

**RESTRICTIVE DECLARATION**

**NEW YORK COUNTY  
BLOCK 1277 – LOTS 20, 27, 46, 52**

**RECORD AND RETURN TO:**

**Fried Frank Harris Shriver & Jacobson, LLP  
One New York Plaza  
New York, New York 10004  
Attention: Stephen Lefkowitz, Esq.**

## RESTRICTIVE DECLARATION

**THIS RESTRICTIVE DECLARATION** (“**Declaration**”), made as of the 30th day of March, 2015, by Green 317 Madison LLC, 51E42 Owner LLC, SLG 48E43 LLC and SGL 331 Madison LLC, each a Delaware limited liability company having an address at c/o SL Green Realty Corp., 420 Lexington Avenue, New York, NY 10170 (collectively, the “**Declarant**”).

### WITNESSETH:

**WHEREAS**, the Declarant is fee owner of certain real property located in the Borough of Manhattan, City and State of New York, designated as Lots 20, 27, 46 and 52 of Block 1277 (the “**Subject Property**”) on the Tax Map of the City of New York, which is more particularly described in **Exhibit A** attached hereto;

**WHEREAS**, Declarant filed applications with the New York City Department of City Planning (“**DCP**”) for approval by the New York City Planning Commission (the “**Commission**”) of (a) a special permit pursuant to Section 81-635 of the Zoning Resolution (defined below) to allow the transfer of floor area from the New York City Landmark Bowery Savings Bank building to the Subject Property (C 150128 ZSM) (the “**Landmark Transfer Permit**”); (b) a special permit pursuant to Section 81-641 of the Zoning Resolution for an increase in the maximum floor area ratio pursuant to the Grand Central Public Realm Improvement Bonus (C 150129 ZSM) (the “**Public Realm Improvement Bonus**”); and (c) a special permit pursuant to Section 81-642 of the Zoning Resolution to allow, in conjunction with additional floor area granted pursuant to Section 81-641, modification of certain mandatory district plan elements, street wall, height and setback, and curb cut regulations (C 150130(A) ZSM) (collectively, the “**Special Permits**”);

**WHEREAS**, the Department of City Planning filed related applications for zoning text amendments (N 150127 ZRM) and a City Map amendment (C 140440 MMM) (the “**Related Actions**”);

**WHEREAS**, the Declarant intends to develop the Subject Property pursuant to the Special Permits with a new building utilizing approximately 1,299,390 square feet of zoning floor area, containing a mix of office, retail and amenity uses as set forth in the Building Drawings (defined below) (the “**Proposed Building**”), and to undertake extensive improvements to the pedestrian and mass transit circulation network in the vicinity of Grand Central Terminal;

**WHEREAS**, the Proposed Building would utilize 535,644.75 square feet of zoning floor area (approximately 12.37 FAR) (the “**Bonus Floor Area**”) pursuant to the Public Realm Improvement Bonus, and 114,050.25 square feet of zoning floor area (approximately 2.63 FAR) transferred from the New York City Landmark Bowery Savings Bank building pursuant to the Landmark Transfer Permit;

**WHEREAS**, as part of the application for the Public Realm Improvement Bonus, Declarant proposed public realm improvements to the portion of Vanderbilt Avenue between East 42nd Street and East 43rd Street (“**Public Place**”), and the New York City Department of Transportation (“**DOT**”) has issued the letter attached hereto as **Exhibit B** providing conceptual approval of the proposed improvements to the Public Place (“**DOT Letter**”);

**WHEREAS**, as part of the application for the Public Realm Improvement Bonus, Declarant has also proposed public realm improvements to the mass transit circulation network, and MTA (defined below) has issued the letter attached hereto as **Exhibit C** providing conceptual approval of the proposed improvements (“**MTA Letter**”);

**WHEREAS**, Section 81-641(c) of the Zoning Resolution requires applicants proposing off-site improvements to execute an agreement setting forth the obligations of the owner, its successors and assigns, to: (a) establish a process for design development and a preliminary construction schedule for the proposed public realm improvements; (b) construct the proposed improvements; (c) where applicable, establish a program for maintenance; (d) where applicable, establish a schedule of hours of public access for the proposed improvements; and (e) where the MTA, or any other City or State agencies with control of the areas of proposed improvements deem necessary, setting forth the obligations of the applicant to provide a performance bond or other security for completion of the improvements in a form acceptable to the MTA or any other such agencies;

**WHEREAS**, MTA and DOT have reviewed and approved the terms of this Declaration pertaining to the Transit Improvements (defined below) and Public Place, respectively;

**WHEREAS**, in connection with the Landmark Transfer Permit, a restrictive declaration dated November 15, 2010, was recorded in the Office of the City Registrar on December 20, 2010 (Document ID: 2010120800112001), which restricted the manner in which the Bowery Savings Bank building (Manhattan Block 1296, Lots 1001 to 1007) can be developed, maintained and operated now and in the future;

**WHEREAS**, the Commission conducted an environmental review of the Special Permits as lead agency pursuant to City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY§5-01 et seq. (“**CEQR**”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“**SEQRA**”), and issued a Notice of Completion of the Final Environmental Impact Statement (“**FEIS**”) on March 20, 2015;

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

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

**WHEREAS**, pursuant to the certificate(s) annexed hereto as **Exhibit D** (“**Certification of Parties-in-Interest**”), Fidelity National Title Insurance Company has certified that as of

February 11, 2015, Declarant is the sole “parties-in-interest” (as defined in subdivision (c) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution) (“**Parties-in-Interest**”; each, a “**Party-in-Interest**”), to the Subject Property;

**WHEREAS**, all Parties-in-Interest have executed this Declaration; and

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

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

## **ARTICLE I.**

### **CERTAIN DEFINITIONS**

#### **Section 1.01 Definitions.**

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

“**AASHTO**” shall mean the American Association of State Highway Transportation Officials.

“**Alternative Environmental Measures**” shall have the meaning set forth in Section 5.05(a) of this Declaration.

“**Areas of Condemnation**” shall mean those areas within the Grand Hyatt Hotel, described in **Exhibit E** that must be acquired by the MTA prior to commencement of the Condemnation-Related Improvements.

“**As-of-Right Building**” shall mean any building that can be developed and constructed on the Subject Premises without utilizing the Special Permits.

“**Bonus Floor Area**” shall have the meaning set forth in the Recitals of this Declaration.

“**Building Drawings**” shall have the meaning set forth in Section 2.01 of this Declaration.

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

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

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

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

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

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

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

**“Condemnation-Related Improvements”** shall mean those components of the Off-Site Improvements that Declarant shall perform following MTA acquisition of the Areas of Condemnation and performance of the Hyatt Preparatory Work as follows: Item Nos. 8, 21, 23 and 26 on Transit Improvement Drawings KP-2 and PN-2; Item Nos. 8, 9 and 25 on Transit Improvement Drawings KP-2 and PN-2; and Item No. 8 on Transit Improvement Drawings KP-1, KP2, PN-1 and PN-2.

**“CO Notice”** shall have the meaning set forth in Section 7.03 of this Declaration.

**“Construction Drawings”** shall have the meaning set forth in Section 3.02(b)(ii) of this Declaration.

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

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

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

**“Delay Notice”** shall have the meaning set forth in Section 9.04(a) of this Declaration.

**“Default Notice”** shall have the meaning set forth in Section 9.01(a) of this Declaration.

**“Denial Determination”** shall have the meaning set forth in Section 5.02(a)(iii)(1) of this Declaration.

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

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

**“Elimination or Modification of FEIS Obligation”** shall have the meaning set forth in Section 5.05(b) of this Declaration.

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

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

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

**“Grand Hyatt Hotel”** shall mean the Grand Hyatt New York, located at 109 East 42nd Street (Manhattan Tax Block 1280, Lot 30).

**“Hyatt Preparatory Work”** shall mean certain preparatory work including but not limited to the design and construction of structural modifications of existing structural elements to be completed by the MTA through design professionals and contractors retained by the MTA independent of any services required of Declarant.

**“Landmark Transfer Permit”** shall have the meaning set forth in the Recitals of this Declaration.

**“LEED”** shall mean the Leadership in Energy and Environmental Design rating system developed by the United State Green Building Council.

**“Letter of Concurrence”** shall have the meaning set forth in Section 4.04 of this Declaration.

**“Minimum Green Standard Certification”** shall have the meaning set forth in Section 5.02(a)(i) of this Declaration.

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

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

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

**“MTA”** shall mean the Metropolitan Transportation Authority, New York City Transit, or any successor to its jurisdiction.

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

**“Named Mortgagee”** shall have the meaning set forth in Section 10.01(d) of this Declaration.

**“Non-Bonus Floor Area”** shall mean the 763,745.25 square feet of floor area that is permitted by a combination of the as-of-right floor area and the floor area transferred by the Landmark Special Permit.

**“Notice”** shall have the meaning set forth in Section 10.01(a) of this Declaration.

**“Notice of Final Completion”** shall have the meaning set forth in Section 7.02 of this Declaration.

**“Notice of Substantial Completion”** shall have the meaning set forth in Section 7.01 of this Declaration.

**“On-Site Improvements”** shall have the meaning set forth in Section 2.01(a) of this Declaration.

**“Off-Site Improvements”** shall have the meaning set forth in Section 2.01(b) of this Declaration.

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

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

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

**“PDC”** shall have the meaning set forth in Section 4.03(b) of this Declaration.

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

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

**“Public Realm Improvement Bonus”** shall have the meaning set forth in the Recitals of this Declaration.

**“Public Realm Improvements”** shall mean the Transit Hall, Public Place and Transit Improvements.

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

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

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

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

**“Substantial Completion”** or **“Substantially Complete”** shall mean that the Public Realm Improvements have been constructed substantially in accordance with the Special Permits and may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed or (b) Declarant has not completed

any relevant planting or vegetation or tasks that must occur seasonally. A portion of the Public Realm Improvements shall be considered Substantially Complete where it has been certified as Substantially Complete by the MTA or DOT, as applicable.

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

**“Transit Hall”** shall mean the ground-level transit hall shown on Z-400 to Z-402 of the Building Drawings.

**“Transit Improvement Agreement”** shall have the meaning set forth in Section 3.02(a) of this Declaration.

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

**“Transit Improvements”** shall mean the On-Site Improvements and Off-Site Improvements respectively defined in Section 2.02(a) & (b) of this Declaration.

