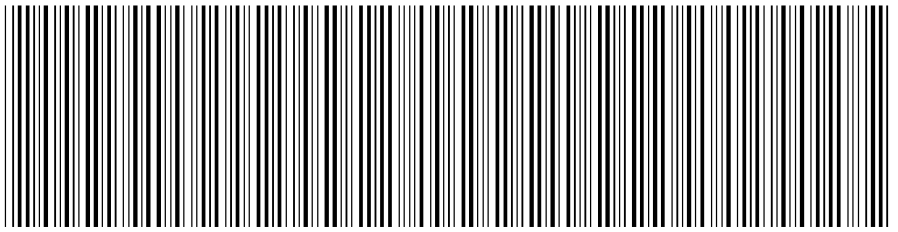


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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2016120100390005003E91DF

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 44

Document ID: 2016120100390005

Document Date: 11-30-2016

Preparation Date: 12-01-2016

Document Type: EASEMENT

Document Page Count: 42

PRESENTER:

FIDELITY NATIONAL TITLE INS. COMPANY
485 LEXINGTON AVENUE, 18TH FLOOR
NEW YORK, NY 10017
212-481-5858
kat.lam@fnf.com/ title no. 16-39016-NYM

RETURN TO:

FIDELITY NATIONAL TITLE INS. COMPANY
485 LEXINGTON AVENUE, 18TH FLOOR
NEW YORK, NY 10017

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	1333	49	Entire Lot	300-302 EAST 41ST STREET

Property Type: OTHER

Borough	Block	Lot	Unit	Address
MANHATTAN	1333	49	Entire Lot	762-766 2 AVENUE

Property Type: OTHER

Additional Properties on Continuation Page

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:

304-324 OWNERS CORP.
C/O TUDOR REALTY SERVICES CORP. , 250 PARK AVENUE SOUTH, 4TH FLOOR
NEW YORK , NY 10003

GRANTEE/BUYER:

TURKEN FOUNDATION, INC.
1441 BROADWAY, 3RD FLOOR, SUITE 3017
NEW YORK , NY 10018

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 250.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 100.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 45,602.00

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 12-05-2016 08:55

City Register File No.(CRFN):

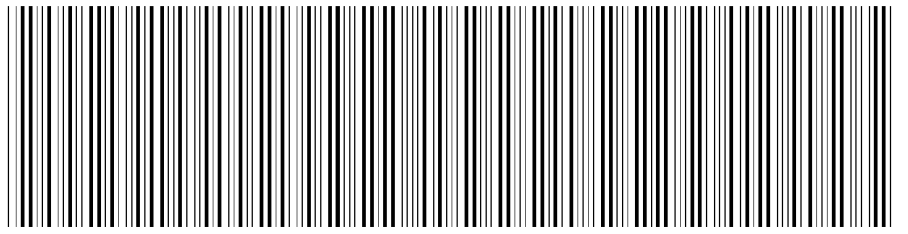
2016000426826



Annette Mc Hill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2016120100390005003C935F

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 44

Document ID: 2016120100390005
Document Type: EASEMENT

Document Date: 11-30-2016

Preparation Date: 12-01-2016

PROPERTY DATA

Borough	Block Lot	Unit	Address
MANHATTAN	1333 42 Entire Lot		304 EAST 41ST STREET

Property Type: OTHER

ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT

AGREEMENT made as of this 30th day of November, 2016 (this "**Agreement**"), by and between **304-324 Owners Corp.**, a New York corporation, having an address at c/o Tudor Realty Services Corp., 250 Park Avenue South, 4th Floor, New York, NY 10003 ("**Owner**"), and **Turken Foundation, Inc.**, a Delaware not-for-profit corporation, having an address at 141 Fifth Avenue, New York, New York 10010] ("**Developer**").

RECITALS:

A. Owner is the owner in fee title of certain land, with the buildings and improvements thereon, known as 304-324 East 41st Street and identified on the Tax Map of the City of New York, County of New York (the "**Tax Map**") as Block 1333, Lot 42, which is more particularly described in **Exhibit A** annexed hereto (said land being herein called "**Owner's Land**"; said buildings and improvements, together with any future replacements, additions or alterations thereto permitted pursuant to the provisions of this Agreement being referred to hereinafter collectively as "**Owner's Building**"; Owner's Land, Owner's Building and any and all buildings and improvements now or hereafter located on Owner's Land and/or any Additional Parcels (as hereinafter defined) being herein referred to collectively as "**Owner's Parcel**").

B. Developer is the owner in fee title of certain lands located at 302 East 41st Street and 762-766 Second Avenue (a/k/a 300 East 41st Street) and identified on the Tax Map as Block 1333, Lot 49, (f/k/a Lots 149 and 49) which is more particularly described in **Exhibit B** annexed hereto (said land being herein called "**Developer's Land**"; and said existing buildings and improvements thereon being herein referred to as "**Developer's Existing Building**").

C. Owner's Land and Developer's Land are contiguous along a shared property line for a distance of at least 10 linear feet.

D. Developer may desire in the future to enlarge Developer's Existing Building or demolish Developer's Existing Building and construct a new building or buildings on a development site comprising all or a portion of Developer's Land and/or any Additional Parcels (as hereinafter defined) and to construct other improvements associated with such new building or buildings (said enlargement or new building or buildings and improvements, together with any further replacements thereof or additions thereto not prohibited by the provisions of this Agreement, being herein referred to collectively as the "**New Building**"; Developer's Existing Building, the New Building and any and all building and improvements now or hereafter located on Developer's Land and/or any Additional Parcels being herein referred to collectively as "**Developer's Parcel**") which New Building will contain more Development Rights than would be permitted on the Developer's Land if considered as a single zoning lot (as hereinafter defined) under the Zoning Resolution (as hereinafter defined).

E. To enable Developer to construct the New Building, Owner and Developer have taken advantage of the procedure authorized by the Zoning Resolution that permits them to merge their separate zoning lots into a single zoning lot (the "**Combined Zoning Lot**") and *inter alia* to effectuate the transfer of Development Rights from Owner's Land to Developer's Land.

F. To achieve these objectives, Owner and Developer wish to enter into this Agreement for the purpose of establishing and setting forth the rights and obligations of the Parties (hereafter defined) to this Agreement with respect to the Combined Zoning Lot, as the same may be further enlarged or subdivided pursuant to the terms of this Agreement, and wish to provide to the maximum extent possible for each to exercise its rights in the future without having to seek any consent, approval or action from the other.

NOW, THEREFORE, intending to be legally bound, and 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 hereto agree as follows:

ARTICLE I

DEFINITIONS; DECLARATION OF RESTRICTIONS

Section 1.1 As used in this Agreement:

(a) "Additional Development Rights" shall mean any Development Rights which are appurtenant to Additional Parcels, hereafter acquired by either Party.

(b) "Additional Parcels" shall mean any other property within Block 1333 that is contiguous to any portion of the Combined Zoning Lot for a minimum of ten (10) linear feet (or contiguous for a minimum of ten (10) linear feet within any other lot hereafter made part of the Combined Zoning Lot). All references to Additional Parcels shall be deemed to refer to any one Additional Parcel or any combination of such Additional Parcels that either Party may elect to include in the Combined Zoning Lot pursuant to this Agreement.

(c) "Building" shall mean Developer's Building or Owner's Building, as applicable.

(d) "Business Days" shall mean Mondays through Fridays, other than holidays observed by banks in the State of New York.

(e) "Bonus Development Rights" shall mean any bonus floor area and other development rights attributed to Owner's Parcel, Developer's Parcel, or the Combined Zoning Lot which may be or become available for inclusion in a building constructed thereon through the provision of an amenity or public benefit, either on or off the Combined Zoning Lot, in accordance with the provisions of the Zoning Resolution and approved by the City Agencies or any other Governmental Authority having jurisdiction in connection therewith.

(f) "City Agencies" shall mean the Board of Standards and Appeals of the City of New York, City Council of the City of New York, New York City Planning Commission, DOB, DCP, Department of Environmental Protection of the City of New York, Landmarks Preservation Commission of the City of New York, the Manhattan Borough President, the local Community Board and any other relevant or necessary agencies of the City of New York, or any successor entity to any of the foregoing.

(g) "Combined Zoning Lot" shall mean the combined zoning lot declared pursuant to the Declaration, which shall be comprised of the Owner's Land and Developer's Land, as such combined zoning lot may be further enlarged or subdivided pursuant to the terms of the Declaration and this Agreement.

(h) "DCP" shall mean the Department of City Planning of the City of New York or any successor entity thereto.

(i) "Declaration" shall mean that certain Declaration of Zoning Lot Restrictions executed by Owner and Developer declaring the creation of the Combined Zoning Lot, a copy of which is annexed hereto as Exhibit C.

(j) "Developer's Development Rights" shall mean, collectively, (i) the Development Rights appurtenant to the Developer's Land, (ii) the Excess Development Rights as shown on the Architect's Certificate prepared by Perkins and Will Architects, P.C. and dated November 30, 2016 (the "Architect's Certificate"), annexed hereto as Exhibit D and set forth on Exhibit E, (iii) any Additional Development Rights acquired by Developer, (iv) any Bonus Development Rights pertaining solely to Developer's Parcel as if it were separate from the Combined Zoning Lot or acquired by Developer, but specifically excluding any Bonus Development Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Owner's Parcel or Owner's activities thereon, and (v) any Upzoning Rights appurtenant to the Developer's Land as if it were separate from the Combined Zoning Lot that may become available to Developer's Land pursuant to Section 2.5(d), but specifically excluding any Upzoning Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Owner's Land.

(k) "Development Rights" shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop such zoning lot by erecting thereon a building or buildings with a total floor area determined by multiplying the area of the zoning lot by the basic maximum allowable floor area ratio for structures in the zoning district in which the zoning lot is located.

(l) "DOB" shall mean the Department of Buildings of the City of New York, or any successor entity thereto.

(m) "Excess Development Rights" shall mean 27,000 square feet of Development Rights, including the right to maintain any and all dwelling units appurtenant to the Owner's Land, in excess of the Retained Development Rights as confirmed in Exhibit D and set forth on Exhibit E.

(n) "Government Approval", with respect to either Parcel, shall mean any approval, consent, variance, certificate, permit or special permit issued by, or applied for, from any City Agency or Governmental Authority (including any zoning approval or variance, building permit, special permit or certificate of occupancy) relating to such Parcel or the use or operation thereof.

(o) "Governmental Authority" shall mean the City Agencies and the United States, the State of New York and/or any political subdivision of any of them, and/or any agency, department, commission, board or instrumentality of any of them.

(p) "Legal Requirements" or in the singular "Legal Requirement" shall mean any or, as the case may be, all applicable laws, statutes and ordinances (including codes, approvals, permits and zoning regulations and ordinances) and the orders, rules, regulations, interpretations, directives and requirements of any Governmental Authority, whether now or hereafter in effect.

(q) "Parcel" shall mean either Owner's Parcel or Developer's Parcel, as applicable.

(r) "Party" shall mean either Owner or Developer, as applicable, and their respective successors and assigns permitted pursuant to the terms of this Agreement.

