Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

Appendix D

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Appendix D - Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus in Subarea H

LAST AMENDED
2/2/2011

This Appendix sets forth additional requirements governing #zoning lots# located within Subarea H between West 17th and 18th Streets over which the #High Line# passes with respect to a #development# or #enlargement# which involves an increase in the applicable basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 9822 (Maximum Floor Area Ratio and Lot Coverage in Subareas), with respect to: (1) the issuance of a building permit for such #development# or #enlargement# pursuant to paragraph (a) of Section 9825 (High Line Improvement Bonus); and (2) the performance or funding of improvements as a condition of issuance of temporary or permanent certificates of occupancy, pursuant to paragraph (b) of Section 9825, for #floor area# in such #development# or #enlargement# which exceeds the basic maximum #floor area ratio# of the #zoning lot#. The term "parties in interest" as used herein shall mean "parties-in-interest," as defined in paragraph (f)(4) of the definition of #zoning lot# under Section 12-10.

(a) Requirements for issuance of building permit under paragraph (a) of Section 9825

(1) As a condition of issuance of a building permit under paragraph (a) of Section 9825:

(i) Owner shall, subject to reduction pursuant to the other provisions of this Appendix D, deposit into the #High Line# Improvement Fund, or secure by letter of credit or other cash equivalent instrument in a form acceptable to the City, a contribution of $50.00 per square foot of #floor area# which exceeds the basic maximum #floor area ratio# of the #zoning lot#, up to the amount specified in Section 98-22, provided, that in the event the Owner has previously entered into agreements for construction of At-Grade Plaza Work and Stairway and Elevator Access Work by the City, pursuant to paragraph

(a)(2) of this Appendix D, and has made a contribution pursuant thereto, the amount of contribution to the #High Line# Improvement Fund under this subparagraph for purposes of Section 98-25, paragraph (a) shall be reduced by such amount at the time it is made;

(ii) all parties-in-interest shall execute a restrictive declaration including easements to the City providing for: the location of and public access to and use of the At-Grade Plaza and the stairway and elevator that will provide access to the #High Line#, as shown in Diagram 3 of Appendix C, such easement area for the At-Grade Plaza to include the entire area of the #zoning lot# east of the #High Line# and such easement area as it relates to such stairway and elevator to be at least 2,500 square feet and in a location and configuration acceptable to the City; access for the potential performance by the City of work under the provisions set forth below; and maintenance and repair of the stairway and elevator. Such declaration shall incorporate by reference the maintenance and operating agreement referred to in paragraph (a)(1)(iii) of this Appendix D, provided that, in the event the Owner enters into agreements for construction of some or all of the At-Grade Plaza Work and Stairway and Elevator Access Work by the City pursuant to paragraph (a)(2) of this Appendix D, the provisions of such restrictive declaration shall be modified as deemed necessary by the City to effectuate such agreements; and

(iii) the Owner shall execute a maintenance and operating agreement for the At-Grade Plaza.

The easements and agreements described herein shall remain in force and effect irrespective of whether certificates of occupancy are issued pursuant to Section 98-25, paragraph (b).

(2) Upon the request of the Owner or the City, the City in its sole discretion, may enter into agreements with the Owner, in a form acceptable to the City, providing for construction by the City of some or all of the At-Grade Plaza Work described in paragraph (b)(2)(ii)(b) of this Appendix D, and some or all of the Stairway and Elevator Access Work described in paragraph (b)(3)(ii) by the City, including provisions with regard to the viability of retail space fronting the At-Grade Plaza. Pursuant to such agreements, the Owner shall make a contribution of $2,300,000 to a sub-account of the #High Line# Improvement Fund to fund such construction, which amount may be reduced in accordance with provisions of such agreements by an amount reflecting expenditures that the owner has reasonably incurred or shall reasonably incur with respect to remediation work for the At-Grade Plaza and any other work which is the responsibility of the Owner pursuant thereto. All parties in interest shall execute a Restrictive Declaration pursuant to paragraph (a)(1)(ii) of this Appendix D, with such modifications as deemed necessary by the City to effectuate such agreements.

