

RESTATED FOURTH MODIFICATION TO RESTRICTIVE DECLARATION

THIS RESTATED FOURTH MODIFICATION TO RESTRICTIVE DECLARATION, made as of the 9th day of November, 2001 by HUDSON WATERFRONT ASSOCIATES, L.P., a New York partnership having an office at 175 Riverside Boulevard, New York, New York 10069 ("Declarant").

WITNESSETH

WHEREAS, Penn Yard Associates entered into a Restrictive Declaration (the "Declaration") made as of December 17, 1992 and recorded in the Office of the City Register, New York County in Reel 1934, Page 0392; and

WHEREAS, by indenture made as of July 5, 1994 and recorded in the Office of the City Register, New York County in Reel 2112, Page 2231, Penn Yards Associates conveyed all its rights, title and interests to the property described in the Declaration to Declarant; and

WHEREAS, the Declaration was modified by the First Modification to the Restrictive Declaration (the "First Modification") made as of October 4, 1994 and recorded in the Office of the City Register, New York County in Reel 2159, Page 1096; by a Second Modification to the Restrictive Declaration (the "Second Modification") made as of January 9, 1997 and recorded in the Office of the City Register, New York County in Reel 2422, Page 424 and by a Third Modification to the Restrictive Declaration (the "Third Modification") made as of September 13, 1999 and recorded in the Office of the City Register, New York County in Reel 3026, Page 1983 (the

Declaration, as amended by the First Modification, the Second Modification and the Third Modification, the "Amended Declaration");

WHEREAS, the Amended Declaration provided, among other things, that Declarant would construct, or provide the Park Construction Entity with money for construction, of the Open Space Improvements; and

WHEREAS, the Commission approved on August 20, 2001 the proposed modifications to the Amended Declaration; and

WHEREAS, pursuant to Section 4.01(c) of the Amended Declaration, the Chair and the Parks Commissioner have approved certain changes to the Park Drawings, the Park Phasing Plans, the Park Construction Budget and the Open Space Phasing Schedule;

WHEREAS, pursuant to Section 9.05(a) of the Amended Declaration, all Unit Interested Parties have consented to any amendment, modification, cancellation, revision or other change to the Amended Declaration and have waived and subordinated any rights they may have to enter into an instrument amending, modifying, canceling, revising or otherwise changing the Amended Declaration; and

WHEREAS, there is no Existing Mortgagee (as such term is defined in the Amended Declaration); and

WHEREAS, this Restated Fourth Modification to Restrictive Declaration contains certain exhibits that were inadvertently omitted from the Fourth Modification to Restrictive Declaration dated as of November 9, 2001 and recorded in the office of the City Register, County of New York on January 25, 2002 in Reel No. 34~~3~~6, Page 1992.

NOW THEREFORE, Declarant does hereby declare that the Amended Declaration shall be modified as set forth herein:

1. All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in the Amended Declaration.

2. The last revision date for Plans Z-55, Z-56, Z-57, Z-58, Z-61 to Z-65 as set forth in Section 2.01(d) of the Amended Declaration is hereby modified to be as follows:

February 9, 2001	Z-61
May 1, 2001	Z-55, Z-58, Z-62, Z-63, Z-64, Z-65
May 14, 2001	Z-56, Z-57

3. Article IV (Open Space Plan) of the Amended Declaration is hereby deleted in its entirety and the following new Article IV is substituted therefor.

ARTICLE IV.

OPEN SPACE PLAN

4.01 Funding and Construction of the Open Space Plan.

(a) Pursuant to the procedures more particularly described in this Article IV of the Declaration, if the Subject Property is developed in accordance with the Special Permits following the Special Permit Election, Declarant covenants to construct, or at its sole election provide the Park Construction Entity with an amount of funds computed and payable solely as herein set forth for the construction of (i) a temporary open space (the "Temporary Open Space"), to be constructed in stages, subject to the provisions of Section 4.04(c) hereof, and, subject to the provisions of Section 4.02(c); either (ii) the

Open Space Plan substantially in accordance with Plans Z-55 to Z-61 if the Miller Highway is relocated before the expiration of the First Toll Period (as hereinafter defined) or (iii) the Interim Open Space Plan substantially in accordance with Plans Z-62 to Z-65 (the "Interim Open Space Plan") if the Miller Highway is not relocated before the expiration of the First Toll Period and (iv) the Southern Open Space substantially in accordance with Plan Z-60 (collectively, the "Park Drawings") (the Temporary Open Space, Interim Open Space Plan and Open Space Plan are collectively, the "Open Space Improvements"). The Open Space Improvements shall be constructed in accordance with the budget attached to this Declaration as Exhibit E (the "Park Construction Budget"), substantially in accordance with plans attached to this Declaration as Exhibit D (the "Park Phasing Plans" or "Phasing Plans"). Declarant covenants to make portions of the Open Space accessible to the public as soon as it is practicable.

