Section 98-25 shall include a #transient hotel#;

 - (b) Retail Concourse

As a condition of any #development# or #enlargement# pursuant to Section 98-25, owner shall provide a pedestrian passageway within any #building# located on the #zoning lot# connecting the Ninth Avenue sidewalk with the Tenth Avenue sidewalk, which passageway shall be open to the public during business hours. Not less than 60 percent of the length of the frontages of such passageway shall be occupied primarily by retail uses, and in addition may be occupied by service, wholesale, production and event space identified in Use Groups 6A, 6C, 7B, 7C, 8A, 9A, 9B, 10B, 11A, 12A, 12B, 16A, 17A and such spaces shall have access to the passageway;

(c) Locations and Dimensions of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall be sized and located to accommodate the following amenities, all of which shall be located within the #buildings# located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii):

- (1) Exclusive easements for public restrooms for each gender with an aggregate area of no less than 560 square feet (and which need not be more than 700 square feet) located adjacent to the #High Line# with direct access to the #High Line# for each of the public restrooms;
- (2) Exclusive easements for #High Line# support space with an aggregate area of no less than 2,400 square feet (and which need not be more than 3,000 square feet) of which up to 800 square feet may be located on a mezzanine level, such space to be located adjacent and accessible to the #High Line#;
- (3) Exclusive easements for #High Line# support space located in the cellar level in an aggregate area no less than 800 square feet (but need not be more than 1,000 square feet);
- (4) Exclusive use of a dedicated freight elevator that shall provide access to the cellar level, to a shared loading facility at street level, to the level of the #High Line bed# and to the level of the #High Line# support space described in paragraph (a)(1)(ii)(a)(2) of this Appendix, F; and
- (5) Non-exclusive easements for:
 - (i) access between the dedicated freight elevator and the shared loading facility at grade level and the #High Line# support space located in the cellar level; and
 - (ii) use of the shared loading facility as more particularly set forth in paragraph (a)(1)(ii)(b) of this Appendix, F;

(d) #Use# of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall not be dedicated for use by the general public but rather for use by the City or its designee for storage, delivery of materials and support of #uses# within the #High Line# (and in connection therewith, the fitting-out, operating, maintaining, repairing, restoring and replacement of the #High Line# Support Easement Volumes), except that:

1. the public may use the public restrooms;
2. up to 650 square feet of space adjacent to the #High Line# may be used exclusively for educational and related programming that is at no cost to the public; and
3. if dedicated to the City in accordance with paragraph (d) of this Appendix F, the optional additional #High Line# Support Easement Volume may be accessible to the public as part of concessions or other uses that relate to the #High Line#. The City or its designee shall at all times use, operate and maintain the #High Line# Support Easement Volumes so as not to interfere with the use and enjoyment of the #buildings# located within Subarea J. The #High Line# support spaces described in paragraphs (a)(1)(ii)(a)(2) and (3) of this Appendix, F, shall be accessible by a dedicated freight elevator that connects to non-exclusive portions of the #building#, including a loading facility at #curb level#, through which the City or its designee shall be provided with a non-exclusive easement to enable reasonable and customary access;

(e) Effective Date of the #High Line# Support Easement Volumes

The City's or its designee's rights to utilize the #High Line# Support Easement Volumes shall commence on the date that the #High Line# Support Work has been completed in accordance with paragraph (b)(1) of this Appendix, F, or in the event of default of the Owner in accordance with paragraph (c) of this Appendix, F, the date that the

City has notified the Owner that it intends to perform such #High Line# Support Work in accordance with paragraph (c); and

