Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

Appendix F

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Appendix F - Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus and Located Within Subarea J

LAST AMENDED
11/13/2012

This Appendix sets forth additional requirements governing #zoning lots# located within Subarea J over which the #High Line# passes for any #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 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas). The additional requirements are set forth in this Appendix F, in paragraph (a), the issuance of a building permit for such #development# or #enlargement# pursuant to paragraph (a) of Section 98-25 (High Line Improvement Bonus); in paragraph (b), the performance of improvements as a condition of issuance of temporary or permanent certificates of occupancy pursuant to paragraph (d) of Section 98-25; and in paragraph (c), the option of the owner to offer to the City an additional #High Line# Support Easement Volume. 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# in Section 12-10.

(a) Requirements for issuance of a building permit pursuant to paragraph (a) of Section 98-25

(1) As a condition of certification:

(i) For each square foot of #floor area# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on November 13, 2012, up to the amount specified in Section 98-22, the owner shall:

(a) for the first 80,000 square feet of such #floor area#, deposit such contribution to the Affordable Housing Fund established under Section 98-262, paragraph (c), for use in accordance with the

provisions of that Section; and

(b) for all such #floor area# which exceeds 80,000 square feet, subject to a deduction pursuant to other provisions of this Appendix F, deposit such contribution to the #High Line# Improvement Fund, or secure such contribution by letter of credit or other cash equivalent instrument in a form acceptable to the City.

Such contribution, in each case, shall be $59.07 per square foot of #floor area# as of November 13, 2012, which contribution rate shall be adjusted July 1 of the following year and each year thereafter by the percentage change in the Consumer Price Index for all urban consumers as defined by the U.S. Bureau of Labor Statistics;

(ii) All parties-in-interest shall execute that restrictive declaration, dated October 25, 2012, and on file at the Office of the Counsel, Department of City Planning, required in connection with environmental assessment (CEQR No. 11DCP120M) for the purpose of addressing historic resources and containing other provisions regarding the preservation of certain features of existing #buildings# and structures and related matters;

(iii) All parties-in-interest shall execute a restrictive declaration in a form acceptable to the City addressing the terms described in this paragraph (a)(1)(iii):

(a) Hotel #use#

No #development# or #enlargement# that utilizes the provisions of Section 98-25 shall include a #transient hotel#;

(b) Retail concourse

As a condition of any #development# or #enlargement# pursuant to Section 98-25, the owner shall provide a pedestrian passageway within any #building# located on the #zoning lot# connecting the Ninth Avenue sidewalk with the Tenth Avenue sidewalk, which passageway shall be open to the public during business hours. Not less than 60 percent of the length of the frontages of such passageway shall be occupied primarily by retail uses, and in addition may be occupied by service, wholesale, production and event space identified in Use Groups 6A, 6C, 7B, 7C, 8A, 9A, 9B, 10B, 11A, 12A, 12B, 16A, 17A and such spaces shall have access to the passageway;

(c) Locations and dimensions of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall be sized and located to accommodate the following amenities, all of which shall be located within the #buildings# located within the Tenth Avenue Zone, as described in Section 98-423, paragraph (g)(3):

(1) exclusive easements for public restrooms for each gender with an aggregate area of no less than 560 square feet (and which need not be more than 700 square feet) located adjacent to the #High Line# with direct access to the #High Line# for each of the public restrooms;

(2) exclusive easements for #High Line# support space with an aggregate area of no less than 2,400 square feet (and which need not be more than 3,000 square feet) of which up to 800 square feet may be located on a mezzanine level, such space to be located adjacent and accessible to the #High Line#;

(3) exclusive easements for #High Line# support space located in the cellar level in an aggregate area no less than 800 square feet (but need not be more than 1,000 square feet);

(4) exclusive use of a dedicated freight elevator that shall provide access to the cellar level, to a shared loading facility at #street# level, to the level of the #High Line bed# and to the level of the #High Line# support space described in paragraph (a)(1)(iii)(c)(2) of this Appendix F; and

