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March 20, 2001

Via Overnight Mail

Honorable Janet H. Deixler
Secretary
New York State Department of
Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Petition to Transfer Utility
Property Pursuant to PSL § 70

Dear Secretary Deixler:

Enclosed are an original and ten copies of a redacted Joint Petition of Consolidated Edison Company of New York, Inc. ("Con Edison) and FSM East River Associates LLC ("FSM") for authority under Section 70 of the Public Service Law to transfer four parcels of Con Edison's real property located at 616 First Avenue, 685 First Avenue, 700 First Avenue ("Waterside") and 708 First Avenue to FSM. Con Edison and TRC Companies, Inc., TRC Engineers, Inc., and TRC Environmental Corporation ("TRC") are seeking trade secret protection for Exhibit B to the Petition, and consequently, Exhibit B to the Petition has been redacted from this filing. A draft environmental assessment form ("EAF") and scoping document are not included in this filing and will be submitted shortly.

I would appreciate it if you would stamp one copy of the Petition to acknowledge receipt and return it in the enclosed envelope.

If you require anything further in connection with this filing, please contact me.

Very truly yours,

Candida Canizio

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

-----X
Joint Petition Of Consolidated Edison Company :
Of New York, Inc. And FSM East River :
Associates LLC For Authority Under Section 70 :
Of the Public Service Law To Transfer Certain :
Real Property Located at 616 First Avenue, :
A Portion of 685 First Avenue, 700 First Avenue :
And 708 First Avenue And For Related Relief :
: :
-----X

**JOINT PETITION OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
AND
FSM EAST RIVER ASSOCIATES LLC
FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW
TO TRANSFER CERTAIN REAL PROPERTY LOCATED AT
616 FIRST AVENUE, A PORTION OF 685 FIRST AVENUE, 700 FIRST AVENUE AND
708 FIRST AVENUE, MANHATTAN, TO FSM EAST RIVER ASSOCIATES LLC
AND FOR RELATED RELIEF**

March 19, 2001

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AND FOR RELATED RELIEF**

I. OVERVIEW

1. Pursuant to Section 70 of the Public Service Law, Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") and FSM East River Associates LLC ("FSM"),¹ hereby request authorization from the Public Service Commission ("Commission") to transfer four parcels of Con Edison's real property located at 616 First Avenue, the portion of 685 First Avenue not occupied by the Con Edison substation, 700 First Avenue ("Waterside") and 708 First Avenue (collectively, the "First Avenue Properties" or "Properties"), from Con Edison to FSM. The First Avenue Properties are to be transferred pursuant to an agreement between the Petitioners dated as of November 15, 2000 as amended by that certain First Amendment between Con Edison and FSM dated as of November 15, 2000, and by certain letter agreements dated January 12, 2001, January 29, 2001 and February 28, 2001 (collectively referred to herein as the

¹ Con Edison and FSM East River Associates LLC will be referred to herein collectively as the "Petitioners."

"Sale Agreement" or "Agreement"). As will be described below and in the attached affidavit of Andrew Behymer, Senior Account Director of Cushman and Wakefield, Inc. ("C&W"), the process used by C&W, as agent for Con Edison, for the auction of the First Avenue Properties was designed to maximize the auction proceeds. The affidavit of Edward J. Rasmussen, Con Edison's Vice President and Controller, outlines the calculations of the expected net gains on the sales and the rate treatment requested by Con Edison, and the affidavit of Rick Shansky, Section Manager of Planning and Forecasting for Steam Operations of Con Edison, substantiates the fact that the proposed transfers will have no effect on Con Edison's steam system reliability. The affidavit of Marilyn Selig, General Counsel of FSM, further describes the anticipated public interest benefit resulting from a sale by Con Edison to FSM. Collectively, the attachments demonstrate that the transfers are in the public interest and should be approved by the Commission after full compliance with all applicable SEQRA requirements.

2. The Petitioners request authorization for the transfer of the First Avenue Properties to FSM, a New York limited liability company, for a minimum purchase price of \$300 million plus an additional \$50 million payment, as described in paragraph 32, *infra*. As described below, if the Properties are re-zoned, the total purchase price could be increased to approximately \$680 million (subject to certain adjustments). The assets to be transferred to FSM consist of real property.

3. Petitioners also request that the Commission approve the Agreement in connection with the transaction. A copy of the Agreement is attached as Exhibit A and summarized herein.

4. To effectuate the Commission's order authorizing the auction of the Properties (Cases 96-S-1065 and 96-S-1121, Order Concerning Phase II Steam Plan Report, issued December 2, 1999) (the "December 2, 1999 Order") and to maximize the auction proceeds for the benefit of Con Edison's ratepayers, Con Edison has contracted to demolish the structures located on the Properties and to remediate the underlying soil on the Properties. The costs of demolition and remediation and premiums for environmental insurance associated with the First Avenue Properties (which are the subject of an agreement (the "TRC Contract") between Con Edison and TRC Companies, Inc., TRC Environmental Corporation and TRC Engineers, Inc. (collectively,

“TRC”) and the subject of Cost Cap, New Conditions and Third Party Legal Liability Insurance policies issued by Granite State Insurance Company, as insurer, in favor of Petitioners and TRC, as insureds) will be reflected in the calculation of benefits to Con Edison ratepayers. The demolition and remediation contract between Con Edison and TRC and the various insurance policies are attached as Exhibit B, which is being transmitted to the Commission’s Record Access Officer with a request for trade secret protection. A copy of that transmittal letter is enclosed herewith.