**“Uncontrollable Circumstances”** shall include the following elements: strike(s) or labor dispute(s); inability to obtain labor, equipment, supplies or materials or reasonable substitutes therefore in the open market; acts of God; governmental restrictions, regulations, omissions or controls; enemy or hostile government actions, war, hostilities, terrorism, explosion, invasion; civil commotion, riot, mob violence, malicious mischief, insurrection, revolution or sabotage; a lockout; a flood, earthquake, or fire (destruction due to any of the foregoing events in this paragraph hereinafter referred to as **“Casualty”**); inclement weather or field conditions of such a nature as to make performance or completion of the Public Realm Improvements not feasible; a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; governmental actions with respect to construction projects in the vicinity of the Public Realm Improvements that directly delay performance or completion of the Public Realm Improvements; disruptions in subway services that impact the timely delivery of materials for the Transit Improvements; inability to perform work due to transit related accidents including property damage, repairs as a result thereof or criminal investigations; inability to access the work area; inability to perform work during hours stipulated by MTA for such work due to conditions outside of Declarant’s control, including without limitation the unavailability of MTA force account personnel; the pendency of litigation not initiated by Declarant or similar proceeding which results in an injunction or restraining order or similar relief prohibiting or otherwise delaying the commencement or continuation of the obligations of Declarant pursuant to this Declaration, provided such litigation or proceeding was not instituted, financed or supported by Declarant or any of its affiliates; or other conditions similar in character to the foregoing which are beyond the control of Declarant. In addition, “Uncontrollable Circumstances” shall also include (i) material delays by the City, State or United States government, or any agency or instrumentality thereof, MTA, or any utility company, in the performance of any work or processing or approval of any applications, or comment on architectural and engineering plans within a reasonable time period following receipt of such plans, unless due to any act or failure to act by Declarant; (ii) denial to Declarant by any owner, ground lessee or franchisee of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any



agency of the City or State or any utility company having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property; and (iii) design changes required by MTA which result in a material delay. No event shall constitute Uncontrollable Circumstances unless (i) the event is not due to an act or failure to act of Declarant, (ii) Declarant complies with the procedures set forth in Section 9.04 hereof, and (iii) the Chair has certified the existence of Uncontrollable Circumstances in accordance with the provisions of Section 9.04 hereof or has failed to respond.

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

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

## ARTICLE II.

### DEVELOPMENT OF THE SUBJECT PROPERTY

**Section 2.01** The Proposed Building shall be constructed substantially in accordance with the locations, dimensions and specifications (except as provided in Section (c), below) as indicated on the following drawings prepared by Kohn Pedersen Fox Associates, annexed hereto as **Exhibit F** (collectively, the **“Building Drawings”**):

<u>Drawing Number</u>	<u>Title</u>	<u>Last Revision Date</u>
Z-102	ZONING CALCULATIONS	1/23/15
Z-103	ZONING CALCULATIONS	1/16/15
Z-104	ZONING LOT SITE PLAN	3/25/15
Z-105	GROUND FLOOR PLAN	3/25/15
Z-200	RETAIL CONTINUITY – SOUTH / EAST 42ND STREET	3/25/15
Z-201	RETAIL CONTINUITY – WEST / MADISON AVENUE	1/16/15
Z-202	STREET WALL AND WAIVERS – SECTIONS	10/20/14
Z-203	STREET WALL AND WAIVERS – SECTIONS	10/20/14
Z-204	STREET WALL AND WAIVERS – SECTIONS	10/20/14

Z-205	STREET WALL AND WAIVERS-AXONS	10/20/14
Z-206	PEDESTRIAN CIRCULATION AND WAIVERS	3/25/15
Z-207	BUILDING ENTRANCE RECESS AND RETAIL CONTINUITY WAIVERS	3/25/15
Z-400	TRANSIT HALL – PLAN	3/25/15
Z-401	TRANSIT HALL – SECTIONS	3/25/15
Z-402	TRANSIT HALL – DETAILS	3/25/15
Z-503	ZONING ENVELOPE - BUILDING ELEVATIONS AND SECTIONS	3/25/15

**Section 2.02** As a requirement for utilizing Bonus Floor Area, the Declarant shall construct, at its sole cost and expense (except as provided in Section 3.03 with respect to Condemnation-Related Improvements), the improvements set forth in the following drawings (the “**Transit Improvement Drawings**”):

(a) The proposed on-site improvements as shown on the following plans prepared by Stantec, annexed hereto as **Exhibit G** (the “**On-Site Improvements**”):

<b><u>Drawing Number</u></b>	<b><u>Title</u></b>	<b><u>Last Revision Date</u></b>
KP-1	ON-SITE KEY PLAN GROUND LEVEL	3/25/15
KP-2	ON-SITE KEY PLAN B1 LEVEL	1/16/15
KP-3	ON-SITE KEY PLAN B2 LEVEL	10/15/14
KP-4	ON-SITE KEY PLAN ESA LEVEL	10/15/14
PV-1	ON-SITE GROUND LEVEL	3/25/15
PV-2	ON-SITE B1 LEVEL	1/16/15
PV-3	ON-SITE B2 LEVEL	10/15/14
PV-4	ON-SITE ESA LEVEL	10/15/14
PV-5	ON-SITE LONGITUDINAL SECTION 1	10/15/14

PV-6	ON-SITE LONGITUDINAL SECTION 2	1/16/15
PV-7	ON-SITE TRANSVERSE SECTION 3	1/16/15

(b) The proposed off-site improvements as shown on the following plans prepared by Stantec, annexed hereto as **Exhibit H** (the “**Off-Site Improvements**”):

<b><u>Drawing Number</u></b>	<b><u>Title</u></b>	<b><u>Last Revision Date</u></b>
KP-1	OFF-SITE KEY PLAN GROUND LEVEL	10/15/14
KP-2	OFF-SITE KEY PLAN MEZZANINE LEVEL	10/15/14
KP-3	OFF-SITE KEY PLAN PLATFORM LEVEL	10/15/14
PN-1	OFF-SITE NORTH END GROUND LEVEL	10/15/14
PN-2	OFF-SITE NORTH END MEZZANINE LEVEL	10/15/14
PN-3	OFF-SITE NORTH END PLATFORM LEVEL	10/15/14
PS-1	OFF-SITE SOUTH END MEZZANINE LEVEL	10/15/14
PS-2	OFF-SITE SOUTH END PLATFORM LEVEL	10/15/14
PM-1	OFF-SITE MOBIL PASSAGEWAY GROUND LEVEL	10/15/14
PM-2	OFF-SITE MOBIL PASSAGEWAY MEZZANINE LEVEL	10/15/14

(c) Notwithstanding the foregoing provisions of this Article II, Declarant may develop an As-of-Right Building, in which case the provisions of Sections 2.01, 2.02(a) and 2.02(b) and the provisions of Articles III through VII of this Declaration shall not apply to such development.

### ARTICLE III.

#### TRANSIT IMPROVEMENTS

**Section 3.01 Building Permits.** Declarant shall not accept the issuance by the DOB of a Building Permit for the Proposed Building until the Declarant has entered into an agreement with the MTA with respect to the design, construction and maintenance of the Transit Improvements (the “**Transit Improvement Agreement**”) and recorded such agreement in the Office of the City Register, New York County. Notwithstanding the foregoing, the Declarant may file a Building Permit application for the Proposed Building with the DOB solely for the

purpose of seeking plan review and may file for and accept demolition and excavation permits for the Proposed Building prior to recordation of the Transit Improvement Agreement. Declarant may file for and accept a foundation permit for the Proposed Building prior to recordation of the Transit Improvement Agreement only with the concurrence of MTA that the proposed foundation plans are not inconsistent with the plans for the On-Site Improvements.

**Section 3.02 Transit Improvement Agreement Terms.** The Transit Improvement Agreement shall incorporate the requirements of the MTA Letter and shall include but not be limited to the following terms:

(a) **Construction Schedule.** Declarant shall develop a construction schedule in consultation with the MTA describing the phasing of work and permitted work hours.

(b) **Design Development.** Declarant shall prepare construction drawings (the “**Construction Drawings**”) for the various scopes of work comprising Transit Improvements for approval by MTA prior to commencement of a given scope of work. The Construction Drawings shall be in substantial compliance with the Transit Improvement Drawings and shall be prepared in accordance with MTA design standards and guidelines in effect at the time Declarant gives to MTA a “Notice to Commence Design” that Declarant is commencing design of the Transit Improvements.

(c) **Security.** Prior to the commencement of construction of Off-Site Improvements, Declarant shall provide (i) letters of credit or other appropriate security reasonably satisfactory to the MTA for the performance of Declarant’s demolition and construction obligations relating to the Transit Improvements, in an amount not to exceed 120% of the estimated construction cost of the Off-Site Improvements based on cost estimates prepared by Declarant and approved by MTA; (ii) a letter of credit or other appropriate security reasonably satisfactory to the MTA for the performance of Declarant’s maintenance and capital replacement obligations with respect to the On-Site Improvements; and (iii) payment bonds, if and to the extent required pursuant to Section 5 of Article 2 of the New York Lien Law.

(d) **Hyatt Preparatory Work.** Declarant shall provide a letter of credit or deposit into escrow Ten Million Dollars (\$10,000,000) to be used as payment to MTA to undertake the Hyatt Preparatory Work, which shall be provided at the earlier of: (i) the time of the MTA’s commencement of condemnation proceedings for the Areas of Condemnation; or (ii) MTA’s acquisition of such Areas of Condemnation.

(e) **Maintenance, Repair and Replacement.** Declarant shall be responsible, at its expense, for the maintenance, repair and capital replacement of the On-Site Improvements within the areas designated “Maintained by Developer” as shown on drawings PV-2, PV-3, PV-4 and PV-7 of the Transit Improvement Drawings, including all architectural finishes and structural, mechanical, ventilation, plumbing and electrical systems (excluding turnstiles, high exit and entry turnstiles, Metrocard vending machines and agent booths). Declarant shall not be responsible for the maintenance, repair and capital replacement of (i) any Off-Site Improvements; (ii) any areas designated “Maintained by NYCT” as shown on drawings PV-2, PV-3, PV-4 and PV-7 of the Transit Improvement Drawings; or (iii) any turnstiles, high exit and

entry turnstiles, Metrocard vending machines or agent booths. In no event shall Declarant be responsible for public safety and security in the areas of the On-Site Improvements.

(f) **Hours of Operation.** On-Site Improvements shall be open at a minimum during all times that Grand Central Terminal is open, or such other schedule of operation as is agreed to between the Declarant and MTA.

(g) **Easements within On-Site Improvement Areas.** On or prior to the date of Substantial Completion of the On-Site Improvements, the Declarant shall grant to the MTA easements necessary for public access through any area of the On-Site Improvements under the control of the Declarant, in a form satisfactory to the MTA.

(h) **Successors and Assigns.** The Transit Improvement Agreement shall run with Declarant's interest in the land and be binding on the Declarant, its successors and assigns.

**Section 3.03 Phasing.** Declarant shall be obligated to complete the Condemnation-Related Improvements within 48 months following MTA's completion of the Hyatt Preparatory Work and delivery of all the Areas of Condemnation, or such later date as determined by the Chair, based on the determination by the Chair of the existence of Uncontrollable Circumstances in accordance with Section 9.04 hereof. Declarant shall be obligated to perform the Condemnation-Related Improvements prior to acceptance of a TCO or PCO for the bonused space pursuant to Section 7.01 or Section 7.02 provided MTA has completed the Hyatt Preparatory Work and delivered the Areas of Condemnation at least 48 months prior to Declarant's readiness to receive a TCO or PCO (the "**Estimated Schedule**"). The Chair may require that Declarant post a letter of credit ("**Completion Letter of Credit**") or similar security if acceptable to the Chair, in a form reasonably acceptable to the Chair and naming the City and/or MTA as beneficiary, as appropriate, to secure Declarant's obligation to complete the Condemnation-Related Improvements in the event they have not been completed at the time of issuance of a TCO. Such Completion Letter of Credit or similar security shall be in a sum of no more than 120% of the estimated cost of completing such remaining work, based upon an estimate provided by Declarant and accepted by the City and/or MTA, as appropriate, to complete the Condemnation-Related Improvements. If Declarant fails to complete the Condemnation-Related Improvements within the Estimated Schedule, subject to Uncontrollable Circumstances, the City may draw on the Completion Letter of Credit and undertake the performance of such work. Upon completion of the Condemnation-Related Improvements, whether by Declarant, the City or MTA, the City shall promptly return the aforesaid security (or the undrawn balance thereof) to Declarant.