(s) "Rebuilding" shall mean any construction, alteration, addition, reconstruction, replacement, repair or rebuilding of Owner's Building, the New Building or any other building hereafter constructed by either of the Parties on either of the Parcels pursuant to the terms of this Agreement, whether following a casualty or otherwise.

(t) "Retained Development Rights" shall mean, collectively, (i) the Development Rights appurtenant to the Owner's Land that are utilized by Owner's Building as of the date of this Agreement plus any Development Rights appurtenant to Owner's Land that are not included in the definition of Excess Development Rights, each as shown on the Architect's Certificate, annexed hereto as Exhibit D and set forth on Exhibit E, (ii) the right to maintain a maximum of 190 dwelling units within Owner's Building, (iii) any Additional Development Rights acquired by Owner (iv) any Bonus Development Rights pertaining solely to the Owner's Land as if it were separate from the Combined Zoning Lot or acquired by Owner, but specifically excluding any Bonus Development Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Developer's Parcel or Developer's activities thereon, and (v) any Upzoning Rights appurtenant to the Owner's Land as if it were separate from the Combined Zoning Lot that may become available to Owner's Land pursuant to Section 2.5(d), but specifically excluding any Upzoning Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Developer's Land.

(u) Intentionally Omitted.

(v) "Upzoning" shall mean any validly enacted amendment of the Zoning Resolution after the date of this Agreement increasing the maximum number of dwelling units or Development Rights appurtenant to the Combined Zoning Lot or any part thereof.

(w) "Upzoning Rights" shall mean any Development Rights that may become available to Owner's Land, Developer's Land, or the Combined Zoning Lot resulting from an Upzoning.

(x) "Violations" shall mean, collectively, any violation of the Zoning Resolution or any Legal Requirement in effect with respect to the Parcels or the Combined

Zoning Lot that is officially issued by any Governmental Authority and which would delay, hinder, or prevent issuance of a certificate of occupancy, building permit or any other permit or approval required by law to alter, repair, maintain, build or rebuild any building, on the Combined Zoning Lot.

(y) "Zoning Resolution" shall mean the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended to date, and as the same may hereafter be amended or restated from time to time.

(z) Undefined terms used in this Agreement which are defined in the Zoning Resolution – such as, without limitation, the terms "bulk," "dwelling unit," "height," "floor area," "floor area ratio," "non-conformance," "non-compliance," "party in interest," "use" and "zoning lot" – shall be defined and construed as those terms are defined in and construed pursuant to Section 12-10 of the Zoning Resolution.

Section 1.2 The Parties hereto have executed and delivered the Declaration, in accordance with the certain provisions set forth in the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution, which confirms and effectuates the intent of the Parties set forth in the Recitals to this Agreement to create the Combined Zoning Lot comprising the Owner's Land and Developer's Land.

Section 1.3 **NOTICE IS HEREBY GIVEN** that this Agreement imposes certain burdens upon the Owner's Parcel for the benefit of the Developer's Parcel by reducing the Development Rights available to the Owner's Parcel and creating certain easements for use, construction, and access that burden the Owner's Parcel for the benefit of the Developer's Parcel.

ARTICLE II

DEVELOPMENT AND USE OF THE COMBINED ZONING LOT

Section 2.1 Conveyance of Excess Development Rights. Owner hereby transfers, assigns and conveys to Developer the Excess Development Rights and consents to Developer's incorporation of the Excess Development Rights and any Additional Development Rights in the New Building and Developer's use of the Excess Development Rights and any Additional Development Rights in the development of Developer's Parcel. Developer shall be entitled to use Developer's Parcel and Developer's Development Rights for any use allowed to be located on Developer's Parcel under the Zoning Resolution.

Section 2.2 Lot Line Construction.

(a) Owner acknowledges that, subject to Legal Requirements, Developer shall have the right to build the New Building to any lot line of the Owner's Parcel contiguous to the Developer's Parcel, as such lot lines exist on the date of this Agreement and to maintain the New Building at such lot lines. Owner shall provide and maintain adequate flashing over any gap, seismic or otherwise, between the New Building and Owner's Building.

Section 2.3 Development Limitations on Owner's Parcel.

(a) Owner covenants and agrees that no Rebuilding of Owner's Building shall be made so as to (i) create a new, or increase any existing, non-conforming use or non-compliance with any requirement of the Zoning Resolution or any other Legal Requirements in effect at the time of such Rebuilding that would delay, hinder or prevent Developer from obtaining or maintaining a building permit or certificate of occupancy for the New Building, or would adversely affect Developer's right to construct, maintain, alter or occupy the New Building, (ii) utilize any of Developer's Development Rights, (iii) result in any Violations on the Combined Zoning Lot or (iv) violate any of the terms of this Agreement.

(b) Owner acknowledges that the owners of Additional Parcels, whether now a part of or which may hereafter be merged into the Combined Zoning Lot, may have reserved or retained certain Development Rights attributable to their properties, and Owner covenants and agrees not to (i) utilize, or attempt to utilize, on Owner's Parcel all or any portion of any such reserved or retained Development Rights or (ii) make any application to the DOB to incorporate all or any portion of any such Development Rights into Owner's Parcel. Such other owners shall be deemed to be third party beneficiaries of this Section 2.3(b) and may enforce the provisions contained herein, provided, however, that such owners of Additional Parcels shall have no right to enter on the Owner's Parcel.

(c) Owner covenants and agrees not to create or permit to exist any Violation with respect to the Owner's Parcel.

Section 2.4 Development Limitations on Developer's Parcel.

(a) Developer acknowledges and agrees that Owner shall retain all rights in and to the Retained Development Rights and all other rights pertaining to Owner's Building and Owner's Parcel, subject to the express limitations imposed by this Agreement, and Developer shall have no rights with respect to any of the Retained Development Rights.

(b) Developer covenants and agrees that no development or Rebuilding of the New Building shall be made so as to (i) create a new, or increase any existing, non-conforming use or non-compliance with any requirement of the Zoning Resolution or any other Legal Requirements in effect at the time of such development or Rebuilding that would delay, hinder or prevent Owner from obtaining or maintaining a building permit or certificate of occupancy for the Owner's Building, or would adversely affect Owner's right to maintain, alter or occupy Owner's Building, (ii) utilize any Retained Development Rights, (iii) result in any Violations on the Combined Zoning Lot or (iv) violate any of the terms of this Agreement.

(c) Developer acknowledges that the owners of Additional Parcels, whether now a part of or which may hereafter be merged into the Combined Zoning Lot, may have reserved or retained certain Development Rights attributable to their properties, and Developer covenants and agrees not to (i) utilize, or attempt to utilize, on Developer's Parcel all or any portion of any such reserved or retained Development Rights or (ii) make any application to the DOB to incorporate all or any portion of any such Development Rights into Developer's Parcel. Such other owners shall be deemed to be third party beneficiaries of this Section 2.4(c) and may

enforce the provisions contained herein, provided, however, that such owners of Additional Parcels shall have no right to enter on the Developer's Parcel.

(d) Developer covenants and agrees not to permit to exist a Violation with respect to the Developer's Parcel.

Section 2.5 Downzoning; Upzoning.

(a) If, following a validly enacted amendment of the Zoning Resolution reducing the floor area ratio of all or any portion of the Combined Zoning Lot (a "**Downzoning**"), only one of the buildings on the portion of the Combined Zoning Lot affected by such Downzoning suffers a casualty, and such building cannot be restored to its former bulk pursuant to the provisions of the Zoning Resolution relating to damage or destruction, then any Rebuilding of such building shall be limited to an amount of Development Rights allocated to the Parcel on which such building was located on the date of this Agreement (considered as if such Parcel were a separate zoning lot) which would not reduce or otherwise adversely affect the Development Rights incorporated into or allocated pursuant to this Agreement to the other building on the Combined Zoning Lot which did not suffer any casualty.

(b) If, following a Downzoning, both buildings on the Combined Zoning Lot suffer a casualty and such buildings cannot be lawfully restored to such buildings' former bulk pursuant to the provisions of the Zoning Resolution relating to damage or destruction, then, except as otherwise permitted by the provisions of the Zoning Resolution regulating the redevelopment of non-complying buildings, any Rebuilding undertaken on the Combined Zoning Lot shall be limited by such Downzoning such that each affected premises shall be entitled to its pro rata share of the Development Rights available in accordance with Exhibit E hereto. In the event that that the Combined Zoning Lot has been enlarged or subdivided in accordance with the terms of this Agreement prior to such Downzoning and Exhibit E does not represent the totality of the Development Rights available on the Combined Zoning Lot, each Party's pro rata share of the Development Rights shall be determined by the ratio of the Retained Development Rights or the Developer's Development Rights, as the case may be (as adjusted to subtract or add any Additional Development Rights, available to such Party on the Combined Zoning Lot as the result of an enlargement or subdivision), to the total Development Rights available on the Combined Zoning Lot prior to the Downzoning.

(c) If, following a Downzoning, more than one but less than all of the buildings on the Combined Zoning Lot suffer a casualty and such buildings cannot be lawfully restored to such buildings' former bulk pursuant to the provisions of the Zoning Resolution relating to damage or destruction, then, except as otherwise permitted by the provisions of the Zoning Resolution regulating the redevelopment of non-complying buildings, any Rebuilding undertaken on the Combined Zoning Lot shall be limited by such Downzoning such that each Parcel affected by the casualty shall be entitled to its pro rata share of total Development Rights available as of the date hereof to all of the Parcels affected by the casualty, after taking into account the Development Rights allocated (in accordance with Exhibit E hereto) to any buildings remaining on the Combined Zoning Lot following such casualty. In the event that that the Combined Zoning Lot has been enlarged or subdivided in accordance with the terms of this Agreement prior to such Downzoning and Exhibit E does not represent the totality of the

Development Rights available to the affected Parcel, each Party's pro rata share of the Development Rights shall be determined by the ratio of the Retained Development Rights or Developer's Development Rights, as the case may be (as adjusted to subtract or add any Development Rights available to such Party on the Combined Zoning Lot as the result of the enlargement or subdivision) to the total Development Rights available to all of the Parcels affected by the casualty prior to the Downzoning, after taking into account the Development Rights attributable to any buildings remaining on the Combined Zoning Lot following such casualty.

(d) If an Upzoning increases the Development Rights, including the right to maintain dwelling units, ascribable to all or a portion of the Combined Zoning Lot, Developer is entitled to the Upzoning Rights appurtenant to Developer's Land, as if it were separate from the Combined Zoning Lot, that may become available to Developer's Land, but specifically excluding any Upzoning Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Owner's Land and Owner is entitled to the Upzoning Rights appurtenant to Owner's Land, as if it were separate from the Combined Zoning Lot, that may become available to Owner's Land, but specifically excluding any Upzoning Rights appurtenant to the Combined Zoning Lot that accrue from, or arise out of, Developer's Land.

(e) In the event or as a result of a Downzoning or Upzoning of the Combined Zoning Lot resulting in Exhibit E inaccurately representing the totality of the Development Rights available to the Combined Zoning Lot, the Parties each agree upon request to modify and record Exhibit E to reflect the totality of the Development Rights then available to the Combined Zoning Lot due to such Downzoning or Upzoning of the Combined Zoning Lot.