(b) The Open Space Improvements shall be constructed substantially in the sequence and based upon the drawings of the construction phases (the "Park Construction Phases" or "Phases") in the Park Phasing Plans and the description of the Park Construction Phases attached to this Declaration as Exhibit F, entitled "Park Phasing Description". Subject to Section 4.04 hereof with respect to the provision of Temporary Open Space, each Park Construction Phase shall be conveyed to the City and opened for public use within thirty (30) days after the Parks Commissioner certifies it to be Substantially Completed, in accordance with Section 4.06 of this Declaration.

(c) The Construction Documents and Park Construction Budget may be modified only upon the approval of the Parks Commissioner as provided in the M&O Agreement. Within five (5) business days of any such approval, written notice of such approval shall

be given by the Declarant to the Chair provided, however, when any such approval modifies the (i) Park Drawings, (ii) Park Phasing Plans, (iii) Park Phasing Description, and (iv) Open Space Phasing Schedule, such modifications must be approved with notice to the Speaker of any request for such modification, by both the Parks Commissioner and Chair who shall give such approval upon a finding that such modification will not have a significant negative effect on the public access, visual character or function of the Open Space Improvements or SOS. Major modifications shall be referred to the Commission and City Council as provided in Section 9.02 of this Declaration.

(d) Prior to the commencement of construction of any Phase or part thereof of the Open Space Improvements or the SOS, the Declarant or the Park Construction Entity, if any, shall submit Construction Documents for such portion of the Open Space Improvements or SOS to the Parks Commissioner for approval. Within thirty (30) business days after submission, the Parks Commissioner shall approve or disapprove of the Construction Documents. If the Parks Commissioner disapproves the Construction Documents, the Parks Commissioner shall state in writing the reasons for such disapproval. The Declarant or the Park Construction Entity, if any, shall thereafter submit revised Construction Documents in accordance with the Parks Commissioner's disapproval report and upon receipt thereof, the Parks Commissioner shall approve or disapprove the revised Construction Documents within ten (10) business days. If there are any further revisions required as a result of a disapproval of the Parks Commissioner, the Parks Commissioner shall approve or disapprove any further revised Construction Documents within ten (10) business days of submission. All such approvals by the Parks Commissioner shall not be unreasonably withheld.

(e) Prior to the submission of the Construction Documents to the Parks Commissioner in accordance with Section 4.01(d) hereof, Declarant shall consult with the Parks Commissioner and, Declarant and the Parks Commissioner shall together consult periodically with the Manhattan Borough President, the parks committees of Community Board Nos. 4 and 7, the local City Council representative and appropriate civic groups and neighborhood organizations throughout the design of the Open Space Improvements, including the preparation of full schematic drawings and design development drawings, as well as the Construction documents.

4.02 Allocation of the Park Construction Budget; Certificates of Occupancy.

(a) Declarant shall allocate the Park Construction Budget to the Floor Area in the Subject Property in a “front-loaded” manner, so that by the time approximately seventy-five percent (75%) of the Floor Area in the GLSD has been constructed (5,900,000 square feet), one hundred percent (100%) of the funds shall have been contributed to the Park Construction Budget in accordance with the schedule (the “Floor Area Allocation Schedule”) attached to this Declaration as Exhibit G. Each building’s required contribution, or portion thereof, to the Park Construction Budget, indexed from the Effective Date annually to the Consumer Price Index, shall be denominated the “Floor Area Contribution”, and shall equal approximately \$8.95 per square foot of Floor Area for the first 5,900,000 square feet of Floor Area in the GLSD to be completed. At the request of the Declarant, the Chair and the Speaker may approve an alternate method for the Declarant to allocate the Floor Area Contributions (the “Alternate Floor Area Allocation”), other than as described in the first sentence of this paragraph, provided that the Chair in consultation with the Parks Commissioner determines the Alternative Floor

Area Allocation is reasonably calculated to assist development of the GLSD and construction of the Open Space.