(5) non-exclusive easements for:

(i) access between the dedicated freight elevator and the shared loading facility at grade level and the #High Line# support space located in the cellar level; and

(ii) use of the shared loading facility as more particularly set forth in paragraph (a)(1)(iii)(d) of this Appendix F;

(d) Use of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall not be dedicated for use by the general public but rather for use by the City or its designee for storage, delivery of materials and support of #uses# within the #High Line# (and in connection therewith, the fitting-out, operating, maintaining, repairing, restoring and replacement of the #High Line# Support Easement Volumes), except that:

(1) the public may use the public restrooms;

(2) up to 650 square feet of space adjacent to the #High Line# may be used exclusively for educational and related programming that is at no cost to the public; and

(3) if dedicated to the City in accordance with paragraph (d) of this Appendix F, the optional additional #High Line# Support Easement Volume may be accessible to the public as part of concessions or other uses that relate to the #High Line#.

The City or its designee shall at all times use, operate and maintain the #High Line# Support Easement Volumes so as not to interfere with the use and enjoyment of the #buildings# located within Subarea J.

The #High Line# support spaces described in paragraphs (a)(1)(iii)(c)(2) and (3) of this Appendix F, shall be accessible by a dedicated freight elevator that connects to non-exclusive portions of the #building#, including a loading facility at #curb level#, through

which the City or its designee shall be provided with a non-exclusive easement to enable reasonable and customary access;

(e) Effective date of the #High Line# Support Easement Volumes

The City's or its designee's rights to utilize the #High Line# Support Easement Volumes shall commence on the date that the #High Line# Support Work has been completed in accordance with paragraph (b)(1) of this Appendix F, or in the event of default of the owner in accordance with paragraph (c) of this Appendix F, the date that the City has notified the owner that it intends to perform such #High Line# Support Work in accordance with paragraph (c); and

(f) Notice by the Department of City Planning of its receipt of certified copies of the recorded restrictive declarations required pursuant to paragraph (a) (1) (ii) and (iii) of this Appendix F, shall be a precondition to issuance by the Commissioner of Buildings of any building permits including any foundation or alteration permit for any #development# or #enlargement# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on November 13, 2012;

(iv) The owner shall submit plans for the #High Line# Support Work described in paragraph (b)(1) of this Appendix F, that demonstrate compliance with the provisions of this Appendix and are consistent with New York City Department of Parks and Recreation standards and best practices governing material life cycle and maintenance, for review and approval by the Chairperson of the City Planning Commission;

(v) Solely in the event the initial certification made pursuant to Section 98-25, paragraph (a), is with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), then the owner shall enter into agreements with the City or its designee, in a form reasonably acceptable to the City, to provide interim access, in accordance with such agreements, to the #High Line# through a non-exclusive loading facility and an existing freight elevator. Such agreements shall provide that any space within the existing #building# may be used by the City or its designee at no cost, except that the City or its designee shall be obligated to pay for the proportionate costs of utilities, maintenance and other building expenses associated with the use of such loading facility and elevator, and for any improvements or modifications to such space that may be requested by the City or its designee. Such interim access shall cease upon the date that the City or its designee commences utilization of the #High Line# Support Easement Volumes in accordance with paragraph (a)(1)(iii)(d) of this Appendix F;

(2) The location of #floor area# which would cause the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on November 13, 2012, 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 98-25, paragraph (a), the owner designates on plans submitted to the Chairperson of the City Planning Commission, subject to the concurrence of the Chairperson, an alternate location.

(b) Requirements for issuance of certificates of occupancy pursuant to paragraph (d) of Section 98-25

(1) #High Line# Support Work pursuant to paragraph (d) of Section 98-25

(i) The owner shall perform #High Line# Support Work subject to the provisions of this paragraph (b)(1), inclusive. For temporary certificates of occupancy, certification pursuant to Section 98-25, paragraph (d), shall be the substantial completion of the work. For permanent certificates of occupancy, certification shall be of final completion of the work.