Section 2.6 Cooperation. Pursuant to the Declaration, Owner and Developer have consented to the creation of the Combined Zoning Lot. Owner and Developer agree that, subject to Section 2.5 hereof, Developer may incorporate into Developer's Building all of the Excess Development Rights, and otherwise utilize the Excess Development Rights at any time hereafter to develop the Developer's Parcel or any Additional Parcels pursuant to this Agreement. Except as otherwise provided in Section 2.5 hereof, (i) Owner shall retain all rights in and to the Retained Development Rights; (ii) Developer shall retain all rights in and to Developer's Development Rights, and (iii) consistent with the rights of the Parties, each Party to this Agreement covenants and agrees to reasonably cooperate with each of the other Parties in the utilization of such other Party's rights under this Agreement, and to take all commercially reasonable steps requested by any Party which seeks to implement development or redevelopment of its Parcel and, in furtherance thereof, covenants that:

(a) In order to enable Developer to use any or all of Developer's Development Rights, including, without limitation, the Excess Development Rights and any Additional Development Rights acquired by Developer, on Developer's Parcel, provided that such use is consistent with this Agreement and will not result in a violation of any of the terms hereof, Owner shall cooperate with Developer, at Developer's sole cost and expense, in connection with the utilization of Developer's Development Rights and the incorporation of any or all of the same into the New Building or a Rebuilding thereof, including, without limitation, the prosecution of all zoning applications, approvals, certifications, authorizations, permits, variances, special permits or modifications thereof or other land use approvals of any Governmental Authorities

requested by Developer relating thereto, any application by Developer to increase or decrease the size of the Combined Zoning Lot, or any application to Governmental Authorities to permit the use of any or all of Developer's Development Rights on Developer's Parcel, subject to the provisions of this Agreement. Developer shall have the right at any time to make application(s) in its own name, unless otherwise required, to any Governmental Authority for such licenses, permits, approvals, certificates of occupancy or other certificates, rulings, variances, certifications, special permits or amendments, as shall be required or desired by Developer (i) as a condition to, or to implement the transfer or utilization by Developer of, any or all of the Excess Development Rights or any Additional Development Rights acquired by Developer, including a building permit or permits for the construction of the New Building or a Rebuilding thereof allowing utilization of any or all of such rights, (ii) to waive, modify, amend or alter any provisions of the Zoning Resolution conditioning or affecting Developer's ability to transfer or use the Excess Development Rights or any Additional Development Rights acquired by Developer, (iii) in connection with any development, reconfiguration or other construction of or changes to the New Building or Rebuilding thereof, including, without limitation, any change of use or operation, and (iv) in connection with the submission of Developer's Parcel to condominium ownership (all of the foregoing, collectively, "**Developer's Approvals**" and each a "**Developer's Approval**"), provided that any such Developer's Approval shall not impose any obligation, restriction, or requirement on Owner, Owner's Parcel, Owner's Building, or the Retained Development Rights except as contemplated by this Agreement and shall not result in a violation of this Agreement or the Zoning Resolution.

(b) Developer agrees, if required by the DOB, to cause the certificate of occupancy for Owner's Building to be amended solely for the purpose of indicating the existence of the Combined Zoning Lot, but shall have no obligation to obtain a new certificate of occupancy reflecting the current legal use of Owner's Building or to perform any work on Owner's Building for the purpose of placing it in compliance with law, which shall be and remain Owner's sole obligation. The application therefor shall be prepared by Developer at Developer's sole cost and expense (including, but not limited to, reasonable attorneys' and other professionals' fees and expenses), and shall be forwarded to Owner for Owner's review and execution (if execution by Owner is required by any Governmental Authority). Developer shall pay any permit or application fee imposed on such application. In the event that Owner shall not have executed and delivered, or caused to have executed and delivered, within ten (10) Business Days after demand therefor, any such applications, then Developer shall have the right, after giving five (5) Business Days additional notice to Owner, to execute such applications for, on behalf of, and as attorney-in-fact for Owner. In furtherance of the foregoing, Owner hereby irrevocably appoints Developer as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all such consents, documents or applications. The powers herein granted are irrevocable.

(c) Owner agrees, at Developer's sole cost and expense, to cooperate with Developer in connection with the filing and prosecution of applications for any Developer's Approvals by giving all necessary consents in connection with the filing and prosecution of applications for such Developer's Approvals, if requested, and promptly (and in any event within fifteen (15) Business Days of receipt) to execute and deliver such appropriate documents, restrictive declarations and applications (including, without limitation, a Plan Work Approval Application (Form PW1) and Form PW1A - Schedule A, all as promulgated by the DOB from

time to time) and to furnish such information within the possession or control of, or which can reasonably be obtained by, Owner as may be reasonably requested by Developer for pursuing and obtaining any such Developer's Approvals, and Developer shall reimburse to Owner any reasonable out-of-pocket expenses incurred by Owner (including, but not limited to, reasonable attorneys' and other professionals' fees and expenses), in connection therewith. In the event that Owner shall not have executed and delivered, or caused to have executed and delivered, within fifteen (15) Business Days after demand therefor, any of the consents, documents, restrictive declarations or applications which reference is made herein, then Developer shall have the right, after giving five (5) Business Days additional notice to Owner, to execute any such documents or instruments for, on behalf of, and as attorney-in-fact for Owner. In furtherance of the foregoing, Owner hereby irrevocably appoints Developer as its true and lawful attorney-in-fact, coupled with an interest, to execute on its behalf any and all such consents, documents, restrictive declarations or applications. The powers herein granted are irrevocable.

(d) In order to enable Owner to use the Retained Development Rights including, without limitation, any Additional Development Rights acquired by Owner, on Owner's Parcel, provided that such use is consistent with this Agreement and will not result in a violation of any of the terms hereof, Developer shall cooperate with Owner, at Owner's sole cost and expense, in connection with the utilization of the Retained Development Rights within the Owner's Building or a Rebuilding thereof, including, without limitation, the prosecution of all zoning applications, approvals, certifications, authorizations, permits, variances, special permits or modifications thereof or other land use approvals of any Governmental Authorities requested by Owner relating thereto, any application by Owner to increase or decrease the size of the Combined Zoning Lot, or any application to Governmental Authorities to permit the use of any or all of the Retained Development Rights on Owner's Parcel, subject to the provisions of this Agreement. Owner shall have the right at any time to make application in its own name, unless otherwise required, to any Governmental Authority for such licenses, permits, approvals, certificates of occupancy or other certificates, rulings, variances, certifications, special permits or amendments, as shall be required or desired by Owner (i) as a condition to, or to implement the transfer or utilization by Owner of, any or all of the Retained Development Rights or any Additional Development Rights acquired by Owner, including a building permit or permits for the Rebuilding of the Owner's Building allowing utilization of any or all of such rights, (ii) to waive, modify, amend or alter any provisions of the Zoning Resolution conditioning or affecting Owner's ability to transfer or use the Retained Development Rights or any Additional Development Rights acquired by Owner, (iii) in connection with any development, reconfiguration or other construction of or changes to the Owner's Building or Rebuilding thereof, including, without limitation, any change of use or operation, and (iv) in connection with the submission of Owner's Parcel to condominium ownership (all of the foregoing, collectively, "**Owner's Approvals**" and each an "**Owner's Approval**"), provided that any such Owner's Approval shall not impose any obligation, restriction, or requirement on Developer, Developer's Parcel, Developer's Building, or the Developer's Development Rights except as contemplated by this Agreement and shall not result in a violation of this Agreement or the Zoning Resolution.

(e) Developer agrees, at Owner's sole cost and expense, to cooperate with Owner in connection with the filing and prosecution of applications for any Owner's Approvals by giving all necessary consents in connection with the filing and prosecution of applications for such Owner's Approvals, if requested, and promptly (and in any event within fifteen (15)

Business Days of receipt) to execute and deliver such appropriate documents, restrictive declarations and applications (including, without limitation, a Plan Work Approval Application (Form PW1) and Form PW1A - Schedule A, all as promulgated by the DOB from time to time) and to furnish such information within the possession or control of, or which can reasonably be obtained by, Developer as may be reasonably requested by Owner for pursuing and obtaining any such Owner's Approvals, and Owner shall reimburse to Developer any reasonable out-of-pocket expenses incurred by Developer (including, but not limited to, reasonable attorneys' and other professionals' fees and expenses), in connection therewith. In the event that Developer shall not have executed and delivered, or caused to have executed and delivered, within fifteen (15) Business Days after demand therefor, any of the consents, documents, restrictive declarations or applications which reference is made herein, then Owner shall have the right, after giving five (5) Business Days additional notice to Developer, to execute any such documents or instruments for, on behalf of, and as attorney-in-fact for Developer. In furtherance of the foregoing, Developer hereby irrevocably appoints Owner as its true and lawful attorney-in-fact, coupled with an interest, to execute on its behalf any and all such consents, documents, restrictive declarations or applications. The powers herein granted are irrevocable.

Section 2.7

(a) Owner shall not voluntarily appear in opposition to Developer in any action or hearing brought, sought or defended by Developer before City Agencies or other Governmental Authority, arising out of or in connection with any zoning or variance applications relating to the New Building, a Rebuilding thereof or the Combined Zoning Lot or the incorporation therein of any or all of Developer's Development Rights, or any other application for or proceeding with respect to Developer's Approvals or the Developer's Development Rights that, in the sole judgment of Developer, affects or may affect the ability of Developer to construct the New Building or a Rebuilding thereof or to incorporate any or all of Developer's Development Rights into the New Building or other improvements on the Combined Zoning Lot, unless such Developer's Approval would result in or authorize a violation of this Agreement or adversely affect Developer's ability to construct, alter or rebuild the New Building and utilize and incorporate Developer's Development Rights in the New Building in any manner permitted by this Agreement.

(b) Developer shall not voluntarily appear in opposition to Owner in any action or hearing brought, sought or defended by Owner before City Agencies or other Governmental Authority, arising out of or in connection with any zoning or variance applications relating to the Owner's Building, a Rebuilding thereof or the Combined Zoning Lot or the incorporation therein of any or all of the Retained Development Rights, or any other application for or proceeding with respect to Owner's Approvals or the Retained Development Rights that, in the sole judgment of Owner, affects or may affect the ability of Owner to use or alter the Owner's Building or a Rebuilding thereof or to incorporate any or all of the Retained Development Rights into Owner's Building or other improvements on the Combined Zoning Lot, unless such Owner's Approval would result in or authorize a violation of this Agreement or adversely affect Owner's ability to construct, alter or rebuild Owner's Building and utilize and incorporate the Retained Development Rights in Owner's Building in any manner permitted by this Agreement.

Section 2.8 Each Party shall furnish the other Party, at least ten (10) Business Days prior to filing same with Governmental Authorities, with copies of all plans, applications and submissions to be made to the DOB or any other City Agencies or Governmental Authority relating to any proposed Rebuilding. The delivery of plans, applications and submissions pursuant to this Section 2.8 shall be made solely for purposes of the reviewing Party's verification that any such Rebuilding complies with the terms and conditions of this Agreement. Developer shall furnish to Owner, at least ten (10) Business Days prior to filing same, copies of all plans, applications and submissions made to the DOB or any other City Agencies or Governmental Authority relating to the New Building, including the most recent DOB-approved zoning calculations for the Developer's Parcel and/or Combined Zoning Lot.