(b) The Buildings Department shall not issue, and the Declarant shall not apply for or accept, a Temporary or Permanent Certificate of Occupancy for any building or part thereof on the Subject Property until (i) Declarant has deposited the Floor Area Contribution required for the amount of Floor Area in the building or part thereof for which a Temporary or Permanent Certificate of Occupancy is being requested to the Park Construction Escrow and notified the Parks Commissioner of its delivery, and (ii) the Parks Commissioner has notified the Buildings Department of the deposit of such Floor Area Contribution or part thereof into an escrow account (the "Park Construction Escrow"). This provision shall not be deemed to require Declarant to deposit the entire Floor Area Contribution for either an entire building or Parcel at one time, unless Temporary or Permanent Certificates of Occupancy are being requested with respect thereto.

(c) Upon deposit of the first Floor Area Contribution, Declarant shall commence the development and construction of the Open Space Improvements, substantially in accordance with the Park Drawings and within limitations of the approved Park Construction Budget, utilizing the Floor Area Contribution(s) in the Park Construction Escrow. Subject to the receipt of Floor Area Contributions, and to the provisions of this Article IV of the Declaration and Uncontrollable Circumstances, Declarant shall proceed with the construction of the Open Space Improvements on a Phase by Phase basis in accordance with Exhibits D and F as expeditiously as possible, and, in the event the Highway Relocation Notice (as hereinafter defined) is received, subject to coordination

of the construction of the Open Space Plan with the relocation of the Miller Highway, utilizing the Floor Area Contributions in the Park Construction Escrow.

(d) Declarant shall establish the Park Construction Escrow in accordance with terms and conditions satisfactory to the Parks Commissioner and subject to audit by the Parks Department and the Comptroller of the City of New York (the "Comptroller"). Declarant may draw down the Floor Area Contribution(s) or part thereof from the Park Construction Escrow in order to develop and construct the Open Space Improvements. Declarant shall provide the Parks Commissioner with an annual budget for the utilization of the Floor Area Contributions, which shall be subject to audit and oversight by the Parks Commissioner.

(e) In order to ensure the Declarant's completion of each Phase of the Open Space Improvements as described in Exhibits D and F, Declarant shall not apply for or accept, a Temporary Certificate of Occupancy or a Permanent Certificate of Occupancy for Floor Area in excess of certain cumulative amounts (the "Open Space Restricted Space") until the Declarant has substantially completed certain specified Phases of the Open Space Improvements and the Parks Commissioner has so certified such Substantial Completion in accordance with this Declaration and the Maintenance Agreement. The Open Space Restricted Space shall be related to the Substantial Completion of Phases in accordance with the phasing schedule (the "Open Space Phasing Schedule") attached to this Declaration as Exhibit H. Pursuant to Exhibit H, as such may be modified from time to time, the Buildings Department shall not issue, and the Declarant shall not apply for or accept, a Temporary Certificate of Occupancy or a Permanent Certificate of Occupancy for:

(i) in excess of 1,258,000 square feet of Floor Area in the GLSD unless Phase 1 of the Phasing Plans is substantially complete;

(ii) in excess of an additional 781,993 square feet of Floor Area, or a total of 2,039,993 square feet in the GLSD, unless Phase 2 of the Phasing Plans is substantially complete;

(iii) in excess of an additional 760,696 square feet of Floor Area, or a total of 2,800,689 square feet in the GLSD, unless Phase 3 of the Phasing Plans is substantially complete;

(iv) in excess of an additional 737,240 square feet of Floor Area, or a total of 3,537,929 square feet in the GLSD, unless Phase 4 of the Phasing Plans is substantially complete.

In view of the exigencies related to the construction of the later Phases of the Open Space Improvements which are affected by when or whether or not the Miller Highway is relocated, Declarant shall not be required to have Open Space Restricted Space with respect to Phases 5, 6 or 7 of the Park Phasing Plans unless with respect to Phases 5A, 6A and 7A, the Highway Relocation Notice is received prior to the expiration of the First Toll Period in accordance with Section 4.05 hereof and the relocation of the Miller Highway has been completed for two (2) years, or, with respect to Phases 5B, 6B and 7B, at least two years has elapsed after the expiration of the First Toll Period without the receipt of the Highway Relocation Notice and the construction of the GLSD has not been completed.