## ARTICLE IV.

### VANDERBILT PUBLIC PLACE

**Section 4.01 Notice of Intent to Proceed.** Not more than sixty (60) days following Final Approval of the Special Permits and the Related Actions, Declarant shall send a notice to DOT that it is prepared to proceed with design development of the Public Place.

**Section 4.02 Schedule.** Declarant shall develop a schedule for design and construction of the Public Place in consultation with DOT.

**Section 4.03 Design Development.**

(a) Declarant will work with DOT to progress the design of the Public Place, which shall be consistent with the following goals:

(i) Be a permanent Public Place befitting its location next to the Grand Central Terminal, a major gateway and iconic landmark;

(ii) Provide a vehicle-free environment to help pedestrians move in a safe and unimpeded manner;

(iii) Include improvements such as seating, planting, lighting, paving, other design elements as appropriate and in a manner that does not impede pedestrian circulation;

(iv) Allow for emergency vehicle access, as set by emergency response stakeholders;

(v) Have no portion of the Public Place enclosed by a gate or fence;

(vi) Remain open 365 days a year, 24 hours daily except as allowed by the appropriate government agenc(ies); and

(vii) Be maintained and repaired by the Declarant in conformance with Section 4.04 below.

(b) Declarant will coordinate with DOT, as needed, to establish a review process and regular meetings relating to the design of the Public Place. DOT will review each stage of the design plans for Public Place and the preliminary and final design will be subject to the approval of DOT and the New York City Public Design Commission (“**PDC**”).

(c) To the extent required by DOT, Declarant will participate in a design process initiated by DOT to receive public input on the proposed design for the Public Place, and the design will incorporate input received from the design workshops as may be reasonably required by DOT.

(d) Declarant will cooperate with DOT in applying for PDC approval of the design for the Public Place.

(e) Upon approval of preliminary design of the Public Place by DOT and PDC, Declarant shall seek a letter of concurrence from the Chair that such design meets the goals established in Section 4.03(a) hereof (“**Letter of Concurrence**”). Within twenty (20) days of receipt of the preliminary design, the Chair shall provide such letter or shall notify Declarant and DOT in writing why it does not believe that the design meets these goals.

**Section 4.04 Construction and Maintenance.** Declarant or its designee shall be responsible for the construction, day-to-day maintenance, and repair and replacement of Public Place improvements during the life of the Proposed Building so long as such improvements are not materially altered or replaced by the City. Construction of the Public Place cannot be

performed until after the DOT and PDC approve the final design of the Public Place and the Chair has issued the Letter of Concurrence or has failed to respond within twenty (20) days of submission of such plans. Declarant shall not be obligated to replace or rebuild the Public Place in the event of a Casualty as such term is defined above, or a decision by DOT to replace the initial installation. In no event shall Declarant be responsible for public safety and security in the Public Place.

**Section 4.05 Security.** Declarant shall provide (i) letters of credit or other appropriate security reasonably satisfactory to DOT for the performance of Declarant's construction obligations relating to the Public Place, in an amount not to exceed 120% of the estimated cost of the construction based on cost estimates prepared by Declarant and submitted to DOT for review and approval; (ii) a letter of credit or other appropriate security reasonably satisfactory to DOT for the performance of Declarant's maintenance obligations with respect to Public Place; and (iii) payment bonds, if and to the extent required pursuant to Section 5 of Article 2 of the New York Lien Law. Upon Final Completion of the Public Place, Declarant shall establish a reserve fund in the amount of \$500,000 to assure the long-term capital needs of the Public Place. Notwithstanding the foregoing, there shall not be a limitation to Declarant's construction and maintenance obligations as provided for in Section 4.04 above.

**Section 4.06 Ownership.** It is expressly understood that the Public Place is owned by the City and is under the jurisdiction of DOT.

## ARTICLE V.

### PROJECT COMPONENTS RELATING TO THE ENVIRONMENT AND MITIGATION MEASURES

**Section 5.01 Project Components Related to the Environment.** Declarant shall implement as part of its construction of the Proposed Building, as appropriate, the following PCREs:

(a) **Construction Air Emissions Reduction Measures.**

(i) All nonroad construction equipment with a power rating of 50 hp or greater shall meet at least the Tier 3 emissions standard to the extent practicable. All nonroad engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard to the extent practicable.

(ii) Non-road diesel engines with a power rating of 50 horsepower or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks shall utilize the best available tailpipe technology for reducing diesel particulate matter emissions. Construction contracts shall specify that all diesel nonroad engines rated at 50 horsepower or greater must utilize diesel particulate filters, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by EPA or the California Air Resources Board. Active diesel particulate filters or other technologies proven to achieve an equivalent reduction may also be used.

(iii) All on-site diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

(iv) On-site vehicle idle time shall be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.

(v) Electrically powered equipment shall be utilized, to the extent practicable, in lieu of diesel-powered and gasoline-powered versions of that equipment. Such equipment includes, but may not be limited to, hoists and small equipment such as welders and rebar benders.

(b) **Fugitive Dust Control Plan.** A fugitive dust control plan including a watering program shall be required as part of construction contract specifications. Such plan shall, for example, require that all trucks hauling loose material be equipped with tight-fitting tailgates and that their loads shall be securely covered prior to leaving the project site; water sprays shall be used for all demolition, excavation, and transfer of soils to ensure that materials would be dampened as necessary to avoid the suspension of dust into the air. Loose materials shall be watered, stabilized with chemical suppressing agent, or covered.

(c) **Construction Noise Reduction Measures.**

(i) Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) would be used for certain dominant noise equipment to the extent feasible and practical (e.g., tower crane).

(ii) Where feasible and practical, noise barriers would be utilized to provide shielding (e.g., a minimum 12-foot barrier surrounding the Subject Property during construction).

(iii) Where feasible and practical, the construction site shall be configured to minimize back-up alarm noise.

(iv) Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.

(v) Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations. Once the building foundation is completed, delivery trucks shall operate behind a construction fence, where possible.

(d) **Construction Materials.** During construction of core and shell, Declarant shall use reasonable efforts to use recycled materials, materials produced regionally, rapidly renewable materials, certified sustainable wood products, and materials that contain recycled content, as appropriate. Such materials shall include, to the extent commercially reasonable, concrete made with slag or fly ash and recycled steel.



**Section 5.02 [Intentionally Omitted.]**

**Section 5.03 Mitigation Measures.**

(a) The Declarant shall notify DOT in writing six (6) months before the completion and full occupancy of the Proposed Building and request that DOT determine the feasibility or necessity of implementing the Mitigation Measures set forth in **Exhibit I** for those mitigation measures described in the FEIS. DOT shall advise Declarant of its determination of the feasibility and necessity in writing after the project is fully occupied. Declarant shall have no obligations with respect to those mitigation measures that DOT determines are not feasible or necessary.

(b) With respect to those Mitigation Measures that require physical changes (bulb-out, signal pole relocation, etc.), Declarant shall submit to DOT for review and approval all required drawings/designs as per AASHTO and DOT specifications.

(c) Declarant shall either implement such measures as directed by DOT, or if directed by DOT, pay DOT/City of New York for the ordinary and customary costs of the Mitigation Measures that DOT implements.

**Section 5.04 Uncontrollable Circumstances Involving a PCRE or Mitigation Measure.** Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE or Mitigation Measure set forth in this Article V by reason of the occurrence of Uncontrollable Circumstances, Declarant shall not be excused from performing such obligation unless the failure to implement the obligation during the period of Uncontrollable Circumstances, or that implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

**Section 5.05 Innovation; Alternatives; Modifications Based on Further Assessments.**

(a) **Innovation and Alternatives.** In complying with any obligation set forth in this Article V, Declarant may, at its election, implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Proposed Building, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant obligation than those set forth in this Declaration (such measures, "**Alternative Environmental Measures**"), in each case subject to approval by DCP.

(b) **Modifications Based on Further Assessments.** In the event that Declarant believes, in good faith, based on changed conditions, that an obligation under this Article V should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the obligation, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the obligation, Declarant may eliminate or modify the PCRE or

Mitigation Measure consistent with the DCP determination (**“Elimination or Modification of FEIS Obligation”**).

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

## ARTICLE VI.

### ADDITIONAL DECLARANT OBLIGATIONS

**Section 6.01 Transit Hall.** Declarant shall not accept the issuance by DOB of a Building Permit for the Proposed Building until the Declarant has certification to the Chair that Declarant has consulted with the Manhattan Borough President and Community Board 5 regarding final design of the Transit Hall. Declarant shall maintain the Transit Hall for the life of the Proposed Building.

**Section 6.02 ADA Compliance.** All public spaces shown on the Building Drawings and Transit Improvement Drawings shall be accessible to people with disabilities in accordance with the Americans with Disabilities Act.

**Section 6.03 Decorative Façade Features.** If feasible, Declarant will use commercially reasonable efforts to preserve certain components of the existing decorative façade of 51 East 42nd Street when the building is demolished, including donating such components to a museum or other location where they might be displayed.

**Section 6.04 East 43rd Street Façade.** The proposed building shall incorporate materials and details at grade level on the East 43rd Street façade, which are consistent with the overall aesthetic and quality of the Proposed Building, including but not limited to the truck elevator doors.

## ARTICLE VII.

### CERTIFICATES OF OCCUPANCY

**Section 7.01 Temporary Certificate of Occupancy.** Declarant shall not accept a TCO for any portion of the Proposed Building utilizing the Bonus Floor Area prior to certification by the Chair in accordance with Section 7.03 that the Public Realm Improvements are Substantially Complete (**“Notice of Substantial Completion”**). However, nothing herein shall prevent occupancy of Non-Bonus Floor Area prior to receipt of a Notice of Substantial Completion. In the event that the Chair has not issued a Notice of Substantial Completion or equivalent notice as a result of a determination by the Chair of the existence of Uncontrollable Circumstances in accordance with Section 9.04 hereof, the Chair may, in his or her sole discretion (a) authorize Declarant to accept a TCO for the Proposed Building incorporating the Bonus Floor Area or such portions of the Bonus Floor Area as the Chair determines to be warranted; (b) in authorizing such occupancy of the Bonus Floor Area, the Chair may take into account commitments to tenants relating to the occupancy of such space; (c) require such additional security as the Chair

determines is sufficient to assure the performance of Declarant's obligations; and (d) specify a date whereby performance of Declarant's obligations shall be completed. Notwithstanding the foregoing, Declarant may apply for and accept a Zero Occupancy TCO prior to receipt of a Notice of Substantial Completion.

**Section 7.02 Permanent Certificates of Occupancy.** Declarant shall not accept a PCO for any portion of the Proposed Building utilizing the Bonus Floor Area prior to certification by the Chair in accordance with Section 7.03 that such Public Realm Improvements are Finally Complete ("**Notice of Final Completion**"). However, nothing herein shall prevent occupancy of Non-Bonus Floor Area prior to receipt of a Notice of Final Completion. In the event that the Chair has not issued a Notice of Final Completion or equivalent notice as a result of Uncontrollable Circumstances, the Chair may (a) authorize Declarant to apply for and accept a PCO for the Proposed Building incorporating the Bonus Floor Area, and (b) require such additional security as the Chair determines is sufficient to assure the performance of Declarant's obligations.