Section 2.9 Separate Buildings. The Parties agree that all construction plans and specifications for, and applications for a certificate of occupancy or any building, alteration, demolition or other permits for any building on Owner's Parcel shall be separate and independent from those for any building on Developer's Parcel and vice versa and shall be filed with the DOB so as to obtain separate "new building" and "alteration" numbers, as appropriate, so long as permitted by applicable law.

Section 2.10 Violations. If at any time after the date hereof there exists any Violation with respect to either Party's Parcel that (i) would prevent or materially delay or hinder the issuance of any Government Approval with respect to the other Parcel, or (ii) would otherwise materially and adversely affect the use and operation of the other Parcel, then such Party (the "**Violation Party**") shall cure such Violation within thirty (30) days after receiving notice of the same from the other Party (or if the cure cannot with due diligence be completed within thirty (30) days, then the Violation Party shall commence the cure within such thirty (30) days and thereafter diligently prosecute the cure to completion). In the event the Violation Party does not comply with the immediately preceding sentence, then, without limiting any other rights or remedies available to the other Party on account thereof (at law or in equity or by statute, including the right to bring an action to compel the Violation Party to cure such Violation), the other Party (the "**Curing Party**") shall have the right (but not the obligation) to cure such Violation, at the expense and for the account of the Violation Party (and, if necessary, in the name of the Violation Party) and the Violation Party shall execute and deliver such documents as may be required in connection therewith. The Curing Party shall have a license permitting access to the Parcel of the Violation Party for the purposes of effecting such cure; provided, however, that (i) such access and cure (A) shall occur only after written notice to the Violation Party, (B) except in the event of an emergency, shall only occur at reasonable times, and (C) shall not unreasonably interfere with the use and operation of the other Parcel, (ii) the Curing Party shall indemnify and hold harmless the Violation Party from and against any and all claims, liabilities, damages, costs, losses and expenses resulting from any wrongful or negligent act or omission of the Curing Party (or any party engaged by it) occurring upon the Parcel of the Violation Party during the period of such access and cure and (iii) during the period of such access and cure, the Curing Party shall procure and maintain liability insurance, naming the Violation Party (and any mortgagee of the Parcel of the Violation Party of which the Curing Party has notice) as an additional insured, which insurance shall be customary in form and amount(s) based on the activities to be performed during such access and cure. The Violation Party shall, upon written demand, promptly reimburse the Curing Party all such sums of money expended by the Curing Party to cure or attempt to cure any Violation with respect to the Parcel

of the Violation Party (or to compel the Violation Party to cure any such Violation), together with interest thereon at the rate of ten percent (10%) per annum, from the date of such expenditure. Such reimbursable expenditures shall be limited to reasonable out-of-pocket expenses which are necessary to cure such Violation (or, as the case may be, to compel the Violation Party to cure such Violation), including reasonable attorneys' fees. Notwithstanding the foregoing, each party reserves the right to contest any Violation with respect to its Parcel by appropriate legal proceedings, provided, that (i) such proceedings are prosecuted diligently and in good faith, and (ii) any postponement or deferment of the cure of such Violation by reason of such contest shall not (x) prevent or materially delay or hinder the issuance of any Government Approval with respect to the other Parcel, or (y) would otherwise materially and adversely affect the use and operation of the other Parcel.

ARTICLE III

SUBDIVISION; ADDITIONAL DEVELOPMENT RIGHTS

Section 3.1 Subdivision. No party hereto shall have the right to subdivide the Combined Zoning Lot without the consent of the other Party, which consent shall not be unreasonably withheld, except that each Party shall be permitted to subdivide one or more tax lots within its Parcel, provided that all of such tax lots continue to be treated as part of the Combined Zoning Lot. Any Party that requests the consent of the other Party to the subdivision of the Combined Zoning Lot, pursuant to this Section 3.1, shall provide the other Party with: (i) a copy of the subdivision application, and (ii) the opinion of an architect licensed in New York State, familiar with New York City zoning requirements, addressed to both Parties, stating the zoning consequences of the subdivision and concluding that the subdivision will not diminish each Party's right to utilize its respective Development Rights, in the manner contemplated by the Declaration and this Agreement, and will not result in a new or increase any existing non-compliance. Provided that such subdivision does not violate any provision of this Agreement and does not modify Owner's or Developer's respective rights and obligations under this Agreement or in any manner limit, restrain, or interfere with either Parties' respective Parcels, Owner's utilization of the Retained Development Rights, or Developer's utilization of the Developer's Development Rights, each Party shall cooperate with the other in connection with any such subdivision, within ten (10) Business Days after receipt of a request for consent, and, if requested, shall execute such documents, consents or applications as may be reasonably requested in connection therewith, provided that the requesting Party shall pay any actual reasonable out-of-pocket fees and expenses incurred by the other Party (including, but not limited to, attorneys' and other professionals' fees and expenses) in connection therewith. In the event that either Party shall not have executed and delivered, or caused to have executed and delivered, within ten (10) Business Days after demand therefor, any of the consents, documents or applications herein referred to, then requesting Party shall have the right, after giving five (5) Business Days additional notice, to execute any such documents or instruments for, on behalf of, and as attorney-in-fact of the other Party. In furtherance of the foregoing, each Party hereby irrevocably appoints the other Party as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all such consents, documents or applications. The powers herein granted are irrevocable.

Section 3.2 Additional Parcels.

(a) Each Party shall have the right, from time to time, to enlarge the Combined Zoning Lot through the addition of Additional Parcels and the acquisition for use on Developer's Parcel or Owner's Parcel, as the case may be, of Additional Development Rights, provided that such enlargement does not prevent the use by Owner of the Retained Development Rights or Developer of the Developer's Development Rights, as applicable, in the manner contemplated by the Declaration and this Agreement. Upon execution of the Declaration, all present and future parties in interest to the Combined Zoning Lot, including Owner and Developer, will be deemed to have (i) consented to and waived objection to the enlargement of the Combined Zoning Lot covered by the Declaration to include one or more Additional Parcels, (ii) consented to or waived their respective right to declare that the Combined Zoning Lot and any Additional Parcels are to be treated as one zoning lot for the purpose and in accordance with the provisions of the Zoning Resolution, (iii) consented to or waived their right to execute, at that time or in the future, and subordinated their right to, the Declaration and any and all Declarations of Zoning Lot Restrictions and any and all modifications, amendments, additions, replacements, restatements or consolidations (each individually, an "Amendment", and collectively, "Amendments") thereof that are necessary to effectuate any such enlargement, provided that same do not modify Owner's or Developer's respective rights and obligations under this Agreement, (iv) consented to and subordinated their rights to this Agreement, (v) consented to and waived objection to the transfer of any Additional Development Rights to Owner's Parcel or Developer's Parcel, as the case may be, and/or the Combined Zoning Lot, (vi) consented, to, waived objection to, waived their right to execute, if any, and subordinated their respective interest to, any documents required by the Zoning Resolution in connection with the transfer of any Additional Development Rights to Owner's Parcel or Developer's Parcel, as the case may be, including without limitation any transfer and distribution documents, or notices of restriction required to be executed pursuant to any Approvals, and (vii) consented to and waived objection to any applications for Government Approvals, and any applications, agreements, declarations or documents or such other actions as may be required to effectuate the utilization of any Excess Development Rights or the transfer of any Additional Development Rights to Owner's Parcel or Developer's Parcel, as the case may be, provided that any such Amendment or Government Approval does not violate any provision of this Agreement and does not modify Owner's or Developer's respective rights and obligations under this Agreement or in any manner limit, restrain or interfere with either Parties' respective Parcels, Owner's utilization of the Retained Development Rights, or Developer's utilization of the Developer's Development Rights except as contemplated by the Declaration and this Agreement. Such consent, subordination and waiver shall be effective whether or not such parties sign such consent, subordination and waiver or the documents to which such consent, subordination and waiver apply. Each Party agrees that any zoning lot development and easement agreement ("ZLDA") executed after the date of this Agreement with respect to the Combined Zoning Lot shall provide that any owner of an Additional Parcel executing such ZLDA is not entitled to utilize any of the Retained Development Rights or the Developer's Development Rights, as the case may be, or create any Violation on such Additional Parcel with respect to any building on the Combined Zoning Lot. Each Party further agrees that said ZLDA shall provide that both Owner and Developer shall be a third party beneficiary of such covenants. Notwithstanding the foregoing, neither Party shall have any license to enter onto such Additional Parcel to effectuate a cure of any Violation unless such right is provided for in the ZLDA encumbering such Additional Parcel.

(b) When requested by a Party, the other Party shall, within ten (10) Business Days after such request, execute, acknowledge and deliver one or more Amendments to the Declaration and/or this Agreement, or execute a waiver of Declaration and subordination to this Agreement or Transfer of Development Rights, Notice of Restrictions, Restrictive Declarations or any other similar documents required by the Zoning Resolution, and shall execute acknowledge and deliver, or cause the execution, acknowledgement and delivery of, such other instruments as may reasonably be required, in each case for the purposes of such enlargement of the Combined Zoning Lot or the transfer and/or utilization of any Additional Development Rights and/or Bonus Development Rights, provided such request complies with the provisions of this Agreement. The Party requesting that any other Party hereto execute and deliver such documents or instruments (a) shall furnish such other Party with such documents as such other Party may reasonably require in order to be assured that the enlarging of the Combined Zoning Lot or the transfer and/or utilization of any Additional Development Rights and/or Bonus Development Rights, as applicable, is consistent with the terms of this Agreement and (b) shall pay any actual reasonable out-of-pocket fees and expenses incurred by such other Party (including, but not limited to, attorneys' and other professionals' fees and expenses) in connection with the review, execution, acknowledgement and delivery of the documents, and for any losses or liabilities suffered or incurred by such other Party as a result of the accuracy or inaccuracy of information which is included in any submissions or filings made or requested by requesting Party and which is not provided by such other Party to the requesting Party, pertaining to enlarging the Combined Zoning Lot or the transfer and/or utilization of any Additional Development Rights and/or Bonus Development Rights, as applicable, pursuant to this Section 3.2. In the event that a Party shall not have executed and delivered, or caused to have executed and delivered, within ten (10) Business Days after demand therefor, any of the documents to which reference is herein made, then the requesting Party shall have the right, after giving an additional (5) Business Days notice, to execute any such documents or instruments for, on behalf of, and as attorney-in-fact for the other Party. In furtherance of the foregoing, each Party hereby irrevocably appoints the other Party as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all such consents, documents or applications. The powers herein granted are irrevocable.