If, pursuant to the preceding paragraph, the Declarant is required to have Open Space Restricted Space, the Buildings Department shall not issue, and the

Declarant shall not apply for or accept, Temporary or Permanent Certificate of Occupancy for:

(x) in excess of an additional 935,875 square feet of Floor Area, or a total of 4,473,804 square feet in the GLSD, unless Phase 5A or 5B (as required in accordance with Sections 4.05 (c) and (d) hereof) of the Phasing Plans is Substantially Complete.

(y) in excess of an additional 935,875 square feet of floor area, or a total of 5,409,679 square feet in the GLSD, unless Phase 6A or 6B (as required in accordance with Sections 4.05 (c) and (d) hereof) of the Phasing Plans is Substantially Complete.

(z) in excess of an additional 490,321 square feet of Floor Area, or a total of 5,900,000 square feet in the GLSD, unless Phase 7A or 7B (as required in accordance with Sections 4.05 (c) and (d) hereof) of the Phasing Plans is Substantially Complete.

This provision shall not be deemed to prevent Declarant from applying for or receiving Temporary or Permanent Certificates of Occupancy for amounts of Floor Area in buildings or parts thereof that does not exceed the amount of Floor Area with respect to a particular Park Phase that constitutes Open Space Restricted Space.

(f) In the event that Declarant reasonably believes that full performance of its obligations to develop the Open Space Improvements or the SOS, including, but not limited to, any obligations with respect to the Open Space Restricted Space which affect the issuance of Temporary or Permanent Certificates of Occupancy, has been delayed as a result of Uncontrollable Circumstances, Declarant shall so notify the Parks Department as soon as Declarant learns of such circumstances. Declarant's written notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact it is reasonably

anticipated to have on the completion of the work. In the exercise of its reasonable judgment, the Parks Commissioner shall, within twenty (20) business days of its receipt of Declarant's written notice, (i) certify in writing that Uncontrollable Circumstances have occurred, including a determination of the expected duration of such delay (the "Delay Notice") and that adequate security exists to assure performance in the future, or (ii) notify Declarant that he or she does not reasonably believe that the delay or inability to perform claimed by Declarant would not have occurred but for Uncontrollable Circumstances or (iii) notify Declarant that he or she does not reasonably believe that adequate security exists to assure performance in the future. If the Parks Commissioner so certifies in accordance with Section 4.02(f)(i), notwithstanding anything contained in this or any other provision of this Declaration, Declarant may apply for or accept and the Buildings Department may issue a Temporary or Permanent Certificate of Occupancy for any building or portion thereof, including a portion of the Open Space Restricted Space, prior to the completion of applicable portion of Open Space Improvements or other obligations as applicable under this Article.

4.03 Utilization of the Park Construction Entity.

(a) In the event that the Declarant, in its sole election, determines to delegate construction of the Open Space Improvements and the SOS to the Park Construction Entity, the following terms and conditions shall apply:

(i) Declarant shall notify the Chair and the Parks Commissioner in writing of Declarant's determination to delegate the construction of the Open Space Improvements to the Park Construction Entity (the "Park Construction Entity Delegation"). Declarant or Successor Declarant (as hereinafter defined) may rescind the

Park Construction Entity Delegation upon three (3) months written notice to the Parks Commissioner and the Park Construction Entity.

(ii) Declarant shall deposit the Floor Area Contributions into an escrow account (the "Entity Construction Escrow") established by the Park Construction Entity in accordance with terms and conditions satisfactory to the Parks Department and the Comptroller. Subject to the provisions of Section 4.03(a)(iii) of this Declaration, the Park Construction Entity may draw down the Floor Area Contributions from the Entity Construction Escrow in order to develop and construct the Open Space Improvements and the SOS. The Park Construction Entity shall provide the Parks Commissioner and Declarant with an annual budget for the utilization of the Floor Area Contributions, which shall be subject to audit and oversight by the Parks Commissioner and by Declarant and audit by the Comptroller.