- (f) Notice by the Department of City Planning of its receipt of certified copies of the recorded restrictive declarations required pursuant to paragraph (a) (1) (ii) and (iii) of this Appendix, F, shall be a precondition to issuance by the Commissioner of Buildings of any building permits including any foundation or alteration permit for any #development# or #enlargement# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT];
- (iv) The Owner shall submit plans for the #High Line# Support Work described in paragraph (b)(1) of this Appendix, F, that demonstrate compliance with the provisions of this Appendix and are consistent with New York City Department of Parks and Recreation standards and best practices governing material life cycle and maintenance, for review and approval by the Chairperson of the City Planning Commission;
- (v) Solely in the event the initial certification made pursuant to Section 98-25, paragraph (a), is with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), then the Owner shall enter into agreements with the City or its designee, in a form reasonably acceptable to the City, to provide interim access, in accordance with such agreements, to the #High Line# through a non-exclusive loading facility and an existing freight elevator. Such agreements shall provide that any space within the existing #building# may be used by the City or its designee at no cost, except that the City or its designee shall be obligated to pay for the proportionate costs of utilities, maintenance and other building expenses associated with the use of such loading facility and elevator, and for any improvements or modifications to such space that may be requested by the City or its designee. Such interim access shall cease upon the date that the City or its designee commences utilization of the #High Line# Support Easement Volumes in accordance with paragraph (a)(1)(ii)(c) of this Appendix, F;
- (2) The location of #floor area# which would cause the #floor area ratio# of a zoning lot to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF

THE AMENDMENT] and be subject to the provisions of Section 98-25, shall be considered to be the topmost portion of the #development# or #enlargement# unless, at the time of certification pursuant to Section 98-25, paragraph (a), the Owner designates on plans submitted to the Chairperson of the City Planning Commission, subject to the concurrence of the Chairperson of the City Planning Commission, an alternate location.

(b) Requirements for issuance of certificates of occupancy pursuant to paragraph (d) of Section 98-25:

(1) #High Line# Support Work Pursuant to Paragraph (d) of Section 98-25

(i) The Owner shall perform #High Line# Support Work subject to the provisions of this paragraph, (b)(1), inclusive. For temporary certificates of occupancy, certification pursuant to Section 98-25, paragraph (d), shall be the substantial completion of the work. For permanent certificates of occupancy, certification shall be of final completion of the work.

(ii) The #High Line# Support Work shall consist of the following:

(a) the construction, fit-out and delivery in an operative condition of public restrooms described in paragraph (a)(1)(ii)(a)(1) of this Appendix, F, furnished with restroom fixtures, including six toilet stalls for women, an aggregate of six toilet stalls and/or urinals for men and three sinks in each restroom, and provided with utility connections.

(b) the construction of the core and shell of the #High Line# support space described in paragraphs (a)(1)(ii)(a)(2) and (3) of this Appendix, F, including the provision of and access to separately metered gas, ventilation, water, sewers, electricity and telecommunications utilities systems commonly available in the #building# sufficient to support the anticipated uses of the support space. Within the portion of the #High Line# support space in the vicinity of the level of the #High Line bed#, the Owner will install a kitchen exhaust duct from such support space to a suitable point of discharge and will provide access to the #building# sprinkler standpipe and fire alarm system. Such support space shall also include access to a storage mezzanine pursuant to a dedicated lift, and

- there shall be a clear path at least five feet wide from the lift to the dedicated freight elevator described in paragraph (b)(1)(ii)(c) of this Appendix, F. The Owner will not be responsible for distributing any utility services within the #High Line# support space or for providing any ancillary equipment for the kitchen exhaust duct; and
- (c) the construction of the dedicated freight elevator described in paragraph (a)(1)(ii)(a)(2) of this Appendix, F, with a minimum capacity of 3,000 pounds;
- (iii) Following the completion of the #High Line# Support Work described in paragraph (b)(1)(ii) of this Appendix, F, all subsequent costs of operating, maintaining, repairing, replacing and additional fit-out of the #High Line# support space shall be exclusively the responsibility of the City and not the Owner; provided that the Owner shall be responsible for the repair and replacement of any defective #High Line# Support Work for a period of one year after completion thereof;
- (iv) The cost to the Owner of the #High Line# Support Work pursuant to the plans approved pursuant to paragraph (a)(1) (iv) shall be estimated at the time of such approval by a licensed engineer selected by Owner, such estimate to be in a form reasonably acceptable to the City, at an amount not to exceed \$2,544,000, as adjusted at the time of such approval by changes in the construction cost index published by ENR for New York City commencing as of [FIRST DAY OF FIRST MONTH FOLLOWING EFFECTIVE DATE OF ENACTMENT]. In the event that the City requests the Owner to perform any additional work in conjunction with the #High Line# Support Work and the Owner agrees to perform such additional work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix, F;
- (v) Except as set forth in paragraph (b)(1)(v) of this Appendix, F, no temporary or permanent certificates of occupancy may be issued pursuant to Section 98-25, paragraph (d), for #floor area# in a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT] until the #High Line# Support Work described in paragraph (b)(1) of this Appendix F shall have been substantially completed or finally