(ii) The #High Line# Support Work shall consist of the following:

(a) the construction, fit-out and delivery in an operative condition of public restrooms described in paragraph (a)(1)(iii)(c)(1) of this Appendix F, furnished with restroom fixtures, including six toilet stalls for women, an aggregate of six toilet stalls and/or urinals for men and three sinks in each restroom, and provided with utility connections.

(b) the construction of the core and shell of the #High Line# support space described in paragraphs (a)(1)(iii)(c)(2) and (3) of this Appendix F including the provision of and access to separately metered gas, ventilation, water, sewer, electricity and telecommunications utilities systems commonly available in the #building# sufficient to support the anticipated uses of the support space. Within the portion of the #High Line# support space in the vicinity of the level of the #High Line bed#, the owner will install a kitchen exhaust duct from such support space to a suitable point of discharge and will provide

access to the #building# sprinkler standpipe and fire alarm system. Such support space shall also include access to a storage mezzanine pursuant to a dedicated lift, and there shall be a clear path at least five feet wide from the lift to the dedicated freight elevator described in paragraph (b)(1)(ii)(c) of this Appendix F. The owner will not be responsible for distributing any utility services within the #High Line# support space or for providing any ancillary equipment for the kitchen exhaust duct; and

(c) the construction of the dedicated freight elevator described in paragraph (a)(1)(iii)(c)(4) of this Appendix F, with a minimum capacity of 3,000 pounds;

(iii) Following the completion of the #High Line# Support Work described in paragraph (b)(1)(ii) of this Appendix F, all subsequent costs of operating, maintaining, repairing, replacing and additional fit-out of the #High Line# support space shall be exclusively the responsibility of the City and not the owner, provided that the owner shall be responsible for the repair and replacement of any defective #High Line# Support Work for a period of one year after completion thereof;

(iv) The cost to the owner of the #High Line# Support Work pursuant to the plans approved pursuant to this paragraph, (a)(1)(iv), shall be estimated at the time of such approval by a licensed engineer selected by the owner, such estimate to be in a form reasonably acceptable to the City, at an amount not to exceed $2,544,000, as adjusted at the

time of such approval by changes in the construction cost index published by the Engineering News Record (ENR) for New York City commencing as of December 1, 2012. In the event that the City requests the owner to perform any additional work in conjunction with the #High Line# Support Work and the owner agrees to perform such additional work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F;

(v) Except as set forth in paragraph (b)(1)(v) of this Appendix F no temporary or permanent certificates of occupancy may be issued pursuant to Section 98-25, paragraph (d), for #floor area# in a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on November 13, 2012, until the #High Line# Support Work described in paragraph (b)(1) of this Appendix F has been substantially completed or finally completed, as applicable;

(vi) Notwithstanding anything to the contrary in this paragraph (b)(1), inclusive, if certification is initially made pursuant to Section 98-25, paragraph (a), with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone, as described in Section 98-423, paragraph (g)(iii), then the conditions for certification pursuant to Section 98-25, paragraph (d), for a permanent or temporary certificate of occupancy shall not apply to such #building# or portion of a #building# and the following conditions shall apply:

(a) the owner shall deliver a letter of credit or other security reasonably satisfactory to the City in an amount reasonably determined by the City as sufficient for the City to perform the #High Line# Support Work described in paragraph (b)(1) of this Appendix F which letter of credit or other security may be drawn or exercised by the City in the event of a default by the owner in accordance with paragraph (c)(ii) of this Appendix F; and

(b) the owner shall enter into an agreement with the City in a form reasonably acceptable to the City requiring the owner to commence the #High Line# Support Work described in paragraph (b)(1) of this Appendix F, no later than September 1, 2017, subject to force majeure as determined by the Chairperson, and shall thereafter diligently prosecute the same to completion, pursuant to an agreed-upon schedule, subject to force majeure as determined by the Chairperson.