(iii) Upon completion of the design development and completion of the Construction Documents but prior to the start of construction of the Open Space or any Park Construction Phase, after the Parks Commissioner has approved the Construction Documents in accordance with Section 4.01(d), the Park Construction Entity must certify to the Parks Commissioner that such Park Construction Phase has a construction cost within the limitations of the approved Park Construction Budget. Thereafter, the Park Construction Entity shall construct the Open Space Improvements in accordance with the provisions of this Declaration.

(iv) The deposits of Floor Area Contributions required by the provisions of Section 4.02(b) of this Declaration shall be to the Entity Construction Escrow established by the Park Construction Entity rather than the Park Construction

Escrow established by Declarant, and the notice of Uncontrollable Circumstances pursuant to Section 4.02(f) of this Declaration may be made by the Park Construction Entity as well as the Declarant.

(v) The procedures in this Section 4.03 shall only apply in the event Declarant makes the Parks Construction Entity Delegation.

4.04 Provision of the Temporary Open Space.

(a) Declarant covenants that, upon Substantial Completion of each area of the Temporary Open Space pursuant to Section 4.04 hereof and the Park Phasing Plans, the City shall hereby enjoy, wield, have the non-exclusive right to and the benefit of and be granted, conveyed and transferred a temporary non-exclusive easement (the "Temporary Open Space Easement") for pedestrian use, passive recreation and unorganized active recreation in such area of the Temporary Open Space until the commencement of the construction in that area of the permanent elements of the Open Space Improvements required by the Park Phasing Plans or construction in connection with the Miller Highway Relocation Approval, unobstructed from the ground up to the sky, appurtenant to adjacent and nearby City-owned real property in streets and parks, and underwater, and that liens, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, and all burdens, covenants, encumbrances, leases, licenses, easements, profits, security interests, and all other interests subsequent thereto, excepting governmental tax liens and assessments, public utilities and easements, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the easement granted herein.

(b) Each portion of the Temporary Open Space Easement shall commence for the benefit of and shall vest in the City commensurate with and on the date of the Substantial Completion of the respective portion of the Temporary Open Space. Any mortgage or other lien or encumbrance upon the Subject Property after the effective date of this Declaration shall, at and after the time of such vesting of the respective portion of the Temporary Open Space Easement in the City, be or be caused to be subject and subordinate to this Declaration.

(c) Subject to Uncontrollable Circumstances, Declarant further covenants to act diligently (i) to construct, provided that repair work on the Miller Highway does not create unsafe conditions that prevent such construction, and vest the City with the first portion of the Temporary Open Space Easement no later than July 1, 1994, and (ii) to substantially complete and vest the City with the remaining portions of the Temporary Open Space Easement in accordance with the Park Drawings and the Open Space Phasing Schedule. The construction of the Temporary Open Space shall not constitute a Special Permit Election.

(d) Upon Substantial Completion of each portion of the Temporary Open Space, Declarant covenants that the Temporary Open Space Easement shall remain open and accessible to the public without charge or fee, seven (7) days per week from 7:00 a.m. to 1:00 a.m., or such other hours as Riverside Park may hereafter be open to the public from time to time. Notwithstanding the provisions of this Section, the Parks Department and the Declarant may by written agreement vary such hours.

(e) Declarant may close the Temporary Open Space Easement to the public for one day or such other period as shall be required by law to prevent a public dedication of

the Temporary Open Space Easement, other than Saturday, Sunday or public holiday, on the same date in January each year or as near to such date as is possible, to preserve Declarant's ownership interest in the Temporary Open Space Easement and to prevent a public dedication.

(f) Declarant may close the Temporary Open Space Easement or the most limited portions thereof as may be necessary in order (x) to accomplish the maintenance, repairs or replacements or (y) to make emergency repairs to mitigate hazardous conditions or emergency conditions and shall notify the Parks Commissioner of such closing and its expected duration as soon as practicable. Emergency conditions for which the Temporary Open Space Easement may be closed shall be limited to actual emergency situations creating or causing physical danger or threat to the public safety. Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or mitigation to be undertaken, and will exercise due diligence in the performance of such repairs etc. or mitigation so that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly.

(g) Declarant further covenants to maintain, insure, and provide indemnification to the City for the Temporary Open Space in the same manner as it covenants to provide for the other Open Space Improvements in accordance with the Maintenance Agreement.