ARTICLE IV

CONSTRUCTION EASEMENTS; INSURANCE

Section 4.1 Owner hereby grants to Developer such temporary easements in and through the Owner's Parcel as and only for so long as may be reasonably required to permit the initial construction and any Rebuilding of the New Building (the "**Construction Easements**"), for the purpose of protecting the Owner's Parcel and facilitating the safe and timely construction of and necessary support for the New Building and any Rebuilding, and conducting a preconstruction survey on the following terms and conditions:

(a) No later than fifteen (15) Business Days, but no earlier than forty-five (45) Business Days, prior to Developer or agents and/or contractors hired by Developer commencing any demolition or excavation on the Developer Parcel which could reasonably be expected to have an effect on the structural integrity, physical condition or occupancy, of Owner's Building, Developer shall have caused, at Developer's sole cost and expense, a high quality, detailed pre-

construction survey to be made of the condition of Owner's Building, including any structures or equipment on the roof of Owner's Building (the "**Preconstruction Survey**"). Developer shall cause a copy of such Preconstruction Survey to be delivered to Owner no later than ten (10) Business Days prior to the foregoing described demolition or excavation. Developer agrees that the Preconstruction Survey shall be scheduled in consultation with Owner or its designated representative during normal business hours and that the agent and/or contractor hired or retained to perform the Preconstruction Survey shall have in full force and effect insurance coverage on commercially reasonable terms and in commercially reasonable amounts. Owner shall cooperate with Developer in the conduct of the Preconstruction Survey provided Developer has provided Owner with not less than five (5) Business Days written notice of intent to conduct the Preconstruction Survey.

(b) The Construction Easements shall be in effect during the initial construction of the New Building or any Rebuilding and shall include but not be limited to, to the extent required by law and good construction practice: (i) the attachment of foundation and building supports and shoring and bracing of Owner's Building, including underpinning of Owner's Building; (ii) the attachment of protective covering over the roof, facade and other portions of Owner's Building; (iii) the maintenance, repairing and replacement of such attachments; (iv) the erection of a construction fence and scaffold as required by the Construction Codes of the City of New York ("**Construction Codes**") and/or a sidewalk bridge as required by the Construction Codes in front of Owner's Parcel; (v) the operation of a crane over the roof of Owner's Building; and (vi) at Developer's sole cost and expense, the permanent relocation of pipes, shafts, ducts, chimneys, exhaust stacks, flues, fans, vents and other passive and/or mechanical ventilation systems located on the roof of Owner's Building (collectively, "**Stack Equipment**") to another portion of the roof of the Owner's Building and/or the roof of the New Building in order to comply with Legal Requirements, including those regarding the location of such Stack Equipment vis-a-vis operable windows and/or air intakes in the New Building.

(c) In addition to the licenses set forth in subsections (a) and (b) of this Section, Owner consents to, and grants to Developer a license for temporary projections and/or intrusions extending from the Developer Property into the air space over the improved or unimproved portions of the Owner Land which are reasonably required in connection with the construction or Rebuilding of the New Building, provided that such projections and/or intrusions (i) are not in violation of applicable law, (ii) do not unreasonably interfere with Owner's use and occupancy of the Owner Building, (iii) are removed promptly after completion of the New Building, and (iv) are made in accordance with the terms and requirements of this Agreement (including the requirements of this Section).

(d) Developer shall, at its sole cost and expense, take such standard and customary measures prior to and during construction of the Developer Building, as are reasonably necessary, in accordance with good construction practice, to ensure that the portion of the westerly façade of the Owner Building that may be exposed by the demolition of Developer's Existing Building and/or the construction of the Developer Building, shall not be adversely affected by water infiltration. After the completion of the construction of the New Building, Developer shall, at its sole cost and expense install flashing on the westerly façade of the Owner Building and on the easterly façade of the New Building, in accordance with good construction

practice, so as to maintain the condition of weather integrity of the exterior wall of the Owner Building existing on the date of this Agreement. After the initial installation of such flashing, Developer shall maintain, repair and replace such flashing as may be required from time to time.

Section 4.2 In respect of Developer's exercise of the Construction Easements, Developer shall (a) provide reasonable prior notice to Owner in advance of its exercise of each of the Construction Easements, provided, however, that once such notice has been given for the erection or removal of protective coverings (including scaffolding or a sidewalk shed), the installation of foundation and building supports, shoring or bracing, the operation of a crane or the relocation of Stack Equipment, use of the Construction Easement in question may continue from day to day during any hours in which construction is permitted pursuant to Legal Requirements until the work in question has been completed; and (b) comply with all requirements of the Construction Codes and all Legal Requirements and shall provide copies of any filings made with the DOB in respect to any protective measures required by law with respect to its exercise or use of the Construction Easements, within ten (10) days after approval of same by the DOB.

Section 4.3 With respect to the Construction Easement set forth in clause (b)(i) and (vi) of Section 4.1, Developer shall submit to Owner plans and specifications for the proposed shoring, bracing and/or underpinning of Owner's Building ("**Shoring Plans**"), the relocation of Stack Equipment ("**Relocation Plans**"), and rooftop protection and flashing (required by Section 4.1(d)) ("**Rooftop Plans**") for Owner's review and approval, and Developer shall pay any reasonable out-of-pocket costs and expenses incurred by Owner (including, but not limited to, reasonable attorney's and consultant's fees) in connection therewith. Owner shall, upon notice given to Developer within twenty (20) Business Days after its receipt of the initial Shoring Plans, Relocation Plans and Rooftop Plans (and within ten (10) Business Days after its receipt of any Shoring Plans, Relocation Plans and Rooftop Plans revised by Developer in response to any disapproval thereof by Owner) either approve or disapprove the Shoring Plans, Relocation Plans and Rooftop Plans. Owner shall not unreasonably withhold or delay such approval, provided that the proposed plans comply with the terms of this Article IV. Any notice of disapproval shall set forth with reasonable specificity the reasons for such disapproval. If (x) Owner fails either to approve or disapprove the Shoring Plans, Relocation Plans and Rooftop Plans within the time prescribed by this Section 4.3 and (y) such failure continues for five (5) Business Days after Developer gives Owner notice of such failure, then Owner shall be deemed to have approved the Shoring Plans, Relocation Plans and Rooftop Plans.

Section 4.4 Upon five (5) Business Days written notice from Developer, Owner shall grant Developer and/or Developer's contractor such entry upon and access to Owner's Parcel as such party shall reasonably request in connection with or for purposes of conducting the Preconstruction Survey, using the Construction Easements or complying with Legal Requirements.

Section 4.5 The Construction Easements granted herein shall be exercised (i) in a prompt, safe and efficient manner and so as not to otherwise materially interfere with the use, occupancy or enjoyment of Owner's Building; (ii) in a manner so as not to adversely affect the structural integrity or the operation of all mechanical systems in or on such building; (iii) taking such precautions as may be necessary or appropriate to prevent unnecessary damage to Owner's

Building, or to cause injury or harm to any person or personal property; (iv) in accordance with good construction practices and in a manner customary for improvements or work necessary to effectuate the Construction Easements.

Section 4.6 The grant of the Construction Easements hereunder is temporary only and shall endure for only so long as is required by law or, if not so required, as is reasonably necessary to substantially complete the construction or Rebuilding of the New Building, provided, in any event, that such construction or Rebuilding shall be deemed substantially complete upon the issuance of a certificate of occupancy by DOB respecting such construction or Rebuilding of the New Building.

Section 4.7 Developer shall, in connection with the construction of the New Building or any Rebuilding, alteration or enlargement thereof (including, without limitation, Developer and/or Developer's contractor access to Owner's Parcel in accordance with Section 4.4) (collectively, "**Construction**") indemnify and hold harmless and defend Owner and Owner's agents, servants and employees, or any other affiliate or party claiming under Owner, and Owner's successors and assigns (collectively "**Owner Parties**"), from and against any and all claims, liabilities, damages, cost, losses and expenses arising out of injury or damage to persons or property on Owner's Parcel caused by Construction or the exercise of the Construction Easements by Developer, its subcontractors and suppliers, or their agents, or employees, except to the extent arising out of the gross negligence or willful misconduct of any Owner Parties or any tenant or other occupant of Owner's Building.

Section 4.8 During construction of the New Building or any material Rebuilding thereof, Developer shall, at its sole cost and expense, obtain and at all times through completion of construction maintain or cause to be obtained and maintained general liability and property damage insurance policies, each having a limit of not less than Twenty-Five Million Dollars (\$25,000,000.00), such coverage to include personal injury, explosion, collapse and underground ("XCU") coverage, bodily injury, broad form property damage, operations hazard, independent contractor's coverage, contractual liability and products and completed operations liability, worker's compensation insurance in the amounts required by state law, and otherwise customary risks inherent in such work, which policies shall name Owner, as its interest may appear, on such policies as an additional insured. Prior to commencing work, Developer shall provide Owner with a standard form of certificate or other evidence of such insurance. The limits of such insurance shall not be or be construed as a limitation on Developer's liability under this Agreement.

Section 4.9 Developer shall obtain all necessary licenses, permits, approvals or variances to perform the construction or Rebuilding of the New Building which may be required by Legal Requirements and shall pay all fees in connection therewith. Owner shall cooperate with Developer in connection therewith, at Developer's expense, and shall sign any applications or other documents that require Owner's signature within five (5) Business Days after receipt of a request for such execution. In the event that Owner shall not have executed and delivered, or caused to have executed and delivered, within five (5) Business Days after demand therefor, any of the consents, documents or applications herein referred to, then Developer shall have the right, after giving five (5) Business Days additional notice to Owner, to execute any such documents or instruments for, on behalf of, and as attorney-in-fact for Owner. In furtherance of the foregoing,

Owner hereby irrevocably appoints Developer as its true and lawful attorney-in-fact, coupled with an interest, to execute any and all such consents, documents or applications. The powers herein granted are irrevocable.

Section 4.10 If the Construction shall require blasting, excavation, or other activities which would have the potential to create undue vibration or adversely affect Owner's Building, Developer shall, in addition to its other obligations under this Article IV, notify Owner in writing of the anticipated date of such work, such notice to be not less than ten (10) Business Days prior to the date is work is anticipated to commence.

Section 4.11 In the event of a casualty or condemnation affecting Owner's Building or for any other reason, Owner requires temporary easements in and through the Developer's Parcel to permit any Rebuilding of Owner's Building, for the purpose of protecting Developer's Parcel and facilitating the safe and timely construction of and necessary support for Owner's Building or any Rebuilding thereof, Developer shall grant to Owner, on the exact same terms (other than reversing the parties and their respective parcels and adjusting the insurance obligations under Section 4.8 such that the amount of XCU coverage is appropriate to the work contemplated under then existing market conditions), the same temporary easements and rights granted to Developer by this Article IV. Owner may exercise its rights under this Section 4.11 by providing Developer with written notice and a license agreement setting forth the terms of the access required by Owner for Developer's review and approval. Developer shall have 10 Business Days to review and approve Owner's license agreement, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.12 If either Developer or Owner shall seek to exercise its rights under this Article IV while Construction is occurring on the other Party's Parcel, any temporary easements granted by this Article IV shall not interfere with such Construction.