**Section 7.03 DCP Review.** Prior to accepting a TCO or PCO from DOB for zoning floor area in excess of the Non-Bonus Floor Area, Declarant shall submit a notice to DCP (the "**CO Notice**") certifying that the Public Realm Improvements are Substantially Complete (or in the case of a PCO, Finally Complete), or if not Substantially Complete or Finally Complete due to Uncontrollable Circumstances, certifying the reasons therefor. If DCP (following consultation where appropriate with MTA or DOT) notifies Declarant that it has failed to Substantially Complete or Finally Complete the Public Realm Improvements, Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to Declarant within twenty (20) business days of receipt of the CO Notice, (y) meet with Declarant within ten (10) business days of receipt of the CO Notice, or (z) respond in writing to Declarant within ten (10) business days of receipt of any additional materials provided to DCP under this Section, then DCP shall be deemed to have accepted the CO Notice and any subsequent materials related thereto as demonstrating compliance with the requirements for the issuance of the TCO or PCO and Declarant shall be entitled to apply for and accept the TCOs or PCOs.

## ARTICLE VIII.

### EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION

#### **Section 8.01 Effective Date; Lapse; Cancellation.**

(a) This Declaration and the provisions and covenants hereof shall become effective upon Final Approval of the Special Permits and the Related Actions, but Declarant's obligations hereunder shall be postponed until: (A) the latest to occur of the following dates: (i) the date on which the right to seek judicial review of the Special Permits and Related Actions has

expired; (ii) the date on which the time to take an appeal from an order upholding or affirming the Special Permits and Related Actions of any court of competent jurisdiction has expired; and (iii) the date on which a final order upholding or affirming the Special Permits and Related Actions is entered pursuant to a decision by a court of competent jurisdiction from which no appeal can be taken; or (B) at any time prior to the latest to occur of the dates set forth in (A) above, such earlier date upon which Declarant proceeds to develop the Proposed Building in accordance with the Special Permits and Related Actions. For avoidance of doubt, demolition of improvements presently on the Subject Property shall not be deemed development for purposes of the foregoing sentence.

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

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

#### **Section 8.02 Modification and Amendment.**

(a) This Declaration may be amended, modified or cancelled (other than pursuant to Section 8.01 hereof) only upon application by Declarant, with the express written approval of the Chair. No other approval or consent shall be required from any public body,

private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(b) Changes to the Building Drawings or Transit Improvement Drawings that the Chair deems to be minor may be amended or modified administratively by the Chair (with the concurrence of the MTA with respect to proposed changes to the Transit Improvement Drawings) and no other approval or consent (including modifications to the Special Permits) shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant. Notwithstanding the foregoing, no approval from the Chair shall be required for changes to the Transit Improvement Drawings that MTA determines to be in substantial compliance with the Transit Improvement Drawings.

(c) Changes to the design of the Public Place, following preliminary approval by DOT and PDC and issuance of the Letter of Concurrence by the Chair pursuant to Section 4.04 hereof shall be subject to approval by DOT and, as required in accordance with its customary practice and procedures, PDC, and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(d) Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 8.02(a) and provide an executed and certified true copy thereof to DCP and, upon Declarant's failure to so record, permit its recording by DCP at the cost and expense of Declarant.

## **ARTICLE IX.**

### **COMPLIANCE; DEFAULTS; REMEDIES**

#### **Section 9.01 Default.**

(a) The City shall give written notice (each, a "Default Notice") of any alleged breach of the provisions of this Declaration to Declarant. Upon receipt of a Default Notice, Declarant shall effect a cure within forty-five (45) business days thereof. Alternatively, if the violation is not capable of cure within such forty-five (45) business day period, Declarant shall promptly initiate and diligently pursue any steps required to cure such breach and, if Declarant thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty-five (45) business day period shall be deemed extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. Declarant shall have the right, in its sole discretion, to determine the manner in which a breach of this Declaration will be cured, provided such cure is in compliance with this Declaration. The forty-five (45) business day period for curing any breach of this Declaration by Declarant (as such may be extended in accordance with this Section 9.01) shall be subject to further extension for Uncontrollable Circumstances, provided that Declarant shall have taken the steps required by Section 9.04 hereof.

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

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

(d) In the case of an alleged breach of, or other dispute regarding the provisions of this Declaration, both Declarant and the City may (but shall not be obligated to) agree that the same shall be resolved by arbitration in a manner to be agreed upon, provided that nothing herein shall be construed to limit the provisions of Section 9.01(b) of this Declaration.

(e) A Named Mortgagee shall have the right to cure a breach on behalf of Declarant within the applicable notice and cure period provided in this Article VIII.

**Section 9.02 Enforcement of Declaration.**

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

(b) Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the fee estate and interest of Declarant in the Subject Property, on an in rem basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. For the purposes of this Section 9.02, "Declarant" shall mean "Declarant" as defined in the Preamble of this Declaration, as well as any principals, disclosed or undisclosed, partners, affiliates, officers, employees, shareholders or directors of Declarant.

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

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

**Section 9.03 Certain Remedies.**

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

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

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

(d) For purposes of this Section 9.03, Declarant shall not be deemed to have failed to comply under any of paragraphs (a), (b) or (c) unless and until Declarant or a Named Mortgagee, as the case may be, has failed to remedy or cure the event or occurrence which is the basis of any allegation of a failure to comply in accordance with the procedure as set forth in Section 9.01 of this Declaration with respect to alleged default(s), including all applicable notice and cure periods afforded Declarant and Named Mortgagee(s) therein.

**Section 9.04 Uncontrollable Circumstances.**

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

(b) Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, Declarant shall promptly recommence the work or implement the measure needed to complete the obligation, in accordance with any

applicable directive of the Chair, unless an alternative is specified and agreed to by the Chair. Unless as otherwise agreed between Declarant and MTA, as a further condition to granting relief as aforesaid, the Chair may also require that Declarant post a letter of credit ("Completion Letter of Credit") or similar security if acceptable to the Chair, in a form reasonably acceptable to the Chair and naming the City and/or MTA as beneficiary, as appropriate, to secure Declarant's obligation to complete the Public Realm Improvements upon cessation of the Uncontrollable Circumstances. Such Completion Letter of Credit or similar security shall be in a sum of no more than 120% of the estimated cost of completing such work, based upon an estimate provided by Declarant and accepted by the City and/or MTA, as appropriate, to complete the Public Realm Improvements. If Declarant fails to resume performance of such work upon cessation of the Uncontrollable Circumstances, the City may undertake the performance of such work. Upon completion of the Public Realm Improvements, whether by Declarant, the City or MTA, the City shall promptly return the aforesaid security (or the undrawn balance thereof) to Declarant.

**Section 9.05 Representation.** Declarant hereby represents and warrants that (a) there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the enforcement of the obligations and restrictions as set forth herein; and (b) the Parties-in-Interest listed in the Certification of Party-in-Interest are the only known Parties-in-Interest in the Subject Property as of the date hereof.

## ARTICLE X.

### MISCELLANEOUS

#### **Section 10.01 Notices.**

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

If to Declarant:

Green 317 Madison LLC, 51E42 Owner LLC,  
SLG 48E43 LLC and SGL 331 Madison LLC  
c/o SL Green Realty Corp.  
420 Lexington Avenue, 19th Floor  
New York, NY 10170  
Attention: Marc Holliday

with a copy to:

SL Green Realty Corp.  
420 Lexington Avenue, 19th Floor



New York, NY 10170  
Attention: General Counsel

with a copy to:

Hines  
499 Park Avenue, 12th Floor  
New York, NY 10022  
Attention: Jim Gutmann

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Stephen Lefkowitz, Esq.

If to the City:

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

(b) Any recipient of Notice may from time to time by Notice designate a new or additional related entity or person or address for receipt of Notices.

(c) Notice shall be deemed given five (5) days after mailing, two (2) Business Days after sending by nationally recognized overnight courier service, or upon personal delivery after receipt, except that a Notice providing for change of Notice name or address shall only be effective upon receipt.

(d) A copy of all Notices to Declarant shall be simultaneously given to any mortgagee or ground lessor of all or a portion of the Subject Property of which the City has been given Notice (any such mortgagee or lessor, a “**Named Mortgagee**”).

(e) In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

**Section 10.02 Certificates.** The City will at any time and from time to time upon not less than fifteen (15) days’ prior notice by Declarant or a Named Mortgagee execute, acknowledge and deliver to Declarant or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of

any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant or such Named Mortgagee may reasonably request.

**Section 10.03 Conveyance.** Nothing contained herein shall be construed as requiring the consent of the DCP, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property.

**Section 10.04 Successors of Declarant.** References in this Declaration to “Declarant” shall be deemed to include any successor to or assign of Declarant. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a Declarant for any purpose, unless and until such holder obtains either a fee interest in the Subject Property or any portion thereof or a lessee’s estate in a ground lease of all or substantially all the Subject Property, and provided further that the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the “Declarant” hereunder unless such holder commences to develop the Subject Property in accordance or has acquired its interest from a party who has done so.

**Section 10.05 Parties-in-Interest.** Declarant shall cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

**Section 10.06 Governing Law.** This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

**Section 10.07 Severability.** In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severed and the remainder of this Declaration shall continue to be of full force and effect.

**Section 10.08 Applications.** Declarant shall include a copy of this Declaration as part of any application pertaining to the Subject Property submitted to the DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

**Section 10.09 Incorporation by Reference.** Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

**ARTICLE XI.**

**SUSTAINABILITY**

**Section 11.01 LEED Certification.**

(a) Declarant shall design and construct the Proposed Building in accordance with the standards and criteria required to achieve a minimum of “Gold” certification under the LEED “Core and Shell” rating system, version 4, or an equivalent standard (such applicable certification, the “**Minimum Green Standard Certification**”).

(b) Declarant shall use reasonable and good faith efforts to obtain the Minimum Green Standard Certification from the U.S. Green Building Council or such other applicable body.

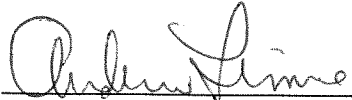
**Section 11.02 Energy Efficiency.** Declarant will continue to explore new and additional methods of achieving increased energy efficiency and will use commercially reasonable efforts to incorporate new technologies to improve the energy efficiency and sustainability of the Proposed Building.

**Section 11.03 LEED Certification Achievement Report.** Within six (6) months following Substantial Completion of the Proposed Building, Declarant shall submit to the Commission a report indicating the LEED certification or other Minimum Green Standard Certification achieved and the measures and technologies employed to achieve such LEED certification or such other Minimum Green Standard Certification.