4.05 Phasing of the Open Space Plan, Interim Open Space Plan and SOS.

(a) Subject to the provision of the Temporary Open Space Easement in accordance with the Phasing Plan pursuant to Section 4.04 of this Declaration, as and when funds are available from the Floor Area Contributions, Declarant shall initially and

sequentially construct Phases 1-4 of the Park Phasing Plans which comprise the portions of the Open Space Plan or the Interim Open Space Plan west of the existing Miller Highway, substantially in accordance with Plans Z-55 to Z-58 and Z-62 to Z-65, and, in accordance with Section 4.06 of this Declaration, upon their completion, convey them for public use. In the event that a pedestrian bridge is constructed at 59th Street to provide access over Route 9-A, Declarant shall apply to the Parks Commissioner to modify the Construction Documents to accommodate such bridge, in accordance with the procedure set forth in Section 4.01(c) hereof.

(b) INTENTIONALLY OMITTED

(c) Upon Substantial Completion of all of Phases 1-4 of the Park Phasing Plans, if (subject to the provisions for extensions set forth in this Section), less than (10) years has elapsed from the Special Permit Election (the "First Toll Period"), no further construction of the Open Space Improvements shall be undertaken until the First Toll Period has expired, unless the Chair has notified the Declarant and/or the Park Construction Entity that the Miller Highway Relocation Approval has been received (the "Highway Relocation Notice"). If the Highway Relocation Notice is received prior to the expiration of the First Toll Period, including any extensions, Declarant shall proceed with the construction of Phases 5A, 6A and 7A of the Park Phasing Plans substantially in accordance with Plans Z-55 to Z-58, which construction shall be subject to the provision of Open Space Restricted Space in accordance with Section 4.02(e) hereof and Exhibit H. If the Highway Relocation Notice is not received prior to the expiration of the First Toll Period (and Phase 4 has been substantially completed), all further Floor Area Contributions shall be deposited in an escrow account to be held by the Parks Department

(the "Completion Escrow") and no further work shall be undertaken until the expiration of the First Toll Period.

(d) After the expiration of the First Toll Period, if the Highway Relocation Notice has not been received, Declarant shall, provided Floor Area Contributions are available and utilizing any funds from the Floor Area Contributions which have been deposited in the Completion Escrow, construct Phases 5B, 6B and 7B of the Park Phasing Plans which comprise the remaining elements of the Interim Open Space Plan, substantially in accordance with Plans Z-62 to Z-65. If within 60 days of the expiration of the First Toll Period, or any extension pursuant hereto, the Parks Commissioner and Chair determine the Highway Relocation Approval is reasonably likely to be forthcoming in the near future, the Parks Commissioner and Chair may extend the expiration of the First Toll Period by successive periods of 180 days.

(e) After the expiration of the First Toll Period, including any extensions, if the Highway Relocation Notice has not been received and Phases 5B, 6B and 7B of the Park Phasing Plans have been substantially completed, any further Floor Area Contributions shall be deposited to the Completion Escrow. The Parks Department and Chair shall then at their discretion wait an additional period of time to be determined by the Parks Commissioner and Chair in consultation with the Commissioner of DOT (the "Second Toll Period") to either use all or part of the funds in the Completion Escrow for additional capital improvements and capital replacements to the Interim Open Space Plan, or, upon receipt of the Highway Relocation Approval at the future date, construct Phases 5A, 6A and 7A of the Park Phasing Plans. Upon issuance of a certification of Final Completion in accordance with the Maintenance Agreement for either Phases 5B, 6B and 7B or

Phases 5A, 6A and 7A of the Park Phasing Plans, Declarant shall have no further liability or obligations under this Declaration or the Declaration and the Maintenance Agreement for the construction of the Open Space Improvements, except that Declarant shall be liable as may be provided by law or this Declaration and the Maintenance Agreement for any claims related to such construction, and provided further that Declarant shall not have liability or obligations for any further construction of the Open Space Improvements during the Second Toll Period.