(c) In the event the owner is in default of its obligations pursuant to the agreements required by paragraph (b)(1)(vi) of this Appendix F:

(1) The City shall be entitled to draw the letter of credit or exercise the other security described in paragraph (b)(1)(vi)(a) of this Appendix F and to take possession of the #High Line# Support Easement Volumes following delivery of notice to the owner that the City intends to perform the #High Line# Support Work in accordance with provisions to be set forth in the restrictive declaration described in paragraph (a)(1)(iii) of this Appendix F;

(2) The City shall return to the owner any contribution made to the #High Line# Improvement Fund with respect to additional #floor area# to be added to a #building# or portion of a #building# located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(3);

(3) No additional building permit may be issued pursuant to Section 98-25, paragraph (a), with respect to a #development# or #enlargement# to be located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), nor may any temporary or permanent certificates of occupancy be issued pursuant to Section 98-25, paragraph (d), for #floor area# in such a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on November 13, 2012.

(d) Option to offer an additional #High Line# Support Easement Volume:

(1) The owner, at its sole option, may elect to offer to the City an easement comprising up to 7,500 square feet of #floor area# within the #building# adjacent to the #High Line# and at the vicinity of the level of the #High Line bed# as an additional #High Line# Support Easement Volume by written notice to the Chairperson of the City Planning Commission, with a copy to the Commissioner of the Department of Parks and Recreation. Such written notice shall be delivered contemporaneously with the owner's first request for certification by the Chairperson, described in paragraph (a) of Section 98-25, that relates to a #building# or portion of a #building# within the Tenth Avenue Zone, as described in Section 98-423, paragraph (g)(3);

(2) If the owner elects to exercise such option, the owner shall provide an appraisal from an appraiser reasonably acceptable to the City who is a member of the American Institute of Real Estate Appraisers (or its successor organization) establishing the fair

market value of the additional #High Line# Support Easement Volume to be so dedicated. The term "fair market value" shall mean the price at which such additional #High Line# Support Easement Volume would change hands between a willing buyer and a willing seller, both acting rationally, at arm's length, in an open and unrestricted market. The appraisal shall determine such fair market value of the additional #High Line# Support Easement Volume based on its highest and best as-of-right #uses#, valued in an unimproved core and shell physical condition (including any existing structural elements, such as the #building# wall separating the #High Line# from the additional easement volume) and considered unencumbered by any leases, mortgages or other matters that will be released or otherwise subordinate to the grant of such additional #High Line# Support Easement Volume to the City. The appraisal shall not assume that as-of-right #uses# of the additional #High Line# Support Easement Volume may enjoy any access to and from the #High Line#. Any other appraisal assumptions or instructions not set forth herein shall be subject to approval by the City.

(3) If such option is exercised by the owner, the City shall have up to 60 days from the delivery of the written notice described in paragraph (d)(1) of this Appendix F to irrevocably accept or decline the exercise of the option by written notice to the owner. If the City does not so accept or decline the option within said 60-day period, then the option shall be deemed declined and neither the City nor the owner shall have any further rights or obligations under this paragraph, (d), inclusive;

(4) If such option is exercised by the owner and accepted by the City, the restrictive declaration described in paragraph (a)(1)(ii) of this Appendix F shall provide or shall be amended to include the additional #High Line# Support Easement Volume within the grant to the City, and the value of the additional #High Line# Support Easement Volume as set forth in the appraisal shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution

required pursuant to paragraph (a)(1) of this Appendix F;

(5) In the event that the City requests the owner to perform any work in conjunction with the dedication of the additional #High Line# Support Easement Volume and the owner agrees to perform such work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F. All costs of fitting-out, operating, maintaining, repairing and replacing the additional #High Line# Support Easement Volume shall be exclusively the responsibility of the City and not the owner.