[SIGNATURE LINES ON FOLLOWING PAGE]

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


**GREEN 317 MADISON LLC**

By:   
Name: Andrew S. Levine  
Title: Authorized Signatory


**51E42 OWNER LLC**

By:   
Name: Andrew S. Levine  
Title: Authorized Signatory

**SLG 48E43 LLC**

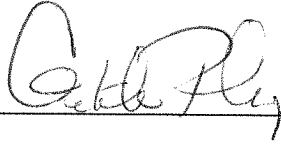
By:   
Name: Andrew S. Levine  
Title: Authorized Signatory

**SGL 331 MADISON LLC**

By:   
Name: Andrew S. Levine  
Title: Authorized Signatory

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

On the 27<sup>th</sup> day of March in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew S. Levine, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_

GRETCHEN REINHAGEN  
Notary Public, State of New York  
No. 01RE6309397  
Qualified in New York County  
Commission Expires Aug. 11, 2018

## **SCHEDULE OF EXHIBITS**

<b><u>EXHIBIT A</u></b>	Metes and Bounds Description of the Subject Property
<b><u>EXHIBIT B</u></b>	DOT Letter
<b><u>EXHIBIT C</u></b>	MTA Letter
<b><u>EXHIBIT D</u></b>	Certification of Parties-in-Interest
<b><u>EXHIBIT E</u></b>	Areas of Condemnation
<b><u>EXHIBIT F</u></b>	Building Drawings
<b><u>EXHIBIT G</u></b>	On-Site Improvements
<b><u>EXHIBIT H</u></b>	Off-Site Improvements
<b><u>EXHIBIT I</u></b>	Traffic and Pedestrian Mitigation Measures

**EXHIBIT A**

Metes and Bounds Description of the Subject Property

The subject tract of land is known as Tax Lot Numbers 20, 27, 46 and 52 in Block 1277 on the Tax Map of the City of New York, New York County and is more particularly described as follows:

As to Lot 20:

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 corner formed by the intersection of the northerly side of 42<sup>nd</sup> Street with the easterly side of Madison Avenue;

RUNNING THENCE northerly along the said easterly side of Madison Avenue, 134 feet 2 inches;

THENCE easterly and parallel with 42<sup>nd</sup> Street and part of the distance through the center of a party wall, 100 feet;

THENCE northerly and parallel with Madison Avenue, 66 feet 8 inches to the southerly side of 43<sup>rd</sup> Street;

THENCE easterly along the said southerly side of 43<sup>rd</sup> Street, 40 feet;

THENCE southerly again parallel with Madison Avenue, 100 feet 5 inches;

THENCE easterly and parallel with 42<sup>nd</sup> Street, 24 feet 7-1/2 inches to line of land now or formerly of The New York & Harlem Railroad Company or of The New York Central Railroad Company;

THENCE southwesterly along said Railroad Company's land, 101 feet 10 inches to the northerly side of 42<sup>nd</sup> Street;

THENCE westerly along the said northerly side of 42<sup>nd</sup> Street, 147 feet 3 inches to the point or place of BEGINNING, be the said several dimensions more or less.

As to Lot 27:

ALL that certain plot, piece or parcel of land, lying above a horizontal plane drawn at elevation 44.25 feet and intersecting the easterly, westerly, northerly and southerly bounds of the land (hereinafter referred to as the "Land") situate in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of 42<sup>nd</sup> Street with the westerly line of Vanderbilt Avenue;

RUNNING THENCE westerly along the northerly line of 42<sup>nd</sup> Street 68 feet 5 inches;



THENCE northeasterly in a straight line 203 feet 8 inches, more or less, to a point in the southerly line of 43<sup>rd</sup> Street, 33 feet 8 inches westerly of the westerly line of Vanderbilt Avenue;

THENCE easterly along the southerly line of 43<sup>rd</sup> Street, 33 feet 8 inches to the westerly line of Vanderbilt Avenue; and

THENCE southerly along the westerly line of Vanderbilt Avenue, 200 feet 10 inches, more or less, to the northerly line of 42<sup>nd</sup> Street, the point or place of beginning, be said dimensions more or less.

THE above mentioned horizontal plane is referred to herein as the "Limiting Plane". The elevation of the Limiting Plane and all other elevations referred to herein have reference to the datum plane of the former The New York Central Railroad Company, predecessor of the Grantor, which takes for its elevation 0 feet 0 inches mean high water mark of the East River at the foot of East 26<sup>th</sup> Street in the City of New York on June 1, 1905.

EXCEPTING so much therefrom as was excepted, reserved and set forth as subdivisions b, c, and d as Article 6 in the deed made by The Penn Central Corporation to 51 East 42<sup>nd</sup> Street Associates, dated December 5, 1978 and recorded December 22, 1978 in Reel 464 page 1721.

As to Lot 46:

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

COMMENCING at the point on the southerly side of 43<sup>rd</sup> Street, distant 140 feet easterly from the southeasterly corner of 43<sup>rd</sup> Street and Madison Avenue;

RUNNING THENCE southerly and parallel with Madison Avenue, 100 feet 5 inches to the center line of the block between 42<sup>nd</sup> and 43<sup>rd</sup> Streets;

THENCE easterly, along said center line and parallel with 43<sup>rd</sup> Street, 24 feet 7-1/2 inches;

THENCE northeasterly on an oblique line, 101 feet 10 inches, more or less, to a point on the southerly side of 43<sup>rd</sup> Street, distant 42 feet easterly from the point of beginning; and

THENCE westerly along the southerly side of 43<sup>rd</sup> Street, 42 feet to the point or place of BEGINNING.

As to former Lot 50, n/k/a part of Lot 52:

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 easterly side of Madison Avenue, distant 45 feet 10 inches southerly from the southeasterly corner of Madison Avenue and 43<sup>rd</sup> Street;

RUNNING THENCE easterly parallel with 43<sup>rd</sup> Street and part of the way through a party wall, 100 feet; THENCE southerly and parallel with Madison Avenue, 20 feet 10 inches;

THENCE westerly and parallel with 43<sup>rd</sup> Street and part of the way through a party wall, 100 feet to the easterly side of Madison Avenue;

THENCE northerly and along easterly side of Madison Avenue, 20 feet 10 inches to the point or place of BEGINNING.

As to former Lot 51, n/k/a part of Lot 52:

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 easterly side of Madison Avenue, distant 25 feet southerly from the corner formed by the intersection of the easterly side of Madison Avenue with the southerly side of 43<sup>rd</sup> Street;

RUNNING THENCE southerly along the said easterly side of Madison Avenue, 20 feet 10 inches; THENCE easterly, parallel with 43<sup>rd</sup> Street 100 feet;

THENCE northerly, parallel with Madison Avenue, 20 feet 10 inches and

THENCE westerly, again parallel with 43<sup>rd</sup> Street, 100 feet to the easterly side of Madison Avenue, the point or place of BEGINNING.

As to former Lot 52, n/k/a part of Lot 52:

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 43<sup>rd</sup> Street and the easterly side of Madison Avenue;

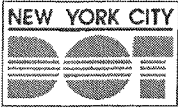
RUNNING THENCE southerly along the easterly side of Madison Avenue, 25 feet;

THENCE easterly parallel with 43<sup>rd</sup> Street and part of the way through the center of a party wall, 100 feet; THENCE northerly parallel with Madison Avenue, 25 feet to the southerly side of 43<sup>rd</sup> Street;

THENCE westerly along the southerly side of 43<sup>rd</sup> Street, 100 feet to the easterly side of Madison Avenue, to the point or place of BEGINNING.

**EXHIBIT B**

DOT Letter



October 20, 2014

Hon. Carl Weisbrod  
Chairman  
New York City Planning Commission  
22 Reade Street, 2W  
New York, NY 10007

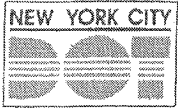
Re: One Vanderbilt – DOT Conceptual Approval

Dear Mr. Weisbrod:

In order to facilitate commercial development within the Vanderbilt Corridor as well as improvements to the pedestrian and mass transit network in the vicinity of Grand Central Terminal, the City Planning Commission may allow, by special permit, additional floor area for development or enlargements located within the Vanderbilt Corridor. As part of its application for such a special permit, the applicant, Green 317 Madison LLC, proposes to change the portion of Vanderbilt Avenue between East 42<sup>nd</sup> and East 43<sup>rd</sup> Streets in Manhattan, which is under the ownership and jurisdiction of the New York City Department of Transportation (DOT), into a new pedestrian plaza adjacent to Grand Central Terminal.

In accordance with Section 81-641 of the Proposed East Midtown/Vanderbilt Corridor Zoning Text Amendment, DOT received and reviewed the submitted concept plans from the applicant for the pedestrian plaza. Upon review, DOT sets forth the following considerations regarding the construction and operation of the proposed pedestrian plaza:

- The pedestrian plaza will remain under the jurisdictional control of DOT and its design will be subject to DOT's approval;
- The development of the pedestrian plaza will follow the NYC Plaza Program public process which includes multiple community workshops and community board approval;
- The design of the pedestrian plaza must meet the requirements set by emergency response stakeholders, including the New York City Fire Department and the Metropolitan Transportation Authority Police;
- The design of the pedestrian plaza will require the approval by the Public Design Commission of the City of New York; and
- While the applicant is obligated to maintain all design elements that deviate from DOT's standards as set forth in the Street Design Manual, the applicant's maintenance obligations for all other elements of the pedestrian plaza will be determined by DOT.



Department of Transportation

POLLY TROTTEBERG, Commissioner

Accordingly, DOT conceptually approves the proposed pedestrian plaza.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Forgione', written over a horizontal line.

Margaret Forgione  
Manhattan Borough Commissioner

**EXHIBIT C**

MTA Letter



# Metropolitan Transportation Authority

State of New York

October 16, 2014

Hon. Carl Weisbrod  
Chairperson  
NYC Planning Commission  
22 Reade Street, 2W  
New York, NY 10007

Reference: 1 Vanderbilt --- MTA, MNR, ESA and NYCT Concept Approval

Dear Mr. Weisbrod:

The Metropolitan Transportation Authority (together with its constituent agencies, the "MTA") is in receipt of the attached conceptual drawings for (1) Proposed Off-Site Transit Improvements, dated 10/15/2014 and (2) Proposed On-Site Transit Improvements dated 10/15/2014 (collectively, the "Drawings").