(f) In the event that 5,900,000 square feet of Floor Area in the GLSD has received Temporary or Permanent Certificates of Occupancy and the Floor Area Contributions are insufficient to construct Park Construction Phases 5, 6 or 7 of the Open Space Plan or the Interim Open Space Plan, the Construction Documents shall be modified as agreed between the Declarant or the Park Construction Entity (if the Construction Entity Delegation has been made) and the Park Commissioner in accordance with the procedures set forth in Section 4.01(c) hereof. Neither the Declarant nor any other party shall have any obligation to make additional Floor Area Contributions for Phases 5, 6 and 7. The Park Construction Entity and the Declarant shall not be required to return funds resulting from savings in the actual construction costs, or contingency funds not expended during the construction of the complete Open Space. After completion, such funds may, at Declarant's election, either be retained for future capital expenses or utilized for payment of maintenance obligations of the Open Space Improvements in accordance with the Maintenance Agreement. Declarant's obligations with respect to the construction and completion of the Temporary Open Space, Open Space Plan and the Interim Open Space Plan are strictly limited to compliance with the

provisions of this Article IV and the Declaration, including the payment of the Floor Area Contributions, to the grant of temporary easements in the Temporary Open Space, pursuant to Section 4.04 hereof, to the grant of an easement for the SOS, and to conveyance of the Open Space and the Public Place, respectively, upon their Substantial Completion, pursuant to Sections 4.06 and 4.07, respectively of this Declaration, including any agreed upon obligations to maintain the Open Space Improvements and the SOS.

(g) As indicated on the Park Drawings, construction of certain of the waterfront elements of the Park Phasing Plans, including the “I” Pier restoration for pedestrian use, adjustments to the bulkhead, and construction of pedestrian boardwalks and piers (the “Pier Work”) may require authorizations from the United States Army Corps of Engineers and other governmental agencies and, if Declarant, after using reasonable efforts, has been unable to obtain all requisite permits and legal approvals for the Pier Work, the Open Space Plan or the Interim Open Space Plan shall be constructed without the Pier Work. Declarant shall report annually to the Parks Commissioner, the Manhattan Borough President, Manhattan Community Boards No. 4 and 7 and the local City Council representative, with respect to its efforts to obtain such permits for the Pier Work. In the event that Declarant has been unable to secure the required authorizations for the Pier Work, or a portion thereof, Declarant shall apply to the Parks Commissioner and the Chair to modify the Park Drawings in accordance with Section 4.01(c) hereof to make any necessary adjustments to the Open Space Plan or the Interim Open Space Plan and to reallocate within the Park Construction Budget any available Floor Area Contributions which were deposited for the Pier Work.

(h) The Buildings Department shall not issue and Declarant shall not apply for or accept a Temporary or Permanent Certificate of Occupancy for more than fifty percent (50%) of the Floor Area in Parcel O until the Parks Commissioner has certified that the SOS is substantially complete.

4.06 Completion and Conveyance of the Open Space.

(a) Upon Substantial Completion of construction of each Park Construction Phase, Declarant shall notify the Parks Department that it believes that such Park Construction Phase is Substantially Complete, and Declarant shall request a certification of Substantial Completion in accordance with the procedure in this Declaration and Maintenance Agreement.

(b) Within thirty (30) days after issuance of a certification of Substantial Completion of any Park Construction Phase by the Parks Department, Declarant shall convey fee title for such Park Construction Phase to the City, at no cost to the City, for public park purposes.

(c) In conjunction with the conveyance of fee title to the City of each Phase which directly abuts any portion of the Subject Property which includes lands underwater, Declarant shall convey the lands underwater adjacent to such Phase in the same manner.

4.07 Conveyance of the Public Place.

Fee title to portions of the Public Place shall be conveyed to the City simultaneously with conveyance of the Park Construction Phase in which such portion of the Public Place is located, as shown on the Park Phasing Plans.

4.08 Maintenance Agreement.

After the Open Space Improvements and the SOS are constructed and conveyed in accordance with Article IV, Declarant covenants to maintain them in good condition and good repair in accordance with the Maintenance Agreement, attached to this Declaration as Exhibit I and incorporated by reference pursuant to Section 10.16 hereof.

4. Exhibits C, D, E, F and H to the Amended Declaration are hereby deleted in their entirety and new Exhibits C, D, E, F and H attached hereto are substituted therefor and made a part hereof.

5. Except as modified herein, the Amended Declaration remains unmodified, in full force and effect and binding upon the party hereto.

IN WITNESS WHEREOF, this Restated Fourth Modification has been executed as of the date first above written.

HUDSON WATERFRONT ASSOCIATES, L.P.

By:

By: Paul VanDien Davis
Name: Paul VanDien Davis
Title: Vice President