completed, as applicable;

- (vi) Notwithstanding anything to the contrary in this paragraph (b)(1), inclusive, if certification is initially made pursuant to Section 98-25, paragraph (a), with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), then the conditions for certification pursuant to Section 98-25, paragraph (d) for a permanent or temporary certificate of occupancy shall not apply to such #building# or portion of a #building# and the following conditions shall apply:
- (a) The Owner shall deliver a letter of credit or other security reasonably satisfactory to the City in an amount reasonably determined by the City as sufficient for the City to perform the #High Line# Support Work described in paragraph (b)(1) of this Appendix F, which letter of credit or other security may be drawn or exercised by the City in the event of a default by the Owner in accordance with paragraph (c)(ii) of this Appendix F; and
- (b) The Owner shall enter into an agreement with the City in a form reasonably acceptable to the City requiring the Owner to commence the #High Line# Support Work described in paragraph (b)(1) of this Appendix, F, no later than September 1, 2017, subject to force majeure as determined by the Chairperson, and shall thereafter diligently prosecute the same to completion, pursuant to an agreed-upon schedule, subject to force majeure as determined by the Chairperson.
- (c) In the event the Owner is in default of its obligations pursuant to the agreements required by paragraph (b)(1)(vi) of this Appendix, F:
- (1) The City shall be entitled to draw the letter of credit or exercise the other security described in paragraph (b)(1)(i)(a) of this Appendix, F, and to take possession of the #High Line# Support Easement Volumes following delivery of notice to the Owner that the City intends to perform the #High Line# Support Work in accordance with provisions to be set forth in the restrictive declaration described in paragraph (a)(1)(ii) of this Appendix, F;

- (2) The City shall return to the Owner any contribution made to the #High Line# Improvement Fund with respect to additional #floor area# to be added to a #building# or portion of a #building# located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii);
- (3) No additional building permit may be issued pursuant to Section 98-25, paragraph (a) with respect to a #development# or #enlargement# to be located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), nor may any temporary or permanent certificates of occupancy be issued pursuant to Section 98-25, paragraph (d), for #floor area# in such a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT].

(d) Option to offer an additional #High Line# Support Easement Volume:

- (1) The Owner, at its sole option, may elect to offer to the City an easement comprising up to 7,500 square feet of #floor area# within the #building# adjacent to the #High Line# and at the vicinity of the level of the #High Line bed# as an additional #High Line# Support Easement Volume by written notice to the Chairperson of the City Planning Commission, with a copy to the Commissioner of the Department of Parks and Recreation. Such written notice shall be delivered contemporaneously with the Owner's first request for certification by the Chairperson described in paragraph (a) of Section 98-25 that relates to a #building# or portion of a #building# within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii);
- (2) If the Owner elects to exercise such option, the Owner shall provide an appraisal from an appraiser reasonably acceptable to the City who is a member of the American Institute of Real Estate Appraisers (or its successor organization) establishing the fair market value of the additional #High Line# Support Easement Volume to be so dedicated. The term "fair market value" shall mean the price at which such additional #High Line# Support Easement Volume would change hands between a willing buyer and a willing seller, both acting rationally, at arm's length, in an open and unrestricted market. The appraisal shall determine such fair market value of the additional #High Line# Support Easement Volume based on its highest and best as-of-right #uses#, valued in an unimproved core and shell physical condition (including any existing structural elements, such as the wall separating the #High Line# from the additional easement volume) and considered unencumbered by any leases, mortgages or other matters that will be released or otherwise subordinate

to the grant of such additional #High Line# Support Easement Volume to the City. The appraisal shall not assume that as-of-right #uses# of the additional #High Line# Support Easement Volume may enjoy any access to and from the #High Line#. Any other appraisal assumptions or instructions not set forth herein shall be subject to approval by the City.