The Drawings depict a program of mass transit improvements that Green 317 Madison LLC and/or its affiliates (the "Developer") would undertake to generate a zoning floor area bonus for a proposed development, to be known as "1 Vanderbilt", on the blocks bounded by 42<sup>nd</sup> Street, Vanderbilt Avenue, 43<sup>rd</sup> Street and Madison Avenue. Such improvements, to be made in part within the property line of 1 Vanderbilt and in part elsewhere within the Grand Central complex, are further described in the table below:

Item	Station/Location	Description
1	42 <sup>nd</sup> St/IRT Shuttle/GCT/ESA	New stair from Level B1 to Ground Level and ADA elevator between Level B2 and Ground Level with a stop on Level B1
2	Shuttle	Escalator from Level B2 to Ground Level
3	Shuttle Platform	Two new fare arrays and expanded circulation at Shuttle Platform B2 Level in front of and behind Stair P10. New stair from B2 Level to circulation corridor on B1 Level
4	Grand Central Terminal	Expanded circulation corridor at B1 Level
5	Grand Central Terminal/East Side Access	Escalators to East Side Access Concourse between Level B1 and B3 and stair from East Side Access Concourse to Level B1
6	43 <sup>rd</sup> Street and Vanderbilt Avenue Street Level	Public Room within 1 Vanderbilt, Ground Level, with a new stair and ADA elevator from Ground Level to B1 Level

*The agencies of the MTA*

MTA New York City Transit  
MTA Long Island Rail Road

MTA Metro-North Railroad  
MTA Bridges and Tunnels

MTA Capital Construction  
MTA Bus Company

7	Mobil Passageway	Restored Connection to Mobil Passageway and new connection via two street stairs on the southeast corner of 42 <sup>nd</sup> Street and Lexington Avenue
8	Hyatt Strawberry	Widened street stair and new ADA Elevator on the northwest corner of 42 <sup>nd</sup> Street and Lexington Avenue and relocated fare array. MTA currently does not control the Hyatt Hotel space associated with the mezzanine expansion, but is working towards its acquisition
9	Hyatt North	New fare array and expanded R-240 Circulation Area. The MTA currently does not control the Hyatt Hotel space associated with the mezzanine expansion, but is working towards its acquisition
9A	Hyatt North	Structural work modifications to be completed by NYCT and paid for by Developer
10	Pershing Square – 42 <sup>nd</sup> Street Between Park and Lexington Avenues	New platform stair
12,13,14,15,17,18,19,20	IRT Lexington Avenue	Platform stair narrowing and column narrowing
21-22	IRT Lexington Avenue	Platform stair relocation, narrowing and column narrowing
23	IRT Lexington Avenue	Platform stair relocation, widening and column narrowing
24-25	Hyatt North – Lexington Avenue	New platform stairs
26	Mezzanine Level – Lexington Avenue Line	Expanded Mezzanine Level
26A	Mezzanine Level – Lexington Avenue Line	Structural work modifications to be completed by NYCT and paid for by Developer

As required in accordance with Sections 81-641 of the Zoning Resolution of the City of New York, the MTA has reviewed the Drawings and has approved the conceptual plan they embody, subject to MTA Board action, insofar as such Board action may be determined to be required, and satisfactory resolution of all of the following, to be definitively memorialized in a restrictive declaration and related agreements acceptable to the MTA:

- Further design development will be required with respect to the following:
  - 1) all interior horizontal and vertical circulation elements, within Metro North controlled spaces are to be designed with finishes that harmonize with existing finishes in Grand Central Terminal. All finishes and other design elements within NYC Transit spaces are to be specified by NYCT. All finishes and other design elements within the East Side Access connection up to level B-1 are to be specified by MTA Capital Construction;



- 2) specification, location and design of all signage, lighting, communications and life safety equipment, canopies, escalators and elevators;
  - 3) restoration of GCT retail affected by the improvements with final layout including configuration, dimensions, MEP design and storefront architectural character that harmonizes with GCT;
  - 4) fire separation, security and passenger control elements within all new entrances and access points;
  - 5) access into the Shuttle Mezzanine area from Public Circulation area on level B-1 and free-zone circulation;
  - 6) new stair connecting levels B-1 and B-2 within new Public Circulation area adjacent to MTA retail space;
  - 7) access into new control area including new turnstile configuration from lower shuttle passageway/Lexington Avenue passageway on level B-2;
  - 8) coordination and connection from the SL Green development to the knock-out panel being constructed by the ESA Project on level B-3; and
  - 9) possible modification of the proposed ADA elevator location within the proposed new public room in 1 Vanderbilt and from level B-1 to street.
- Feasibility studies, design development and final working plans and specifications for each improvement must be coordinated with and acceptable to the MTA
  - Submission of a phasing plan for the improvements to be agreed to by MTA, NYCT, ESA and MNR
  - Metes and bounds descriptions must be developed for modified easement areas
  - The deposit by Developer with MTA of \$10 Million Dollars as reimbursement to MTA to undertake the structural re-framing of Hyatt Hotel's basement structure, which is to be an early project element.

This letter of conceptual approval pertains only to matters shown on the Drawings, and approval of other matters such as impacts of foundation work or any work adjacent to NYCT or Grand Central Terminal will require review of construction documents in due course.

Sincerely,



Robert Paley  
Director, Transit-Oriented Development  
Metropolitan Transportation Authority

Cc: NYCDCP: Frank Ruchala

MTA: Robert Paley, Fredericka Cuenca, Helene Cinque, Andrea Ascher, Jerry Page

NYCT: Judith McClain, William Montanile, Robert Cumella, Judith Kunoff, Rajen Udeshi

SL Green: Robert Schiffer

Hines: James Gutmann

Paul Weiss: Meredith Kane

Bryan Cave: Steven Kass

MNR: Randall Fleisher, Vahak Khajekian

ESA: William Goodrich, Doug Tilden

Attachments: One Vanderbilt Special Permit Approval Plans:

- 1) Proposed Off-Site Transit Improvements, dated: October 15, 2014
- 2) Proposed On-Site Transit Improvements dated: October 15, 2014.

**EXHIBIT D**

Certification of Parties-in-Interest

EXHIBIT I

CERTIFICATION PURSUANT TO ZONING LOT  
SUBDIVISION C OF SECTION 12-10  
OF THE ZONING RESOLUTION OF DECEMBER 15, 1961  
OF THE CITY OF NEW YORK - AS AMENDED  
EFFECTIVE AUGUST 18, 1977

FIDELITY NATIONAL TITLE INSURANCE COMPANY, a Title Insurance Company licensed to do business in the State of New York and having its principal office at 485 Lexington Avenue, New York, New York hereby certifies that as to the land hereafter described being a tract of land, either unsubdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block in the single ownership of Green 317 Madison LLC, 51E42 Owner LLC, SLG 48E43 LLC and SLG 331 Madison LLC, that all the parties in interest consisting of a party in interest as defined in Section 12-10, subdivision (C) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

<u>NAME:</u>	<u>NATURE OF INTEREST</u>
1. Green 317 Madison LLC c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170	Fee Owner of Lot 20 in Tax Block 1277
2. 51E42 Owner LLC c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170	Fee Owner of Lot 27 in Tax Block 1277
3. SLG 48E43 LLC c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170	Fee Owner of Lot 46 in Tax Block 1277
4. SLG 331 Madison LLC c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170	Fee Owner of Lot 52 in Tax Block 1277

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as Tax Lot Numbers 20, 27, 46 and 52 in Block 1277 on the Tax Map of the City of New York, New York County and more particularly described as follows:

**As to Lot 20:**

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 corner formed by the intersection of the northerly side of 42<sup>nd</sup> Street with the easterly side of Madison Avenue;

RUNNING THENCE northerly along the said easterly side of Madison Avenue, 134 feet 2 inches;

THENCE easterly and parallel with 42<sup>nd</sup> Street and part of the distance through the center of a party wall, 100 feet;

THENCE northerly and parallel with Madison Avenue, 66 feet 8 inches to the southerly side of 43<sup>rd</sup> Street;

THENCE easterly along the said southerly side of 43<sup>rd</sup> Street, 40 feet;

THENCE southerly again parallel with Madison Avenue, 100 feet 5 inches;

THENCE easterly and parallel with 42<sup>nd</sup> Street, 24 feet 7-1/2 inches to line of land now or formerly of The New York & Harlem Railroad Company or of The New York Central Railroad Company;

THENCE southwesterly along said Railroad Company's land, 101 feet 10 inches to the northerly side of 42<sup>nd</sup> Street;

THENCE westerly along the said northerly side of 42<sup>nd</sup> Street, 147 feet 3 inches to the point or place of BEGINNING, be the said several dimensions more or less.

**As to Lot 27:**

ALL that certain plot, piece or parcel of land, lying above a horizontal plane drawn at elevation 44.25 feet and intersecting the easterly, westerly, northerly and southerly bounds of the land (hereinafter referred to as the "Land") situate in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of 42<sup>nd</sup> Street with the westerly line of Vanderbilt Avenue;

RUNNING THENCE westerly along the northerly line of 42<sup>nd</sup> Street 68 feet 5 inches;

THENCE northeasterly in a straight line 203 feet 8 inches, more or less, to a point in the southerly line of 43<sup>rd</sup> Street, 33 feet 8 inches westerly of the westerly line of Vanderbilt Avenue;

THENCE easterly along the southerly line of 43<sup>rd</sup> Street, 33 feet 8 inches to the westerly line of Vanderbilt Avenue; and

THENCE southerly along the westerly line of Vanderbilt Avenue, 200 feet 10 inches, more or less, to the northerly line of 42<sup>nd</sup> Street, the point or place of beginning, be said dimensions more or less.

THE above mentioned horizontal plane is referred to herein as the "Limiting Plane". The elevation of the Limiting Plane and all other elevations referred to herein have reference to the datum plane of the former The New York Central Railroad Company, predecessor of the Grantor, which takes for its elevation 0 feet 0 inches mean high water mark of the East River at the foot of East 26th Street in the City of New York on June 1, 1905.

EXCEPTING so much therefrom as was excepted, reserved and set forth as subdivisions b, c, and d as Article 6 in the deed made by The Penn Central Corporation to 51 East 42<sup>nd</sup> Street Associates, dated December 5, 1978 and recorded December 22, 1978 in Reel 464 page 1721.

**As to Lot 46:**

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

COMMENCING at the point on the southerly side of 43<sup>rd</sup> Street, distant 140 feet easterly from the southeasterly corner of 43<sup>rd</sup> Street and Madison Avenue;

RUNNING THENCE southerly and parallel with Madison Avenue, 100 feet 5 inches to the center line of the block between 42<sup>nd</sup> and 43<sup>rd</sup> Streets;

THENCE easterly, along said center line and parallel with 43<sup>rd</sup> Street, 24 feet 7-1/2 inches;

THENCE northeasterly on an oblique line, 101 feet 10 inches, more or less, to a point on the southerly side of 43<sup>rd</sup> Street, distant 42 feet easterly from the point of beginning; and

THENCE westerly along the southerly side of 43<sup>rd</sup> Street, 42 feet to the point or place of BEGINNING.

**As to former Lot 50, n/k/a part of Lot 52:**

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 easterly side of Madison Avenue, distant 45 feet 10 inches southerly from the southeasterly corner of Madison Avenue and 43<sup>rd</sup> Street;

RUNNING THENCE easterly parallel with 43<sup>rd</sup> Street and part of the way through a party wall, 100 feet;

THENCE southerly and parallel with Madison Avenue, 20 feet 10 inches;

THENCE westerly and parallel with 43<sup>rd</sup> Street and part of the way through a party wall, 100 feet to the

easterly side of Madison Avenue;

THENCE northerly and along easterly side of Madison Avenue, 20 feet 10 inches to the point or place of BEGINNING.

**As to former Lot 51, n/k/a part of Lot 52:**

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 easterly side of Madison Avenue, distant 25 feet southerly from the corner formed by the intersection of the easterly side of Madison Avenue with the southerly side of 43<sup>rd</sup> Street;

RUNNING THENCE southerly along the said easterly side of Madison Avenue, 20 feet 10 inches;

THENCE easterly, parallel with 43<sup>rd</sup> Street 100 feet;

THENCE northerly, parallel with Madison Avenue, 20 feet 10 inches and

THENCE westerly, again parallel with 43<sup>rd</sup> Street, 100 feet to the easterly side of Madison Avenue, the point or place of BEGINNING.