(3) Upon the request of Owner, the City in its sole discretion, may elect to have Owner perform all #High Line# improvements (i.e., non-structural and non-remediation work) at its own expense within the #High Line# improvement area, as shown in Appendix C of this Chapter, on such #zoning lot# and over #streets# contiguous to such #zoning lot#. In that event, certification under Section 98-25, paragraph (a), shall also be made upon execution of an agreement by Owner, approved by the Chairperson of the City Planning Commission, to perform such improvements, the cost of which shall be refunded or credited from the contribution to the #High Line# improvement. Such agreement may require Owner to reimburse the City for the costs of a full-time resident engineer to supervise such work.

(4) The location of #floor area# which would exceed the basic maximum #floor area ratio# and be subject to the provisions of Section 98-25 shall be considered to be the topmost portion of the #development# or #enlargement# unless, at the time of certification pursuant to Section 9825, paragraph (a), Owner designates, subject to the concurrence of the Chairperson of the City Planning Commission, an alternate location.

(b) Requirements for issuance of certificates of occupancy under paragraph (b) of Section 9825

(1) Structural Remediation Work under paragraph (b)(2) of Section 9825:

(i) Owner may, at its option, elect to perform Structural Remediation Work on the portion of the #High Line# within the #High Line# improvement area, as shown in Appendix C of this Chapter, on such #zoning lot# and over #streets# contiguous thereto in accordance with the provisions of this paragraph (b). Owner may exercise such option following receipt of the City's specifications for the Structural Remediation Work or upon the City's failure to provide such specifications, as set forth in paragraphs (b)(1)(iv) and (b)(1)(v) in this Section (unless such dates are extended by mutual agreement of the City and Owner), but in no event may exercise such option later than 90 days following receipt of a notice by the City of its intent to commence improvements to the #High Line# within the #High Line# improvement area applicable to the #zoning lot# within the next 24 months. In that event, the amount of contribution to the #High Line# Improvement Fund shall be reduced by $21.00 per square foot of #floor area# which exceeds the basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 98-22 and the City shall refund or credit the Owner, as applicable, for any excess from or against the #High Line# Improvement Fund. In the event of exercise of such option, certification pursuant to Section 98-25, paragraph (b)(2), with respect to the Structural Remediation Work, shall be of

substantial completion with respect to issuance of any temporary certificate of occupancy, and of final completion with respect to issuance of any final certificate of occupancy.

(ii) Such Structural Remediation Work shall include work on or under the #High Line# and above, at and below grade, which shall be of the same quality and performance standards (i.e., with respect to use, useful life and maintenance requirements) as required for the remainder of the #High Line# (recognizing that there may be different standards for portions of the #High Line# that will be exposed to public view versus those that will not be so exposed) and shall include, but not be limited to, the following:

(a) Removal and disposal of all leadbased products in accordance with specifications provided by the City, and disposal of all waste, all in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities;

(b) Repair of all damaged portions of the entire steel structure, including but not limited to railings, columns and footings, in accordance with the specifications provided by the City and all applicable rules, including those pertaining to historic preservation;

(c) Recoating of the entire steel structure with the types of products and numbers of coats specified by the City;

(d) Repairs to damaged concrete; removal, disposal, and replacement of any concrete that is found to contain hazardous materials; and recoating of the entire concrete portion of the #High Line# as

specified by the City, all in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities;

(e) Removal of any or all portions of the ballast material on the #High Line#, including but limited to gravel, railroad ties and steel rails, trash, plant material, and any other objectionable materials (including, but not limited to, asbestos and pigeon guano) that are found on or under the #High Line#, as specified by the City, and disposal of all such material in accordance with the rules and regulations of all appropriate regulatory agencies and disposal facilities. In the event that the City directs that any or all ballast material is to remain on the #High Line#, it shall be capped, as necessary, in accordance with the specifications provided by the City and the rules and regulations of all appropriate agencies. Any ballast material that is to remain, but also remain uncapped, shall be cleared and grubbed in accordance with specifications of the City; and

(f) Any work required to be performed belowgrade for the anticipated improvements of the #High Line# for reuse as open space.