- (3) If such option is exercised by the Owner, the City shall have up to 60 days from the delivery of the written notice described in paragraph (d)(1) of this Appendix, F, to irrevocably accept or decline the exercise of the option by written notice to the Owner. If the City does not so accept or decline the option within said 60 day period, then the option shall be deemed declined and neither the City nor Owner shall have any further rights or obligations under this paragraph, (d), inclusive;
- (4) If such option is exercised by the Owner and accepted by the City, the restrictive declaration described in paragraph (a)(1)(ii) of this Appendix F shall provide or shall be amended to include the additional #High Line# Support Easement Volume within the grant to the City, and the value of the additional #High Line# Support Easement Volume as set forth in the appraisal shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F;
- (5) In the event that the City requests the Owner to perform any work in conjunction with the dedication of the additional #High Line# Support Easement Volume and the Owner agrees to perform such work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F. All costs of fitting-out, operating, maintaining, repairing and replacing the additional #High Line# Support Easement Volume shall be exclusively the responsibility of the City and not the Owner.

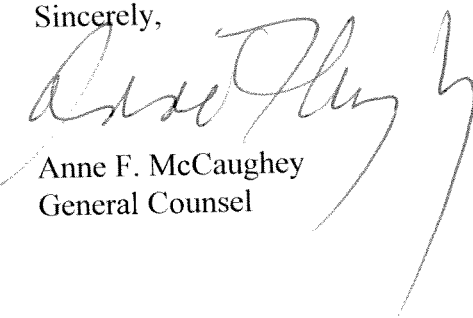
* * *

Further, the Restrictive Declaration dated September 5, 2012, referenced in APPENDIX F, paragraph (a) (ii) of the proposed text has been further amended, as of October 25, 2012, and is attached hereto.

Honorable Amanda M. Burden, FAICP, Chair
N 120142 ZRM and C 120143 ZMM
October 25, 2012
Page 24 of 24

Please feel free to contact me at (212) 788-7312 if you or your staff has any questions in this regard.

Sincerely,



Anne F. McCaughey
General Counsel

BY: _____

DATE: _____

TIME: _____

Attachment: Amended Restrictive Declaration

xc: Members, City Planning Commission
Gail Benjamin
Danielle J. DeCerbo, Project Manager
David Karnovsky, Esq., DCP
Carolyn Grossman, DCP
File

SEPTEMBER 5, October 25, 2012

RESTRICTIVE DECLARATION TO BE FILED AND RECORDED AS CONDITION TO
HIGH LINE IMPROVEMENT BONUS PURSUANT TO PARAGRAPH (a)(1)(ii) OF
APPENDIX F OF CHAPTER 8, ARTICLE IX OF THE ZONING RESOLUTION

RESTRICTIVE DECLARATION

This RESTRICTIVE DECLARATION made as of the [] day of [],
20__ (the "Declaration"), by **JAMESTOWN PREMIER CHELSEA MARKET, L.P.**, having
an office located at 75 Ninth Avenue, 5th Floor, Suite A, New York, New York 10011
(hereinafter referred to as "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner in fee simple of a parcel of land lying and being in
the Borough of Manhattan, City, County and State of New York, designated as Tax Lot 1, Block
713 on the Tax Map of the City of New York, which is known by the street address as 75 Ninth
Avenue, New York, New York, a legal description of which is attached hereto as Exhibit A (the
"Subject Property"); and