ARTICLE V

ESTOPPEL CERTIFICATES

Section 5.1 Whenever requested by a Party, the other Party shall within ten (10) Business Days thereafter furnish to the requesting Party a written certificate setting forth: (i) whether this Agreement is in full force and effect; (ii) the extent to which this Agreement has been assigned, modified or amended by any instrument, whether or not of record (and if it has, then stating the nature thereof); (iii) whether the other Party has served any written notice of default under this Agreement, which default remains uncured; (iv) that the certificate may be relied upon by the requesting Party; and (v) that, to the best of its knowledge, there exists no state of facts which, with the giving of notice, the passage of time, or both, would constitute a default by the requesting Party under this Agreement. Such certificate shall act as a waiver of any claim by the Party furnishing such certificate to the extent such claim is based upon facts which are contrary to those asserted in the certificate but only to the extent the claim is asserted against the named recipient of the certificate (including a bona fide encumbrancer or purchaser for value) without knowledge of facts contrary to those contained in the certificate and who has acted in reasonable reliance upon the certificate. Such certificate shall in no event subject the

Party furnishing it to any liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such Party to disclose correct or relevant information.

ARTICLE VI

REAL ESTATE TAXES; LIENS

Section 6.1 Owner and Developer agree that, for all purposes, including, without limitation, for real property tax purposes (but other than for the purpose of causing the Combined Zoning Lot and the transfer and allocation of the Development Rights), Owner's Parcel and Developer's Parcel shall be, and shall continue to be treated as, separate and independent lots, plots and parcels. Owner and Developer each expect that the assessed valuation of, and the taxes imposed against, Owner's Parcel and Developer's Parcel shall be determined on a basis which treats Owner's Parcel and Developer's Parcel as separate and independent tax lots and which incorporates within Developer's Parcel all Development Rights to which Developer is entitled under this Agreement and applicable law, including without limitation the Excess Development Rights, and which limits the Development Rights available to Owner's Parcel to the Retained Development Rights. Owner and Developer each agree to cooperate with the other and to take such action as shall be necessary, each at their own cost and expense, to insure that the appropriate taxing authority (i) continues to treat each Parcel as a separate and independent tax lot, and (ii) calculates the taxes due with respect to each Parcel in a manner which (A) incorporates the development and zoning rights to which Developer is entitled under this Agreement, as well as all of the buildings and other improvements from time to time constituting a part of Developer's Parcel, in the calculation of taxes due with respect to Developer's Parcel, and (B) excludes the same from the calculation of taxes due with respect to Owner's Parcel. In the event that Owner's Parcel and Developer's Parcel are not classified as separate tax lots, each Party agrees to execute such documents as may be required in support of the apportionment of such taxes in a manner which is consistent with the respective interests of the parties. Neither Party hereto shall object to, or otherwise oppose, Owner's Parcel and Developer's Parcel being treated as separate tax lots and neither Party shall be precluded from contesting tax assessments on its own property.

Section 6.2 Owner and Developer shall retain separate ownership of their respective properties, and nothing in this Agreement shall permit or authorize either Party to encumber or place a lien on the property of the other Party (except for the recording of the instruments, agreements and documents executed by Owner on the date hereof, any subsequent declarations of zoning lot restrictions and/or modifications, consolidations or restatements of the Declaration or such declarations executed by Owner and Developer on the date hereof and that expand the Combined Zoning Lot to include Additional Parcels, any waivers of rights to execute the same and any other instruments related thereto). If either Party shall breach the foregoing sentence, such Party shall, immediately upon demand, remove the encumbrance or lien at issue from the property of the other Party, and if such breaching Party shall fail so to remove such encumbrance or lien within sixty (60) days after such breaching Party's receipt of such written demand, then, in addition to the other Party's rights and remedies, the breaching Party shall indemnify and hold the other Party harmless from and against any and all actual out-of-pocket costs and expenses incurred by the other Party in connection therewith, including without limitation reasonable attorneys' fees and disbursements.

ARTICLE VII

REPRESENTATIONS AND COVENANTS

Section 7.1 Owner represents and warrants to, and covenants with, Developer that (a) Owner is seized of the Owner's Parcel in fee simple, (b) Owner has the right to enter into the Declaration and this Agreement, (c) the execution, delivery and performance of this Agreement and the Declaration by Owner does not violate the provisions of any mortgage or any other agreement or instrument to which Owner is a party or by which it is bound, and (d) any consideration received by Owner will be received subject to the provisions of Section 13 of the Lien Law.

Section 7.2 Developer represents and warrants to, and covenants with, Owner that (a) Developer is seized of the Developer's Parcel in fee simple (b) Developer has the right to enter into the Declaration and this Agreement and (c) the execution, delivery and performance of this Agreement and the Declaration by Developer does not violate the provisions of any mortgage or any other agreement or instrument to which Developer is a party or by which it is bound.

ARTICLE VIII

RETAINED OWNERSHIP

Section 8.1 The Parties hereto acknowledge and agree that this Agreement and the Declaration are intended solely to confirm the creation of the Combined Zoning Lot, to regulate the rights and obligations of the Parties hereto and to confirm the easements and restrictions upon Owner's Parcel and Developer's Parcel specifically set forth herein, and except as set forth herein, each Party hereto retains full ownership and control over its property. Developer and Owner further acknowledge and agree, that, except as otherwise expressly provided in this Agreement, nothing contained herein grants to the other Party the right or an easement of physical access upon or over its premises; including, without limitation, its respective property. Developer and Owner further covenant that, except as expressly provided herein, no portion of any building or other structure hereafter erected on their respective premises shall encroach upon the premises of the other Party. If any encroachment shall occur, it shall be removed by the Party who erected it at such Party's sole cost and expense upon written request of the other Party, and if a Party fails to commence such removal within a reasonable period of time after receipt of such request, the other Party shall have all legal and equitable remedies available with respect to such failure as set forth in Section 9.1 hereof.

ARTICLE IX

REMEDIES; LIMITATION OF LIABILITY

Section 9.1 (a) The Parties hereto acknowledge and agree that in the event of any breach or threatened breach of this Agreement by any Party, the nondefaulting Party shall have the right to any remedy available at law or equity, including, but not limited to, injunctive relief and specific performance, provided, however, neither Party shall have the right to terminate this

Agreement or the Declaration without the written consent of the other Party. If any Party incurs any legal fees or expenses arising from any other Party's default in the performance of that Party's obligations under this Agreement, such fees and expenses shall be payable to the nondefaulting Party upon rendition of a bill or statement to the other Party therefor.

(b) No breach by any Party to this Agreement shall have any effect on the treatment of the Combined Zoning Lot as one zoning lot for purposes of the Zoning Resolution and the Combined Zoning Lot shall be treated as one zoning lot.

Section 9.2 Notwithstanding anything to the contrary contained herein, each Party shall look only to the other Party's then estate in Owner's Parcel (or the proceeds thereof) or Developer's Parcel (or the proceeds thereof), as the case may be, for the satisfaction of their respective remedies for the collection of a judgment (or other judicial process) requiring the payment of money by the other Party in the event of any default by the other Party hereunder, and no other property or assets of the other Party or its principals, officers, directors, trustees, members and partners disclosed or undisclosed shall be subject to levy, execution or other enforcement procedure for the satisfaction of the first Party's remedies hereunder. However, notwithstanding the foregoing provisions of this section, Owner and Developer each reserve the right to the remedies of specific performance and injunction.

ARTICLE X

MISCELLANEOUS

Section 10.1 No Oral Agreements; Integration. Except as stated in this Agreement and the exhibits and schedules annexed hereto, this Agreement contains all the promises, agreements, conditions, inducements and understandings between the Parties relative to the matters stated herein and therein, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, expressed or implied, between the Parties other than as set forth herein and therein. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection herewith, other than with respect to any agreement between the Parties hereto either (i) executed and delivered simultaneously with this Agreement, and/or (ii) which, implicitly or explicitly, by its terms survives the execution of this Agreement and/or the closing thereof.

Section 10.2 Amendments. Except as expressly set forth herein, this Agreement may not be modified, amended or terminated except by an instrument in writing signed by the Parties.

Section 10.3 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in all respects in accordance with, the internal laws of the State of New York (without giving effect to New York's principles of conflicts of law).

(b) Each party hereby irrevocably submits to the exclusive jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan, City of New York over any suit, action or proceeding commenced by or on behalf of any party hereto arising out of, or

relating to, this Agreement. To the extent permitted by applicable law, Owner and Developer hereby waive trial by jury in any action or proceeding, and with respect to any claim asserted in any such action or proceeding, brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of Owner and Developer, any claim of injury or damage, or any emergency or other statutory remedy with respect thereto. Owner and Developer each hereby agree and consent that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New York State or Federal court sitting in the Borough of Manhattan, City of New York may be made by certified or registered mail, return receipt requested, directed to such party at the address indicated in Section 10.8 hereof, and service so made shall be complete three (3) days after the same shall have been mailed.

Section 10.4 Binding Effect. All of the grants, interests, covenants, agreements and conditions contained in this Agreement shall (a) run with the lands, buildings and improvements affected thereby and the Parties' respective interests therein; (b) subject to the provisions of this Agreement, inure to the benefit of and be binding upon each Party to this Agreement and such Party's successors and assigns; (c) to the extent Owner or Developer shall assign its respective rights to the holder of any present or future mortgages encumbering any of the properties affected by this Agreement or any interest therein, be enforceable by any such assignee after default under any such mortgage; (d) shall inure to the benefit of and be binding upon every party having any right, title or interest therein or any part thereof and the heirs, distributees, successors and assigns of any such party, and any mortgagee of such party which may become a "mortgagee-in-possession", a purchaser who acquires title to Developer's or Owner's Parcel through a foreclosure proceeding or a "deed in lieu of foreclosure" or their respective heirs, distributees, successors and assigns; and (e) shall inure to the benefit of and be binding upon any party who joins in an Amendment or similar instrument required by the Zoning Resolution to create, enlarge or subdivide the Combined Zoning Lot, or executes a waiver of their right to join in any such Amendment or similar instrument, and any such party's successors and assigns.

Section 10.5 Third Party Beneficiaries. No covenant or agreement contained herein shall inure to the benefit of any party, including, without limitation, any occupant of either Developer's Parcel or Owner's Parcel, other than to Owner and Developer, their respective heirs, distributees, successors and assigns, any mortgagee of either Developer's Parcel or Owner's Parcel which may become a "mortgagee-in-possession", a developer who acquires title to the Developer Parcel through a foreclosure proceeding or a "deed in lieu of foreclosure" or their respective heirs, distributees, successors and assigns, except as otherwise specifically provided herein.

Section 10.6 Captions; Headings. The captions, headings, titles, articles and sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 10.7 Exhibits and Schedules. Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.

Section 10.8 Notices. All notices and other communications hereunder shall be in writing, signed by the party giving the same or by its attorneys, and shall be deemed to have been

duly given if: (i) personally delivered with proof of delivery thereof, or (ii) delivered to an overnight delivery service with receipt for delivery, or (iii) deposited in the United States mail, postage prepaid, certified with return receipt requested, or (iv) transmitted by facsimile, provided that such facsimile transmission is confirmed within one Business Day thereafter in the manner set forth in either clause (i), (ii) or (iii) of this sentence; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof. Personal delivery to a party or to any officer, partner, member, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed to the respective parties as follows (or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt):

If to Owner:

304-324 Owners Corp.
c/o Tudor Realty Services Corp.
250 Park Avenue South, 4th Floor
New York, NY 10003

with a copy to:

Holland & Knight
31 West 52nd Street
New York, NY 10019
Attn: Paul J. Proulx, Esq.