(iii) Subject to the Not-To-Exceed Limit set forth in paragraph (c) of this Appendix D, if Owner exercises the option to perform the Structural Remediation Work, it shall reimburse the City for the reasonable cost of hiring or procuring the services of a fulltime resident engineer to supervise the Structural Remediation Work, with associated costs (e.g., trailer, computer, telephone).

(iv) The City shall consult with Owner regarding the drafting of the specifications for the Structural Remediation Work, and then provide Owner with such specifications by January 31, 2006, subject to delays outside the reasonable control of the City (including, without limitation, litigation, but such delays shall not extend more than 180 days), unless such date is extended by mutual agreement between the City and Owner.

(v) In the event Owner exercises the option to perform the Structural Remediation Work, Owner shall have 12 months to complete such work following June 23, 2005, or of the date of exercise of such option, whichever is later, unless such date is extended by mutual agreement between the City and Owner, and subject to reasonable extension for any delays beyond Owner's reasonable control and, in addition, for any time during which Owner is unable to gain access in order to perform the Structural Remediation Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon December 20, 2004.

(vi) In the event that the City does not provide the specifications for the Structural Remediation Work, within the timeframe set forth in paragraph (iv) of this Section, Owner may exercise the option to perform such work, and shall complete it within 12 months of the exercise of such option, unless such date is extended by mutual agreement between the City and Owner, and subject to reasonable extension for any delays as described in paragraph (b)(1)(v), but may use its own specifications, consistent with the description of the Structural Remediation Work set forth above and sound, high quality engineering, construction and workmanship standards and practices.

(2) At-Grade Plaza Work under paragraph (b)(3) of Section 9825:

The following shall apply, except to the extent that agreements and other instruments in a form acceptable to the City have been executed pursuant to paragraph (a)(2) of this Appendix D, that provide for construction of some or all of the At-Grade Plaza Work set forth in paragraphs (b)(2)(ii)(b) and (b)(2)(ii)(c), by the City:

(i) Owner shall perform AtGrade Plaza Work within the area on the #zoning lot# shown in Diagram 3 of Appendix C. For any temporary certificate of occupancy, certification pursuant to Section 98-25, paragraph (b)(3), shall be of substantial completion of the At-Grade Plaza Work (i.e., the At-Grade Plaza shall be open and accessible to the public). For any permanent certificate of occupancy, certification pursuant to Section 98-25, paragraph (b)(3), shall be of final completion of the At-Grade Plaza Work. Substantial completion of the At-Grade Plaza Work shall also require execution by all parties-in-interest of the declarations, easements and maintenance and operating agreement described in paragraph (a) of section (1) of this Appendix, if not previously provided in connection with issuance of a building permit.

(ii) At-Grade Plaza Work shall include, but not be limited to:

(a) remediation work; and

(b) all paving, plantings, surface treatments, lighting, trees, seating, fountains and other site amenities; and

(c) infrastructure work, including conduits, drainage, water line, electrical connections, and other utility work serving the At-Grade Plaza.

(iii) The At-Grade Plaza Work shall be performed by the Owner pursuant to construction documents provided by the City by January 31, 2008. The AtGrade Plaza Work shall be completed within one year following January 31, 2008, subject to reasonable extension for any delays beyond Owner's reasonable control and to such extension as the City and the Owner may mutually agree, and, in addition, for any time during which Owner is unable to gain access in order to perform the At-Grade Plaza Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon October 17, 2007, or for any time needed to perform any necessary remediation work on the #zoning lot#.