**As to former Lot 52, n/k/a part of Lot 52:**

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 43<sup>rd</sup> Street and the easterly side of Madison Avenue;

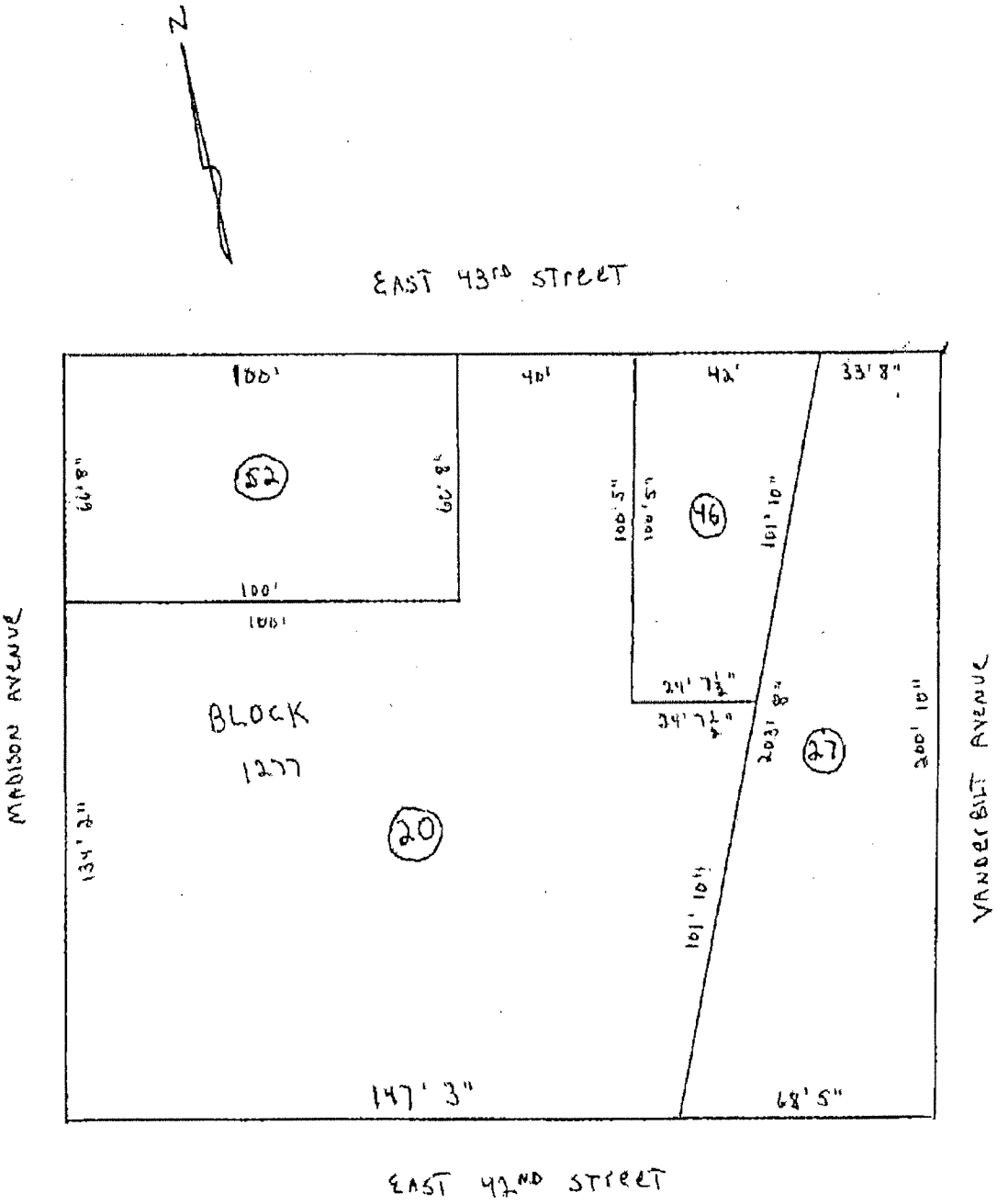
RUNNING THENCE southerly along the easterly side of Madison Avenue, 25 feet;

THENCE easterly parallel with 43<sup>rd</sup> Street and part of the way through the center of a party wall, 100 feet;

THENCE northerly parallel with Madison Avenue, 25 feet to the southerly side of 43<sup>rd</sup> Street;

THENCE westerly along the southerly side of 43<sup>rd</sup> Street, 100 feet to the easterly side of Madison Avenue, to the point or place of BEGINNING.

That the said premises are known as and by street addresses 33 East 42<sup>nd</sup> (Lot 20), 51 East 42<sup>nd</sup> Street (Lot 27), 48 East 43<sup>rd</sup> Street (Lot 46), and 327 Madison Avenue (Lot 52), New York, N.Y., as shown on the following diagram:






**Note:** A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more zoning lots provided all the resulting zoning lots and all the buildings thereon shall comply with the applicable provisions of the zoning lot resolution. The City of New York requires the submission of Real Property Transfer Tax for Number 4348 when a Zoning Lot Declaration is filed for recording pursuant to Zoning Lot Resolution 12-10 of the City of New York.

**Note:** This is a Preliminary Zoning Lot Certification which has been prepared prior to the execution and recording of the necessary Declaration, Waivers, or Zoning Lot Description and Ownership Statement. Upon execution and recording of same, a Final Zoning Lot Certification will be prepared.

THIS CERTIFICATE IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (\$1,000.00) DOLLARS.

Dated: February 11, 2015

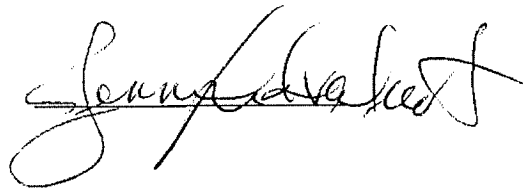
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY

BY:   
Edward Heim  
Vice President and Senior Underwriter

STATE OF NEW YORK     )  
  )  
COUNTY OF NEW YORK    )     SS:

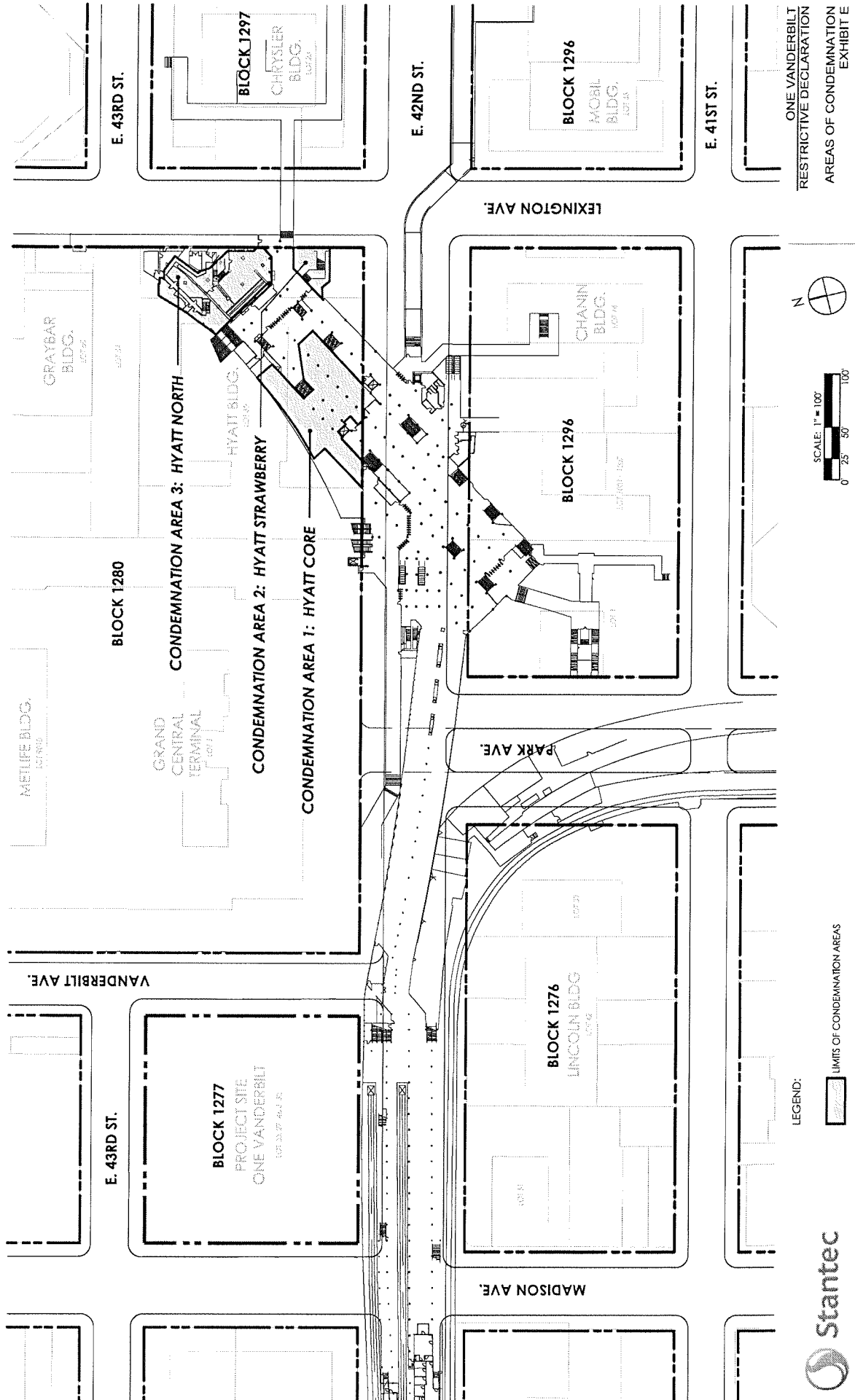
On the 11<sup>th</sup> day of March, 2015 before me, the undersigned, personally came Edward Heim, personally known to me or proved to me the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JENNIFER IVALIOTIS  
Notary Public, State of New York  
No. 01IV6209841  
Qualified in Kings County  
Commission Expires August 3, 2017



**EXHIBIT E**


Areas of Condemnation



LEGEND:

 LIMITS OF CONDEMNATION AREAS

SCALE: 1" = 100'  
 0 25 50 100

 N

ONE VANDERBILT  
 RESTRICTIVE DECLARATION  
 AREAS OF CONDEMNATION  
 EXHIBIT E



**EXHIBIT F**

Building Drawings

**EXHIBIT G**

On-Site Improvement Drawings

**EXHIBIT H**

Off-Site Improvement Drawings

**EXHIBIT I**

Mitigation Measures



## TRAFFIC MITIGATION MEASURES

### *THIRD AVENUE AND EAST 42ND STREET*

The significant adverse impacts at the eastbound left-turn and eastbound through lane groups of this intersection during the weekday PM peak hour could be fully mitigated by shifting 1 second of green time from the northbound phase to the eastbound phase.

### *THIRD AVENUE AND EAST 41ST STREET*

The significant adverse impact at the eastbound approach of this intersection during the weekday PM peak hour could be fully mitigated by shifting 1 second of green time from the northbound phase to the eastbound/westbound phase.

### *LEXINGTON AVENUE AND EAST 42ND STREET*

The significant adverse impact at the southbound right-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting 1 second of green time from the eastbound/westbound phase to the southbound phase.

The significant adverse impact at the eastbound approach of this intersection during the weekday midday peak hour could be fully mitigated by shifting 1 second of green time from the southbound phase to the eastbound/westbound phase.

### *PARK AVENUE AND EAST 47TH STREET*

The significant adverse impacts at the southbound right-turn lane group of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 1 second of green time from the westbound phase to the northbound/southbound phase.