WHEREAS, [] has issued a Certification of Parties in Interest,
annexed hereto as Exhibit B and made a part hereof, that as of [], Declarant and
[], hereinafter also referred to as the "Parties-in-Interest", are the only Parties-in-
Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10
of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR")) in the
Subject Property; and

WHEREAS, all Parties-in-Interest to the Subject Property have either executed this
Declaration or waived their rights to execute this Declaration by written instrument annexed
hereto as Exhibit C and made a part hereof, which instrument is intended to be recorded
simultaneously with this Declaration; and

WHEREAS, Declarant has made applications to the City Planning Commission of the
City of New York (the "CPC"): (a) under Application Number 120142 ZRM to amend the
Zoning Resolution to include the Subject Property within the Special West Chelsea District; and
(b) under Application Number 120143 ZMM to amend the Zoning Resolution to establish
regulations for a new Subdistrict F within the Special West Chelsea District applicable to the
Subject Property (collectively, the "Applications"); and

WHEREAS, such Applications are intended to facilitate the expansion of the Subject
Property by allowing the utilization of the method available in the Special West Chelsea District
for increasing the maximum floor area ratio as more particularly set forth in Section 98-25 of the
Zoning Resolution (the "High Line Improvement Bonus"); and

WHEREAS, the the CPC adopted resolutions approving the Applications on
[], under Calendar Numbers [] (the "CPC Actions"); and

WHEREAS, the New York City Council adopted resolutions approving the CPC Actions on [_____], under Calendar Numbers [_____] (the “Approvals”); and

WHEREAS, an environmental assessment and supplemental technical memorandum (CEQR #11DCP120M) (as supplemented by the technical memorandum, the “EAS”) were prepared in connection with the Applications pursuant to the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”); and

WHEREAS, as part of its assessment of the potential impacts on historic resources that may be caused by the proposed action set forth in the Application and described in the EAS, the CPC, as lead agency, reviewed a conceptual design for the Tenth Avenue Project (as hereinafter defined) prepared by Studios Architecture, as shown in the drawings attached hereto as Exhibit D (the “Concept Plan”); and

WHEREAS, this Declaration is for the purpose of ensuring that the design of the Tenth Avenue Project is substantially consistent with the Concept Plan in terms of certain architectural elements as more fully elaborated below in paragraph 1(b), (as so elaborated, the “Design Features”), or, if substantially different, is unlikely to cause a significant adverse impact on historic resources; and

WHEREAS, this Declaration is also for the purpose of setting forth additional provisions relating to the existing masonry walls of the existing building complex and preservation of certain features of the existing building complex, such provisions to be included in this Declaration as provided under Paragraph (a)(1)(ii) of Appendix F to Chapter 8, Article IX of the Zoning Resolution;

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the environment and the value and desirability of the Subject Property and which shall run with the land and inure to the benefit of the City of New York (the “City”), binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. Consistency Review of the Tenth Avenue Project. In the event that the Declarant requests certification of the Chairperson of CPC (the “Chairperson”) as described in paragraph (a) of Section 98-25 of the Zoning Resolution with respect to a development or enlargement (as each such term is defined in Section 12-10 of the Zoning Resolution) to be located within the Tenth Avenue Zone described in Section 98-423(g)(iii) of the Zoning Resolution (such development or enlargement, the “Tenth Avenue Project”), then the satisfaction of the following additional procedures shall be required prior to the issuance by the New York City Department of Buildings (“DOB”) of a building permit for the Tenth Avenue Project:

a. Declarant shall submit to the Chairperson design plans for the Tenth Avenue Project showing equivalent detail of the Tenth Avenue Project as in the Concept Plan (the “Submitted Plans”).