(iv) In no event shall Owner be required to complete the At-Grade Plaza Work until the #High Line# improvements within the portion of the #High Line# Improvement Area, as shown in Appendix C of this Chapter, adjacent to the #zoning lot# (and, as applicable, over such Improvement Area, as shown on Diagram 3 of Appendix C), are substantially complete (i.e., open to the public but for the work needed to complete the At-Grade Plaza Work). Notwithstanding the foregoing, in no event shall Owner be entitled to certification pursuant to Section 9825, paragraph (b)(3), until the Chairperson determines that the At-Grade Plaza Work is substantially complete.

(v) The cost to Owner of the At-Grade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph, (b)(3) of this Section) shall not exceed $2,300,000. The amount of contribution to the #High Line# Improvement Fund under subdivision (a) of section (1) of this Appendix made for purposes of Section 98-25, paragraph (a), shall be reduced by such amount at the time it is made. In addition to the costs of the At-Grade Plaza Work, subject to the Not-To-Exceed Limit set forth

paragraph (c) of this Appendix D. Owner shall be required to reimburse the City for:

(a) the reasonable cost of developing the plans and construction documents for the At-Grade Plaza Work; and

(b) the reasonable cost of hiring or procuring the services of a fulltime resident engineer to supervise the At-Grade Plaza Work, with associated costs (e.g., trailer, computers, telephone).

(vi) In the event that construction documents for the At-Grade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph (b)(3) of this Section) are not delivered to Owner within the timeframe set forth in paragraph (3) of this subsection, Owner shall not be required to perform the AtGrade Plaza Work (inclusive of the Stairway and Elevator Access Work described in paragraph (b)(3) of this Section) consistent with such documents. Instead, Owner shall perform Alternate At-Grade Plaza Work which shall include all necessary remediation work, all necessary belowgrade work (including related infrastructure work necessary to support the #High Line#), and atgrade improvements pursuant to the standards set forth in Sections 37-718, 37-726, 37-728, 37-741, 37-742, 37-743 and 37-76 of the Zoning Resolution, except that open-air cafes and kiosks shall not be permitted. Permitted obstructions, whether as described in the City's specifications for the At-Grade Plaza Work or as specified in Section 37-726, for the Alternate At-Grade Plaza Work, shall not count towards #lot coverage#.

(vii) The cost to the Owner of the Alternate At-Grade Plaza Work shall not exceed $1,400,000. In addition, Owner shall, subject to the Not-To-Exceed Limit of paragraph (c) of this Appendix D, be required to reimburse the City for the reasonable cost of hiring or procuring the services of a fulltime resident engineer to supervise the Alternate At-Grade Plaza Work, with associated costs (e.g., trailer, computers, telephone).

(viii) Upon substantial completion of the At-Grade Plaza and in any event as a condition of certification of substantial completion pursuant to Section 98-25, paragraph (b)(4), Owner shall provide the City with the declarations, easements and maintenance and operating agreement described in subsection (a) of section (1) of this Appendix, if not already provided in connection with the issuance of a building permit; such At-Grade Plaza shall be open and accessible to the public during at least the same hours during which the #High Line# is open and accessible to the public, subject to the terms of the maintenance and operating agreement; and Owner shall maintain the At-Grade Plaza pursuant to the terms of the maintenance and operating agreement.

(3) Stairway and Elevator Access Work under paragraph (b)(4) of Section 98-25:

The following shall apply except to the extent that agreements and other instruments in a form acceptable to the City have been executed pursuant to paragraph (a)(2) of this Appendix D that provide for the construction of some or all of the Stairway and Elevator Access Work described in paragraph (b)(3)(ii) of this Appendix D by the City:

(i) Except as provided in paragraph (b)(3)(iii) of this Section, Owner shall perform Stairway and Elevator Access Work within the At-Grade Plaza area as shown in Diagram 3 of Appendix C in conjunction with performance of the AtGrade Plaza Work. For temporary certificates of occupancy, certification pursuant to Section 98-25, paragraph (b)(4), shall be of substantial completion of the Stairway and Elevator Access Work (i.e., the stairway and elevator could be made open and accessible to the public). For permanent certificates of occupancy, certification pursuant to such Section shall be of final completion of the work.