### *PARK AVENUE AND EAST 40TH STREET*

The significant adverse impact at the southbound through (Viaduct Exit) lane group of this intersection during the weekday AM peak hour could be fully mitigated by restriping the eastbound approach from one 12-foot parking lane, one 12-foot left-turn/through lane, and one 10-foot right-turn lane to one 10-foot parking lane, one 11-foot left-turn/through lane, and one 13-foot right-turn lane; restriping the eastbound approach shared bike lane from the center lane to the south curbside lane; and shifting 1 second of green time from the eastbound phase to the northbound/southbound phase.

The significant adverse impacts at the northbound through/right-turn and southbound through (Viaduct Exit) lane groups of this intersection during the weekday PM peak hour could be fully mitigated by restriping the eastbound approach from one 12-foot parking lane, one 12-foot left-turn/through lane, and one 10-foot right-turn lane to one 10-foot parking lane, one 11-foot left-turn/through lane, and one 13-foot right-turn lane; restriping the eastbound approach shared bike lane from the center lane to the south curbside lane; and shifting 1 second of green time from the eastbound phase to the northbound/southbound phase.

#### *PARK AVENUE AND EAST 39TH STREET*

The significant adverse impacts at the westbound approach of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 1 and 2 seconds of green time from the northbound/southbound phase to the westbound phase, respectively.

#### *VANDERBILT AVENUE AND EAST 46TH STREET*

The significant adverse impacts at the southbound approach of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 1 second of green time from the eastbound phase to the northbound/southbound phase.

#### *VANDERBILT AVENUE AND EAST 42ND STREET*

The significant adverse impacts at the westbound through lane group of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 1 and 2 seconds of green time from the northbound/southbound pedestrian phase to the eastbound/westbound phase, respectively.

#### *MADISON AVENUE AND EAST 44TH STREET*

The significant adverse impacts at the eastbound approach and northbound through lane group of this intersection during the weekday AM and PM peak hours could be fully mitigated by restriping the eastbound approach (north to south) from one 9-foot parking lane, one 5-foot bike lane, one 10-foot moving lane, and one 9-foot parking lane to one 10-foot parking lane, one 5-foot bike lane, one 10-foot moving lane, and one 8-foot parking lane; by daylighting the north curbside of the eastbound approach (installing “No Standing 7 AM to 6 PM Monday to Friday”) for 100 feet to create an additional left-turn lane; and by shifting 1 second of green time from the eastbound phase to the northbound phase.

The significant adverse impact at the eastbound approach of this intersection during the weekday midday peak hour could be fully mitigated restriping the eastbound approach (north to south) from one 9-foot parking lane, one 5-foot bike lane, one 10-foot moving lane, and one 9-foot parking lane to one 10-foot parking lane, one 5-foot bike lane, one 10-foot moving lane, and one 8-foot parking lane; and by daylighting the north curbside of the eastbound approach (installing “No Standing 7 AM to 6 PM Monday to Friday”) for 100-feet to create an additional left-turn lane.

#### *MADISON AVENUE AND EAST 43RD STREET*

The significant adverse impacts at the northbound left-turn lane group of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 2 and 1 seconds of green time from the westbound phase to the northbound phase, respectively. In addition, installing “No Standing Anytime” regulations for 75 feet on the north side of the East 43rd Street receiving leg would be needed; this would eliminate approximately two to three on-street parking spaces for commercial vehicle parking during weekday daytime hours and for general parking during other times.

#### *MADISON AVENUE AND EAST 42ND STREET*

The significant adverse impacts at the westbound through and northbound left-turn/through lane groups of this intersection during the weekday AM peak hour could be partially mitigated by restriping the northbound approach from one 12-foot west curbside lane, two 10.5-foot through lanes, and one 12-foot right-turn lane to one 11-foot west curbside lane, two 11-foot through lanes, and one 12-foot right-turn lane.

The significant adverse impacts at the westbound through and northbound left-turn/through lane groups of this intersection during the weekday midday peak hour and at the westbound through lane group of this intersection during the PM peak hour could not be mitigated.

#### *FIFTH AVENUE AND 47TH STREET*

The significant adverse impact at the southbound through lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting 1 second of green time from the westbound through phase to the southbound phase.

#### *FIFTH AVENUE AND 46TH STREET*

The significant adverse impact at the southbound approach of this intersection during the weekday AM peak hour could be fully mitigated by shifting 1 second of green time from the eastbound phase to the southbound phase.

#### *FIFTH AVENUE AND 44TH STREET*

The significant adverse impact at the southbound approach of this intersection during the weekday AM peak hour could be fully mitigated by restriping the eastbound approach from one 11-foot through lane and one 9-foot right-turn lane to one 10-foot through lane and one 10-foot right-turn lane; and by shifting 1 second of green time from the eastbound phase to the southbound phase.

The significant adverse impact at the eastbound right-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by restriping the eastbound approach from one 11-foot through lane and one 9-foot right-turn lane to one 10-foot through lane and one 10-foot right-turn lane; and by shifting 1 second of green time from the southbound phase to the eastbound phase.

#### *FIFTH AVENUE AND 42ND STREET*

The significant adverse impact at the westbound approach of this intersection during the Saturday peak hour could be fully mitigated by shifting 1 second of green time from the southbound phase to the eastbound/westbound phase.

#### *SIXTH AVENUE AND WEST 42ND STREET*

The significant adverse impact at the westbound right-turn lane group of this intersection during the weekday midday and Saturday peak hours could be fully mitigated by shifting 4 seconds of green time from the northbound phase to the eastbound/westbound phase.

## **PEDESTRIAN MITIGATION MEASURES**

### *MADISON AVENUE AND EAST 43<sup>RD</sup> STREET*

#### *Corners*

- The significant adverse impacts at the northeast corner of this intersection during the weekday AM and PM peak hours could be fully mitigated by relocating a trash can that is obstructing pedestrian movements on this corner. To mitigate the significant adverse impact during the weekday midday peak hour, it would be necessary to also relocate the signal pole. Subsurface plans from the New York City Department of Environmental Protection were reviewed and these plans show that sewer and water main lines do not run through this corner. At the time of implementation, additional subsurface information related to the need for relocating public utilities (i.e., electric and gas lines) and sewer and water main service connections to individual buildings shall be provided by the Declarant to DOT for approval. Any required relocation of these subsurface elements will be undertaken at the Declarant's expense.
- The significant adverse impact at the southwest corner of this intersection during the weekday PM peak hour could be mitigated by extending the curb line along East 43rd Street by half a foot. The adjacent lane is an 8-foot curb lane with daytime No Standing regulations. A 5-foot Class 2 bike lane separates this curb lane from the street's center travel lane. In accordance with DOT design standards, a curb extension at this location would involve creating a corner bulb-out 6 feet into the adjacent curb lane, which would provide more pedestrian space than would be necessary to mitigate the projected significant adverse corner impact. This bulb-out would not interfere with traffic flow but may eliminate one curbside parking space during non-daytime hours only.

### *MADISON AVENUE AND EAST 42ND STREET*

#### *Sidewalks*

- A significant adverse impact was identified for the north sidewalk of East 42nd Street between Madison Avenue and Fifth Avenue during the weekday PM peak hour. The narrowest width along this sidewalk occurs adjacent to a permanent sidewalk newsstand kiosk that is approximately 6 feet wide and 11.5 feet long (69 square feet). According to the New York City Department of Consumer Affairs (NYCDCA), this type of kiosk can be no more than 72 square feet and can vary in widths (4, 5, and 6 feet) and lengths (8, 10, and 12 feet). At 317 Madison's expense, this newsstand kiosk can be reconstructed with a smaller width (i.e., 4 or 5 feet) to provide added pedestrian space on this sidewalk. With a 1-foot narrowing of the existing kiosk, which would result in a 1-foot widening of the

existing sidewalk, the projected significant adverse pedestrian impact on this sidewalk would be mitigated.

#### *Corners*

- Significant adverse impacts were identified for the northwest corner of this intersection during the weekday AM, midday, and PM peak hours. These impacts could be mitigated by extending the curb line along Madison Avenue by one foot. The adjacent lane is 10 feet wide and designated for daytime commercial loading/unloading and parking at other times. In accordance with DOT design standards, a curb extension at this location would involve creating a corner bulb-out 8 feet into the adjacent curb lane, which would provide more pedestrian space than would be necessary to mitigate the projected significant adverse corner impacts. This bulb-out would not interfere with traffic flow but may eliminate one curbside space for commercial loading/unloading during daytime hours or one parking space during non-daytime hours.

#### *Crosswalks*

- Significant adverse impacts were identified for the north crosswalk of this intersection during the weekday AM, midday, and PM, and Saturday peak hours. Widening it by 5 feet would fully mitigate the projected impacts. However, because the existing stripings of this crosswalk already align with the adjacent building line at the northwest corner of Madison Avenue and East 42nd Street, DOT may deem this proposed crosswalk widening infeasible at the time of implementation as it exceeds their current guidelines for crosswalk widenings.
- Significant adverse impacts were identified for the south crosswalk of this intersection during the weekday PM peak hour. Widening it by 0.5 feet would fully mitigate the projected impacts. However, because the existing stripings of this crosswalk already align with the adjacent building line at the southwest corner of Madison Avenue and East 42nd Street, this proposed crosswalk widening might be considered infeasible.
- A significant adverse impact was identified for the east crosswalk of this intersection during the weekday PM peak hour. Widening this crosswalk by 1.5 feet would mitigate the projected impact. However, this widening would extend the existing outer striping of this crosswalk, which is already beyond the adjacent building line, to slightly beyond the building chamfer on the southeast corner.

### *MADISON AVENUE AND EAST 41ST STREET*

#### *Corners*

- The significant adverse impact at the northeast corner of this intersection during the weekday AM peak hour could be fully mitigated by relocating a trash can that is obstructing pedestrian movements on this corner.

#### *Crosswalks*

- The significant adverse impact at the east crosswalk of this intersection during the weekday AM peak hour could be fully mitigated by providing 2 additional seconds of crossing time or by shifting 2 seconds from the eastbound phase to the northbound phase.

#### *FIFTH AVENUE AND 42ND STREET*

##### *Crosswalks*

- Significant adverse impacts were identified for the north crosswalk of this intersection during the weekday AM, midday, and PM peak hours. Widening this crosswalk by 4 feet would mitigate the projected impacts. However, this widening would extend the existing outer striping of this crosswalk two feet beyond the adjacent building line.
- Significant adverse impacts were identified for the south crosswalk of this intersection during the weekday AM and PM peak hours. Widening this crosswalk by half a foot would mitigate the projected impacts. However, because the existing stripings of this crosswalk already align with the adjacent building line, this proposed crosswalk widening might be considered infeasible.

#### *MODIFIED GROUND FLOOR ALTERNATIVE*

The redistribution of some pedestrian trips resulting from relocating the observation deck entrance from the southeast corner to the northwest corner of the building would result in a significant adverse impact at the south crosswalk of the Madison Avenue and East 43rd Street intersection during the weekday AM peak hour. As with other crosswalk impacts, the impact at the south crosswalk of Madison Avenue and East 43rd Street can be mitigated with restriping a wider crosswalk. Specifically, a 2-foot widening would adequately mitigate this projected impact. In addition, due to the recirculation of pedestrian trips, the impacts identified at the north crosswalk of Madison Avenue and East 42nd Street would only require a 4.5-foot widening for mitigation, rather than a 5-foot widening. However, both of these widenings would exceed DOT's current guidelines for crosswalk widenings and may be found to be infeasible at the time of implementation.