If to Developer:

Turken Foundation, Inc.
1441 Broadway, 3rd Floor, Suite 3017
New York, NY 10018
Attn: Behram Turan

with a copy to:

Cozen O'Connor
277 Park Avenue
New York, New York 10172
Attn: William F. Davis, Esq.

Section 10.9 Mortgagee Notice. All notices, demands, consents, approvals, requests or other communications which may or must be given by any Party (the "**Notifying Party**") pursuant to, under or by virtue of this Agreement in the event of a default in performance hereunder, shall, in the event either Owner's Parcel or Developer's Parcel is encumbered by a mortgage (a "**Mortgage**"), also be sent to the mortgagee thereunder (the "**Mortgagee**"), provided the Notifying Party has been previously given notice that either Owner's Parcel or Developer's Parcel, as the case may be, is encumbered by a Mortgage and the address for notices to such Mortgagee. All notices under this Section 10.9 shall be given in the same manner as provided in Section 10.8 hereof. In the event that any notice shall be given by a Notifying Party of a Violation, a Mortgagee of Owner's Parcel or Developer's Parcel, as the case may be, shall have the same rights to remedy or cure such Violation as the Notifying Party, provided that such Mortgagee gives written notice of its intent to cure to the Notifying Party within five (5) Business Days after receipt of the Notice and cures or commences to cure prior to the taking of any action by the Notifying Party to cure or commence to cure the Violation.

Section 10.10 Further Assurances. Owner and Developer each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of the Declaration or this Agreement, or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the Party requesting such further assurances.

Section 10.11 Breach shall not Defeat Mortgage. A breach of any of the terms, conditions, covenants, or restrictions of this Agreement shall not defeat or render invalid the lien of any mortgage made for value which encumbers either Developer's Parcel or Owner's Parcel, but such terms, conditions, covenants or restrictions shall be binding upon and effective against any person who becomes an owner of either Developer's Parcel or Owner's Parcel by acquiring title thereto or any portion thereof by foreclosure, trustee's sale or otherwise.

Section 10.12 Non-Waiver of Performance. Any failure by a Party hereto (collectively and/or individually referred to herein as the "**Non-Waiving Party**") to insist upon the strict performance by the other Party hereto of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Non-Waiving Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance by the other Party of any and all of the provisions of this Agreement to be performed by the other Party.

Section 10.13 Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The terms "herein," "hereof," or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used unless a contrary intent is expressly set forth.

Section 10.14 Recording. Developer shall record this Agreement and the Declaration in the Office of the City Register for New York County.

Section 10.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all

of which taken together shall be construed as and shall constitute but one and the same instrument.

Section 10.16 Severability. If any term of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law, with the Parties hereto covenanting nonetheless to negotiate in good faith, in order to agree upon the terms of a mutually satisfactory provision to be substituted for the term or provision which is void or unenforceable.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first above written.

OWNER:

304-324 OWNERS CORP., a New York corporation

By: 

Name: Michael Moran
Title: President

DEVELOPER:

TURKEN FOUNDATION, INC., a Delaware not-for-profit corporation

By: _____

Name:
Title:

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK)
).ss.:
COUNTY OF New York)

On the 29th day of November in the year 2016 before me, the undersigned, personally appeared Michael Moran, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

PAUL J PROULX
Notary Public, State of New York
No. 02PR6110161
Qualified in Kings County
Commission Expires ~~May 24, 2017~~
2/20/20

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

On the ____ day of November in the year 2016 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first above written.

OWNER:

304-324 OWNERS CORP., a New York corporation

By: _____

Name:

Title:

DEVELOPER:

TURKEN FOUNDATION, INC., a Delaware not-for-profit corporation

By: Behram Turan

Name: Behram Turan

Title: Chairman

CERTIFICATE OF ACKNOWLEDGMENT

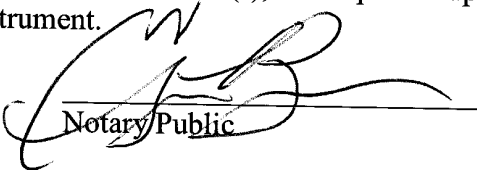
STATE OF NEW YORK)
).ss.:
COUNTY OF _____)

On the ____ day of November in the year 2016 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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

On the 30th day of November in the year 2016 before me, the undersigned, personally appeared Behram Turan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

ELIZABETH BENNETT
NOTARY PUBLIC-STATE OF NEW YORK
No 02BE6303740
Qualified in Kings County
My Commission Expires May 19, 2018

EXHIBIT A
Legal Description - Owner's Land

LOT 42

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 41st Street, distant 76 feet 3 inches easterly from the corner formed by the intersection of the said southerly side of 41st Street with the easterly side of Second Avenue;

RUNNING THENCE easterly along the said southerly side of 41st Street, 182 feet 5 inches;

THENCE southerly parallel with the easterly side of Second Avenue, 98 feet 9 inches;

THENCE westerly parallel with the southerly side of 41st Street, 79 feet 1/2 inch to the land formerly belonging to one Kip;

THENCE northwesterly along said land of Kip, 113 feet 3-1/4 inches;

THENCE northerly again parallel with the easterly aide of Second Avenue and part of the distance through a party wall, 52 feet 5-1/2 inches, more or less, to the southerly side of 41st Street at the point or place of BEGINNING.

EXHIBIT B
Legal Description - Developer's Land

Lot 49 (f/k/a Lots 49 and 149)

LOT 49

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the intersection of the Southerly side of 41st Street and the easterly side of 2nd Avenue;

RUNNING THENCE southerly along the Easterly side of 2nd Avenue 49 feet 4 ½ inches;

THENCE Easterly parallel with 41st Street 60 feet;

THENCE Northerly parallel with 2nd Avenue 49 feet 4 ½ inches to the southerly side of 41st Street;

THENCE Westerly along the Southerly side of 41st Street 60 feet to the point or place of BEGINNING.

LOT 149

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 41st Street distant 60 feet easterly from the southeasterly corner of 2nd Avenue and 41st Street;

RUNNING THENCE easterly along the southerly side of 41st Street 16 feet 3 inches;

THENCE southerly parallel with 2nd Avenue and thru the center line of a party wall between the said house and the house next easterly adjoining 52 feet 5-3/4 inches more or less to land formerly of Kip; (52 feet 6 ½ inches (calc.) per survey)

THENCE northwesterly along the last mentioned land 7 feet 6 inches more or less; (7 feet 9 inches 9(calc.) per survey)

THENCE westerly parallel with 41st Street 9 feet 2 inches;

THENCE northerly parallel with 2nd Avenue 49 feet 4-1/2 inches to the southerly side of 41st Street to the point or place of BEGINNING.

EXHIBIT C

DECLARATION OF ZONING LOT RESTRICTIONS

Follows immediately after

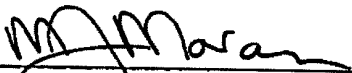
DECLARATION OF ZONING LOT RESTRICTIONS

302-324 OWNERS CORP., a New York corporation, having an address at c/o Tudor Realty Services Corp., 250 Park Avenue South, 4th Floor, New York, NY 10003 and **TURKEN FOUNDATION, INC.**, a Delaware not-for-profit corporation, having an address at 1441 Broadway, 3rd Floor, Suite 3017, New York, New York 10018 (collectively referred to hereinafter as the "**Declarants**") constituting the "parties in interest" (excepting those parties waiving their respective rights to join herein) as defined in Section 12-10(d) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time (the "Zoning Resolution"), with respect to Tax Lots 42 and 49 (f/k/a Lots 49 and 149) in Block 1333 on the Tax Map of the City of New York, County of New York (collectively, the "**Property**"), as more particularly described in the attached Exhibit A, do hereby declare that the Property is to be treated as one zoning lot for the purposes of and in accordance with the provisions of the aforementioned Zoning Resolution.

1. The Property is contiguous for more than ten (10) linear feet and are located within a single block.
2. This Declaration of Zoning Lot Restrictions shall run with the land affected hereby and shall be binding upon every party having any right, title or interest therein or any part thereof.
3. Reference is hereby made to a certain Zoning Lot Development and Easement Agreement, dated as of November 30, 2016, and which is intended to be submitted contemporaneously herewith for recording in the New York County Office of the Register of the City of New York, which sets forth certain rights and obligations of the parties with respect to the land affected hereby.
4. No breach by any party to this Declaration of Zoning Lot Restrictions, or any agreement ancillary hereto, shall have any effect on the treatment of the Property as one zoning lot for purposes of the Zoning Resolution, and the Property shall be treated as one zoning lot unless such zoning lot is subdivided in accordance with the provisions of the Zoning Resolution.
5. This Declaration of Zoning Lot Restrictions shall be recorded in the Conveyances Section of the Office of the City Register for New York County in accordance with the provisions of Section 12-10 of the Zoning Resolution.
6. This Declaration of Zoning Lot Restrictions may be executed in counterparts, but all counterparts shall constitute but one and the same document.

IN WITNESS WHEREOF, each of the Declarants has caused its respective duly authorized representative to execute and deliver this instrument as of this 30th day of November 2016.

302-324 OWNERS CORP., a New York corporation

By: 
Name: Michael Moran
Title: President

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

On the 29th day of November in the year 2016 before me, the undersigned, personally appeared Michael Moran, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

PAUL J PROULX
Notary Public, State of New York
No. 02PR6110161
Qualified in Kings County
Commission Expires ~~May 24, 20~~
7/20/20


Notary Public


[signature continues on following page]

TURKEN FOUNDATION, INC., a Delaware not-for-profit corporation

By: Behram Turan
Name: Behram Turan
Title: Chairman

STATE OF NEW YORK)
).ss.:
COUNTY OF New York)

On the 30th day of November in the year 2016 before me, the undersigned, personally appeared Behram Turan personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

ELIZABETH BENNETT
NOTARY PUBLIC-STATE OF NEW YORK
No 02BE6303740
Qualified in Kings County
My Commission Expires May 19, 2018

EXHIBIT A

LEGAL DESCRIPTION – BLOCK 1333, LOT 42

LOT 42

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 41st Street, distant 76 feet 3 inches easterly from the corner formed by the intersection of the said southerly side of 41st Street with the easterly side of Second Avenue,

RUNNING THENCE easterly along the said southerly side of 41st Street, 182 feet 5 inches,

THENCE southerly parallel with the easterly side of Second Avenue, 98 feet 9 inches,

THENCE westerly parallel with the southerly side of 41st Street, 79 feet 1/2 inch to the land formerly belonging to one Kip;

THENCE northwesterly along said land of Kip, 113 feet 3-1/4 inches;

THENCE northerly again parallel with the easterly side of Second Avenue and part of the distance through a party wall, 52 feet 5-1/2 inches, more or less, to the southerly side of 41st Street at the point or place of BEGINNING.