- a. Within thirty (30) days of the submission of the Submitted Plans, the Chairperson shall review the same and shall either: (i) issue a determination that the Submitted Plans are substantially consistent with the Concept Plan with respect to the Design Elements (the “Chairperson Approval”); or (ii) notify Declarant in writing (the “Chairperson Disapproval”) the manner in which the Submitted Plans are substantially inconsistent with the Concept Plan with respect to the Design Features. As used herein, the term “Design Features shall mean: (i) massing, setback of facades, use of masonry, terra cotta and glazing, including the recess at the first floor of the addition; (ii) use of structural elements to provide depth to the windows in the primary volume; and (iii) reference to the vertical treatment of the primary volume to reflect the location of the piers of the original building on the Subject Property.
 - b. In the event of the issuance of a Chairperson Disapproval, then the Declarant shall submit revised Submitted Plans, which the Chairperson shall review within thirty (30) days in accordance with the foregoing paragraph (1)(b).
 - c. In addition to any requirements under the Zoning Resolution, the Declarant shall not accept a building permit for the Tenth Avenue Project until the Chairperson issues a Chairperson Approval.
2. Other. Declarant agrees ~~that the~~ to the following preservation requirements with respect to the exterior of the building complex as existing as of October 25, 2012 (the “Existing Complex”):
- a. The existing exterior masonry walls of the existing building complex Existing Complex shall not be removed other than to allow for changes to window patterns and (i) changes to windows, subject to the terms and restrictions set forth in subparagraphs (c) and (d) of this Paragraph, and (ii) the introduction of ground floor frontages, as well as minor alterations. New features added to a facade in any restoration or alteration of any part of any such exterior wall above the ground floor shall consist of masonry, terra cotta, or metal elements compatible with the colors and patterns of existing such elements. In the case of window additions or replacements, punched windows shall be used that will maintain a variety of fenestration patterns and styles in the complex and an appearance of a series of individual windows upon each masonry facade. In addition, Declarant agrees that it shall preserve the stairwell tower feature at the corner of Ninth Avenue and 15th Street and shall not demolish the streetbridges connecting the building complex with adjoining buildings, subject to any requirement of a governmental authority. The restrictions set forth in this Paragraph 2 shall not be construed as prohibiting the introduction of ground floor retail frontages, including retail windows, and awnings above entrances. _____ into _____ the _____ building _____ complex. _____, subject to the terms and restrictions set forth in subparagraphs (b) and (f) of this Paragraph.

- b. Any restoration or alteration of any part of the facade above the ground floor shall consist of masonry, terra cotta, or metal elements consistent with the colors and patterns of such existing elements. In the case of window additions or replacements, punched windows shall be used that will maintain a variety of fenestration patterns and styles in the Existing Complex and an appearance of a series of individual windows upon each masonry facade. Declarant shall not install or affix any new advertising signs (as defined in Section 12-10 of the New York City Zoning Resolution) to the Existing Complex and shall remove any existing advertising signage located on the 9th Avenue portion of the Existing Complex when development or enlargement in the 9th Avenue Zone commences and shall remove any existing advertising signage located on the 10th Avenue portion of the Existing Complex when the development or enlargement of the 10th Avenue Zone commences.
- c. Declarant shall preserve the existing masonry openings above the ground floor. In furtherance thereof, Declarant shall not make any alterations to the punched openings of the windows, except, if the existing sills are higher than 30 inches above the interior floor level, Declarant shall be permitted to lower the height of the sills no lower than such 30 inches above the interior floor level, provided such alteration shall result in a pattern substantially consistent with the window openings within the same building segment in the Existing Complex. If a sill is lowered, the terra cotta materials comprising the sill shall be replaced in kind. New window openings shall only be permitted to restore an opening that has been filled in or if it is otherwise consistent with the pattern, size and spacing of the nearby window opening within the same building segment of the Existing Complex, including those on the same floor.
- d. Any window replacements in the Existing Complex shall match the pattern and style of the adjoining windows in the same building segment, such as through the horizontal and vertical alignment of the mullions and the maintenance of glass in the same plane.
- e. Declarant shall preserve the stairwell tower feature at the corner of Ninth Avenue and 15th Street and shall not demolish the streetbridges connecting the Existing Complex with the adjoining buildings to the south and the west, subject to any requirement of a governmental authority.
- f. The restrictions set forth in this Paragraph 2 shall not be construed as prohibiting the introduction of ground floor retail frontages, including retail windows, and awnings above entrances, into the Existing Complex, provided that no existing primary piers separating a ground floor bay shall be removed. Further, in the portion of the Existing Complex facing West 15th Street and West 16th Street where the ground floor bays include existing punched windows, no more than one out of every three bays may be replaced with retail frontages.