(ii) The Stairway and Elevator Access Work shall consist of one stairway and one elevator, shall be included in the construction drawings for the AtGrade Plaza Work described above, and shall be performed by Owner within the time period for performance of the At-Grade Plaza Work described in paragraph (c) of this Section. The location for the stairway and elevator shall take into account the viability of any retail spaces fronting the At-Grade Plaza.

(iii) Owner shall not be responsible for performance of the Stairway and Elevator Access Work where it performs the Alternate At-Grade Plaza Work in accordance with paragraph (b) of this Section. In that event, prior to commencing the Alternate At-Grade Plaza Work and in any event as a condition of certification of substantial completion pursuant to Section 98-25, paragraph (b)(4):

(a) Owner shall deposit into the #High Line# Improvement Fund, a contribution of $900,000.00 (the Access Contribution), to be used at the direction of the Chairperson of the City Planning Commission for construction of stairway and elevator facilities on the #zoning

lot#; and

(b) Owner shall provide the City with the declarations, easements, and maintenance and operating agreement described in paragraph (a)(1) of this Appendix D, if not previously provided in connection with issuance of a building permit.

(4) City performance of work in the event of failure to perform:

(i) In the event Owner has not completed any of the #High Line# Improvement Work (where an agreement for performance of such work has been executed under paragraph (a) of this Appendix D, Structural Remediation Work (where Owner has exercised the option under paragraph (b)(1) of this Appendix), the AtGrade Plaza Work or Alternate Plaza Work, as applicable, and the Stairway and Elevator Access Work (where required to do so under paragraphs (b)(2) and (b)(3) of this Appendix), by a time at which the City has completed portions of the #High Line# (i.e., such that such portions are open and accessible to the public) immediately on either side of the #High Line# improvement area, as shown in Appendix C of this Chapter, for the #zoning lot#, as shown on Diagram 3 of Appendix C, and a relevant deadline for performance of such work under paragraphs (b)(1), (b)(2) or (b)(3) has passed, subject to the provisions of such sections relating to extension by mutual agreement or delay, the City, at its sole option, may, upon written notice to Owner, notify Owner of its intent to proceed with performance and/or completion of the relevant work at its own expense.

(ii) The City may proceed with performance and/or completion of the work following such notice unless Owner:

(a) within 45 days following such notice, submits to the Department of City Planning a reasonable schedule (not to exceed 12 months in total), unless such date is extended by mutual agreement between the City and Owner, for completion of the relevant work, as applicable, which schedule shall be subject to review and reasonable approval by the City; and

(b) completes the relevant work in accordance with such schedule, subject to reasonable extension for any delays beyond Owner's reasonable control and, in addition, any time in which Owner is unable to gain access in order to perform the At-Grade Plaza Work or Alternate Plaza Work due to the actions of a tenant occupying the #zoning lot#, or portion thereof, upon December 20, 2004, or for any time during which remediation work is in progress on the #zoning lot#.

(iii) In the event Owner does not comply with the requirements of paragraph (b)(4)(ii):

(a) the City may proceed with performance and/or completion of relevant work, and may obtain access to perform such work pursuant to the easements described in paragraph (1) of section (a) of this Appendix;

(b) the City shall return to Owner any contribution made to the #High Line# Improvement Fund; and

(c) no building permit may be issued pursuant to Section 98-25, paragraph (a), nor any temporary or permanent certificate of

occupancy may be issued pursuant to Section 98-25, paragraph (b), for #floor area# in a #development# or #enlargement# which exceeds the maximum #floor area# of the #zoning lot#.

(c) Reimbursement Not-To-Exceed Limits

Reimbursement of the City by Owner of costs pursuant to this Appendix shall not exceed a total of $450,000.00.