LEGAL DESCRIPTION – BLOCK 1333, LOT 49 (f/k/a Lots 49 & 149)

LOT 49

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the intersection of the Southerly side of 41st Street and the easterly side of 2nd Avenue;

RUNNING THENCE southerly along the Easterly side of 2nd Avenue 49 feet 4 ½ inches;

THENCE Easterly parallel with 41st Street 60 feet;

THENCE Northerly parallel with 2nd Avenue 49 feet 4 ½ inches to the southerly side of 41st Street;

THENCE Westerly along the Southerly side of 41st Street 60 feet to the point or place of BEGINNING.

LOT 149

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 41st Street distant 60 feet easterly from the southeasterly corner of 2nd Avenue and 41st Street;

RUNNING THENCE easterly along the southerly side of 41st Street 16 feet 3 inches;

THENCE southerly parallel with 2nd Avenue and thru the center line of a party wall between the said house and the house next easterly adjoining 52 feet 5-3/4 inches more or less to land formerly of Kip; (52 feet 6 ½ inches (calc.) per survey)

THENCE northwesterly along the last mentioned land 7 feet 6 inches more or less; (7 feet 9 inches 9(calc.) per survey)

THENCE westerly parallel with 41st Street 9 feet 2 inches;

THENCE northerly parallel with 2nd Avenue 49 feet 4-1/2 inches to the southerly side of 41st Street to the point or place of BEGINNING.

EXHIBIT D

ARCHITECT'S CERTIFICATE

Follows immediately after

PERKINS+WILL

ARCHITECT'S CERTIFICATE

TURKEN HOUSE, NEW YORK, NY - Block 1333, Lot 49 (f/k/a Lots 49 & 149)

The undersigned, an Architect licensed in the State of New York and a principal of the firm Perkins & Will Architects, P.C., hereby certifies to Turken Foundation, Inc. and 304-324 Owners Corp. that to the best of my knowledge and professional judgement:

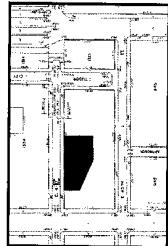
1. Our firm is engaged by Turken Foundation, Inc., the 'Owner' of New York, NY Block 1333, Lot 49 (f/k/a Lots 49 & 149) (the 'Premises') to prepare the zoning calculations and diagrams ('Zoning Calculations') pursuant to the New York City Zoning Resolution as updated on 10/27/2016 (the 'Zoning Resolution'), for the new building (the 'Building') to be constructed on the Premises. Our firm has no ownership interest in the Building or the Premises.
2. The Building will incorporate excess development rights up to the amount of 27,000 square feet of Floor Area, as defined in Section 12-10 of the Zoning Resolution (the 'Excess Development Rights') from New York, NY Block 1333, Lot 42, (the 'Development Rights Parcel') which the Owner intends to be combined into a single zoning lot with Lot 49.
3. The Premises is located in a C1-9 (R10 equivalent) zoning district and the Development Rights Parcel is located partially in a C1-9 zoning district and partially in an R10 zoning district. The transfer of the zoning floor area between an R10 parcel and a C1-9 parcel is permitted because the zoning districts are equivalent. The Premises are not located within an Historic District, but the Development Rights Parcel is located within the Tudor City Historic District.
4. The C1-9 zoning district permits commercial, community facility and residential use up to a base 'Floor Area Ratio' as that term is defined in Section 12-10 of the Zoning Resolution ('FAR'), of 10.0, of which a maximum of 2.0 FAR may be dedicated to commercial use and the balance to residential and community facility uses. The R10 zoning district permits residential and community facility use up to a base FAR of 10.
5. Based on the information in the attached survey provided by JLL, Owner's Representative for Turken Foundation, Inc. and prepared by New York City Land Surveyors, PC on November 7, 2016 (the 'Survey'), the Development Rights Parcel has a lot area of 15,625.28 square feet.
6. According to the Zoning Resolution, based on the applicable FAR, a building on the Development Rights Parcel may contain up to 156,252.8 square feet of Floor Area, excluding any bonuses.
7. According to the Survey, the existing buildings on the Development Rights Parcel include residential and community facility uses and utilize 127,505.5 square feet of Floor Area.
8. Therefore, we estimate conservatively, that 28,747 square feet of Floor Area (i.e. 156,252.8 square feet less 127,505.5 square feet) remain unused on the Development Rights Parcel and, thus, the Excess Development Rights are available for use in the Building.
9. The Zoning Calculations are in compliance with and conform to applicable codes in effect as of the date noted below, including, without limitation, those contained in the NYC Zoning Resolution, the Construction Codes of the City of New York, and the New York State Multiple Dwelling Law.

Date: Nov. 30th 2016

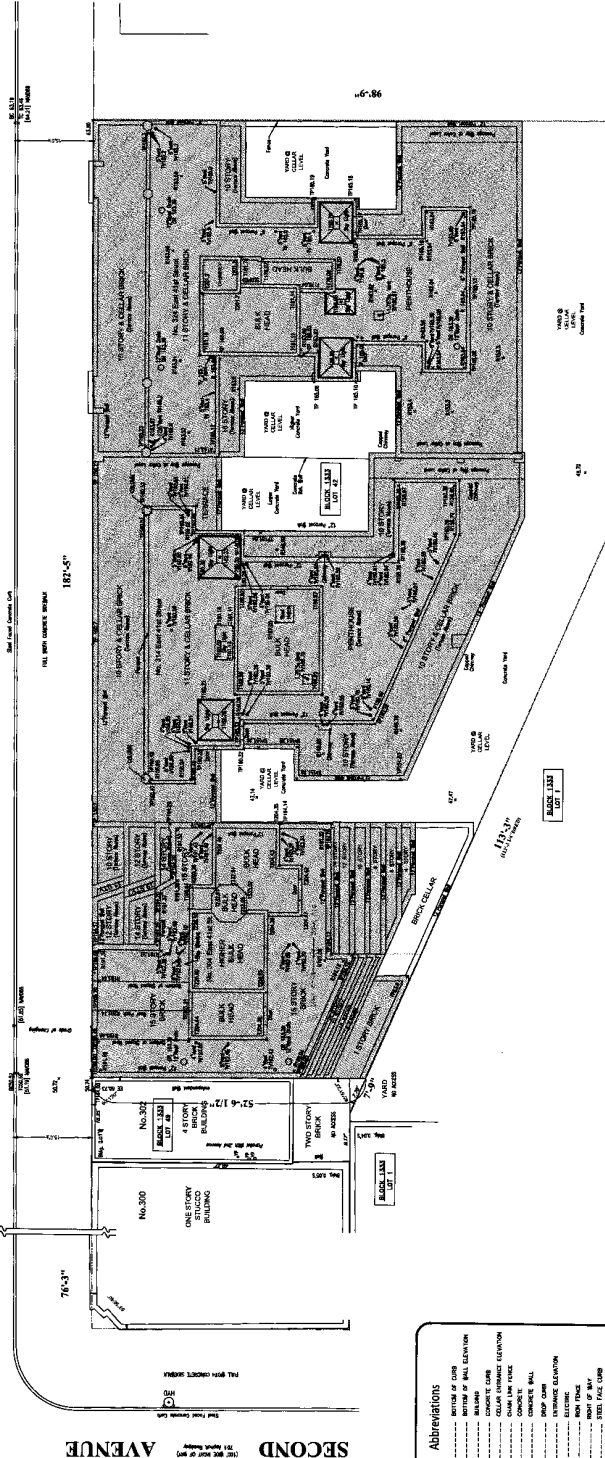
By: Robert W. Goodwin, FAIA



Vicinity Map



EAST 41ST STREET



79'-0" 1/2"

187'-5"

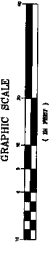
76'-3"

General Notes

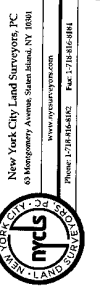
1. Unconditional approval of application is subject to compliance with all applicable laws, rules, regulations, codes, and standards.
2. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.
3. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.
4. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.
5. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.
6. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.
7. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.
8. The applicant shall be responsible for providing all necessary information and documentation required by the agencies.

Special Note:
THE FLOOR AREA CALCULATIONS PRESENTED IN THIS DOCUMENT ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE A GUARANTEE OF ACCURACY. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

Certified to:
• 20233 2nd Ave
• 20233 2nd Ave
• 20233 2nd Ave



prepared by:
Patrick Bennett Jones
New York State Licensed Land Surveyor
License No. 505824



FLOOR AREA CALCULATIONS

LOT AREA = 15,803.58 Sq. Feet

1ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
2ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
3RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
4TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
5TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
6TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
7TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
8TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
9TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
10TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
11TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
12TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
13TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
14TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
15TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
16TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
17TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
18TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
19TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
20TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
21ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
22ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
23RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
24TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
25TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
26TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
27TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
28TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
29TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
30TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
31ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
32ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
33RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
34TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
35TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
36TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
37TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
38TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
39TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
40TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
41ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
42ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
43RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
44TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
45TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
46TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
47TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
48TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
49TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
50TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
51ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
52ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
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60TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
61ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
62ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
63RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
64TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
65TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
66TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
67TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
68TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
69TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
70TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
71ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
72ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
73RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
74TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
75TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
76TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
77TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
78TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
79TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
80TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
81ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
82ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
83RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
84TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
85TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
86TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
87TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
88TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
89TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
90TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
91ST FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
92ND FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
93RD FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
94TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
95TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
96TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
97TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
98TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
99TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET
100TH FLOOR (RESIDENTIAL)	11,391.50 SQ. FEET

ZONING CALCULATIONS

Zoning Map: M2
Zoning District: C1.9.9, R1.9
Floor Area Ratio: 2.0
Yield: 1.0
Total Floor Area: 11,391.50 Sq. Feet
Net Floor Area: 127,095.5 Sq. Feet

240 Permitted (Residential) Community Facility (R1.9)
Lot Area: 15,803.58 Sq. Feet
Existing Building Net Floor Area: 127,095.5 Sq. Feet
*Available Air Rights remaining:
196,292.9 S.F. - 127,095.5 S.F. = 69,197.4 S.F.

*Available Air Rights remaining:
196,292.9 S.F. - 127,095.5 S.F. = 69,197.4 S.F.

EXHIBIT E

ALLOCATION OF DEVELOPMENT RIGHTS*

A. Floor Area Schedule

	Developer's Land	Owner's Land	Total
1. Lot Area	3,776 SF	15,625.28 SF	19,401.28 SF
2. Total Development Rights Generated by Lot Area	37,760 SF	156,252.8 SF	194,012.8 SF
3. Retained Development Rights	N/A	129,252.8 SF	N/A
4. Excess Development Rights	N/A	27,000 SF	N/A
5. Allocation of Development Rights After Transfer	64,760 SF	129,252.8 SF	194,012.8 SF
6. Pro Rata (%) Allocation of Development Rights After Transfer	33.4%	66.6%	100%

**B. Maximum Number of Dwelling Units Permitted on Owner's Land:
190 Dwelling Units**

* Excluding Bonus Development Rights. This Exhibit E shall be deemed modified to reflect any change in the amount of Development Rights in the Combined Zoning Lot at any time, whether such change is the result of the utilization of Bonus Development Rights, the acquisition of Additional Development Rights, the subdivision of the Combined Zoning Lot in accordance with the provisions of this Agreement, or any Upzoning or Downzoning of the Combined Zoning Lot.