

Table 4

Building No.	“Proposed FA with Inclusionary Housing Bonus” from Drawing Z-1R of Plans (ZSF)
Building 1	918,732
Building 2	628,623
Building 3	399,417
Building 4	331,884
Building 5	736,173

(x) No Amendment to Plans or Declaration Required for Smaller Buildings. In the event of a certification by the Chair with respect to a Smaller Building made under subpart (vii) of this Section, no amendment to the Plans or this Declaration shall be required, provided that Declarant complies with the drawings submitted for purposes of Chair review under subpart (ix) of this Section and that the Building otherwise complies in all other respects with the Approvals and the requirements of this Declaration.

#### Section 2.03 Public School.

(a) Declarant shall, subject to subclause (iii) of paragraph (b) hereof: (aa) engage in a collaborative design development process with the New York City School Construction Authority (“SCA”), which shall include collaboration on schematic design, design development and contract documentation; (bb) perform construction at its own expense of “School Base Building Work,” as defined under a School Design, Construction, Funding and Purchase Agreement with SCA (the “SCA Agreement”) intended to be entered into pursuant to a May 3, 2010 Letter of Intent executed by the SCA and accepted and agreed to by Declarant, attached to this Declaration as Exhibit J (the “SCA Letter of Intent”); (cc) perform construction at SCA expense of “Additional School Base Building Work,” as defined in the SCA Agreement; (dd) enter into a condominium regime with respect to the Public School and the remainder of Building 2, or other regime acceptable to SCA and Declarant, as a means of transferring ownership of the Public School to SCA; and (ee) transfer the Public School to SCA ((aa) to (ee) collectively, the “Public School Obligations”), the Public School Obligations to be performed pursuant to, in accordance with, and conditioned upon the terms and conditions of the SCA Agreement.

(b) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(i) Within three (3) months of the date of this Declaration, Declarant shall promptly commence negotiations with the SCA and thereafter diligently pursue the completion and execution of the SCA Agreement.

(ii) Not less than eighteen (18) months prior to the date Declarant anticipates filing for a New Building Permit for Building 2, Declarant shall provide written

notice to the SCA (the "School Election Notice") advising the SCA of the plan to file for such New Building Permit and offering the SCA the location within the base of such Building 2 for the Public School, as shown on drawing Z-101 of the Plans (the "Proposed School Site"). Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 7 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

- (aa) If SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA intends to proceed with the Public School on the Proposed School Site, and has or anticipates receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement, Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the Public School into Building 2 in accordance with the SCA Agreement. SCA's notice to Declarant of its intent to proceed with the development of the Public School shall be accompanied by a statement as to the floor area required to be set aside for use by the Public School, provided that such amount shall not exceed 132,000 square feet. Provided that the SCA has agreed to proceed with the Public School in the manner set forth in this subclause (aa), the Buildings Department shall not issue, and Declarant shall not accept a New Building Permit for Building 2, including the Proposed School Site, unless and until the SCA has approved the construction documents to be filed with the application for the New Building Permit insofar as such documents pertain to the School Base Building Work, as more particularly set forth in the SCA Agreement.
- (bb) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA does not intend to proceed with the Public School on the Proposed School Site, and in any event if the SCA fails to respond to Declarant's notice within such thirty (30) day period, Declarant shall be permitted to construct Building 2 identified in the School Election Notice without including a Public School in Building 2, and Declarant shall have no further obligation under this Section 2.03(b). In such event Declarant shall certify to the Buildings Department, with a copy to DCP, that the SCA has failed to respond to Declarant's notice and that Declarant is proceeding to construct Building 2 without a Public School.
- (cc) Declarant covenants to seek a New Building Permit for Building 2 as one of the first two New Building Permits issued for new buildings containing residential units.

(iii) Provided that the SCA has agreed to proceed with the Public School in the manner set forth in subclause (aa) above and in the SCA Agreement, the Buildings Department shall not issue, and Declarant shall not accept, subject to Uncontrollable Circumstances, temporary certificates of occupancy ("TCOs") or permanent certificates of occupancy ("PCOs") for more than 938 residential units on the Subject Property (the "Unit

**Threshold**) until such time as (I) Declarant has completed the School Base Building Work, and (II) has delivered the School Base Building Work to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement. Notwithstanding the foregoing, in the event that Declarant's obligations under this Section 2.03 have terminated pursuant to subclause (ii)(bb) of paragraph (b) hereof, Declarant may apply for and the Buildings Department may issue TCOs and PCOs for any and all residential units in the Development without regard to this subclause (iii).

(iv) The Unit Threshold set forth in subclause (iii) may be modified with the consent of Declarant, SCA, and DCP in the event that, as demonstrated to the satisfaction of DCP in a Technical Memorandum, such modification is warranted in relation to actual school utilization rates or residential growth in the study area identified in the FSEIS.

(c) For purposes of this Section 2.03, Uncontrollable Circumstances may include, in addition to the elements set forth in the definition thereof under Article I of this Declaration, a failure or delay by SCA resulting from the following: (aa) a failure or delay in approval of a site selection for the Public School pursuant to the New York State Public Authorities Law; (bb) a failure or delay in approval of the SCA Agreement; (cc) a failure or delay in securing funds for the Public School; (dd) a failure or delay in review of design submissions in accordance with timeframes established under the SCA Agreement; and (ee) a failure or delay in change orders initiated or otherwise caused by SCA.

Section 2.04 **Representation.** Declarant hereby represents and warrants that 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 restriction and obligation to develop and enlarge the Subject Property as a General Large Scale Development and related restrictions as set forth herein.