- g. No later than each December 1, and each successive one-year anniversary thereafter, Declarant shall deliver a written report to a community advisory group composed of three members appointed by Manhattan Community Board 4, one person appointed by the City Council District 3 Councilmember and one person appointed by the Manhattan Borough President, describing any changes to the Existing Complex made or in the process of being made pursuant to this Paragraph 2.
3. Declarant Representations. Declarant represents and warrants with respect to the Subject Property that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property, nor any lien, encumbrance, obligation, or covenant of any kind preclude, presently or potentially, the imposition of the obligations, restrictions and agreements of this Declaration.
4. Interested Party. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.
6. Binding Effect. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.
7. Liability. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, subject to the following provisions:
- The City and any other party relying on this Declaration will look solely to the interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant, including its officers, managers, directors, members, agents and employees shall have no personal liability under this Declaration. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.
8. Limitations. The obligations, restrictions and agreements herein shall be binding on the Declarant only for the period during which the Declarant holds an interest in the Subject Property. The obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until

such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

9. Indemnity. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant.
10. Future Parties in Interest. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as exhibits and recorded in the Office of the County or City Register.
11. Effective Date. This Declaration and the provisions hereof shall become effective as of the date of execution of this Declaration; provided however, if the Approvals are at any time declared invalid or are otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken (or for which no appeal has been taken within the applicable statutory period allowing such appeal), then upon such entry of judgment (or the expiration of the applicable statutory appeal period), this Declaration shall be cancelled and of no further force and effect (and CPC shall, if requested by Declarant, execute an instrument in recordable form confirming the same). Within ten (10) business days of the date of this Declaration, Declarant shall submit this Declaration for recording or shall cause this Declaration to be submitted for recording in the Office of the County or City Register, where it will be indexed against the Subject Property. Declarant shall promptly deliver to the Department of City Planning ("DCP") proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to DCP as soon as a certified copy is available.
12. Amendments.
 - a. This Declaration may be amended or modified (other than pursuant to Paragraph 12(b) hereof) only upon application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public

body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor Declarant, except that the provisions of Paragraph 2 herein shall not be modified except pursuant to the provisions and requirements of Sections 197-c and 197-d of the New York City Charter.

- b. ~~Notwithstanding~~ Subject to the provisions of Paragraph 12(a), any change to this Declaration that the Chairperson deems to be a minor modification may be approved administratively by the Chairperson and no other approval or consent shall be required from any public body, private person or legal entity of any kind (other than Declarant), including, without limitation, any present or future Party-in-Interest. Minor modifications shall not be deemed amendments requiring the approval of the CPC.
- c. Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Paragraph 12(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.

13. Notices. Any submittals, requests, approvals, consents, or notices necessary or provided for under this Declaration shall be addressed as follows:

If to Declarant: Jamestown Premier Chelsea Market, L.P.
75 Ninth Avenue, 5th Floor, Suite A
New York, New York 10011

With a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Melanie Meyers

If to DCP or
CPC:

New York City Department of City Planning
22 Reade Street
New York, New York 10007
Attn: General Counsel

14. Miscellaneous.

- a. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.
- b. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.
- c. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.
- d. Nothing in this Declaration shall be construed as requiring the consent of the CPC, the City or any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease, assignment or grant of any present or contingent interest in the Subject Property.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

JAMESTOWN PREMIER CHELSEA
MARKET, L.P.

By: _____

Name:

Title:

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK)

) .ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A
DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B
CERTIFICATION OF PARTIES IN INTEREST

EXHIBIT C
PARTIES IN INTEREST WAIVER

**EXHIBIT D
THE CONCEPT PLAN**

(see attached)

Document comparison by Workshare Professional on Wednesday, October 24, 2012 5:55:06 PM

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