5. Con Edison requests approval of Con Edison’s proposed accounting and rate treatment for the sale and transfer of the First Avenue Properties, including the proposed treatment of the net proceeds, as detailed in the accompanying affidavit of Mr. Rasmussen. Through this transaction, Con Edison’s electric, gas and steam customers will substantially benefit from the resulting net after-tax gains.

6. Finally, Petitioners respectfully request that the Commission act expeditiously on this Joint Petition. As set forth more fully in this Petition and in the accompanying affidavits, the proposed transfer will clearly benefit Con Edison’s customers.

7. This Joint Petition is submitted together with affidavits by the following individuals: Andrew Behymer of C&W; Edward J. Rasmussen of Con Edison; Rick Shansky of Con Edison and Marilyn Selig of FSM. Con Edison states that the information required to be presented under Parts 31 and 18 of the Commission’s Rules and Regulations² is set forth in Exhibit C. An Environmental Assessment Form together with a comprehensive assessment of environmental impacts (“EAF”) and proposed draft scope of an environmental impact statement (“EIS”) will be completed and added to this Petition shortly as Exhibit D.

² 16 NYCRR Parts 31 and 18.

II. HISTORY OF THE PROPOSED TRANSFERS

8. Con Edison states that the history of the proposed transfers is as follows. In July 1999, Con Edison filed a Steam System Plan Phase II Report ("Steam Plan") with the Commission under which the Company proposed to divest the Waterside Generating Station and the other three First Avenue properties as a single asset bundle for real estate development in order to maximize the value of these assets. The objectives of the Steam Plan were to maintain the viability and reliability of the Steam System, to stabilize the steam rates and to protect the environment. As part of this Steam Plan, the Company proposed to replace the steam and electric outputs of the Waterside Generating Station, 2.4 million pounds of steam per hour and 163 MW of electric generating capacity, respectively, by repowering the East River plant with new combined cycle cogeneration facilities that would match Waterside's 2.4 million pounds per hour of steam and produce 450 MW of electric generation. The East River repowering proposal was subsequently revised to 3 million pounds per hour of steam and 360 MW of electric generation. Once the repowering has been completed, the Waterside Generating Station will be retired, and the sale of Waterside will be finalized subject to the terms and conditions outlined herein.

9. In its December 2, 1999 Order, the Commission recognized that the East River Repowering Project ("ERRP") "is designed to minimize both steam and electric rates by replacing an older, less efficient, cogeneration unit with a state of the art facility" and authorized the Company to proceed with the project. The Order also authorized the Company to continue its auction of Waterside along with the three nearby parcels for the purpose of real estate development.

10. The primary purpose of the ERRP is to ensure that Con Edison can continue to supply its customers with reliable, reasonably priced steam by replacing the aging Waterside Generating Station with highly efficient, low-emission combustion turbine technology. ERRP will also result in an overall improvement in air quality through the installation of one of the cleanest steam electric generating facilities in the region. Other benefits include returning the Properties to the marketplace for meaningful economic development, increasing opportunities for new housing and commercial office space in Manhattan, increased waterfront access on the East Side

of Manhattan, increased tax revenues as well as rate stability for steam customers and lower electric production costs.

11. The auction of the Properties has been conducted in accordance with the Company's Steam System Plan as authorized by the Commission. When fully implemented, Con Edison will have a cleaner Steam System that will supply its customers with reliable, reasonably priced steam. In addition, New York City will benefit from the economic development of the Properties and improved waterfront access.

III. DESCRIPTION OF THE PARTIES

A. Con Edison

12. Con Edison is an electric, gas and steam corporation organized under the laws of the State of New York, including the Transportation Corporations Law, and has its principal place of business at 4 Irving Place, New York, New York 10003. Con Edison supplies electric service in all of New York City (except part of Queens) and in most of Westchester County; gas service in Manhattan, the Bronx and parts of Queens and Westchester Counties; and steam service in part of Manhattan.

B. FSM

13. FSM is a New York limited liability company whose members are Fisher East River Associates LLC ("Fisher") and East River Realty Development Company LLC ("East River"). Fisher and East River are Delaware limited liability companies. The beneficial owners of Fisher are the principals of Fisher Brothers and their associates, as managing members, as well as trusts for the benefit of Getty family members and Morgan Stanley Real Estate Fund IV, L.P. or its affiliates. Fisher Brothers is a major New York developer that has been in business for over fifty (50) years. The beneficial owner of East River is Sheldon Solow. Sheldon Solow is a major New York developer who has been in business for approximately 50 years. The attached affidavit of Marilyn Selig, General Counsel of FSM, supports this transaction and describes the anticipated benefits to the community resulting from the sale.

IV. THE AUCTION PROCESS

14. Con Edison states that the auction process was undertaken by C&W and Con Edison to assure that the Company maximized the proceeds to be received for the First Avenue Properties. The affidavit of Mr. Behymer sets forth in detail the manner in which the auction of the First Avenue Properties was conducted.

15. As described in greater detail in Mr. Behymer's affidavit, C&W, as agent for Con Edison, began the auction process by soliciting expressions of interest in the auction of the First Avenue Properties from a broad universe of potentially interested entities. At this time, Waterside was not yet included in the Offering except as a notation under the 708 First Avenue property description. In August of 1998, C&W mailed a "Preliminary Investment Summary package" and confidentiality agreement to approximately one hundred and fifty one (151) prospective purchasers. Forty-one (41) prospective purchasers signed confidentiality agreements and received a Formal Offering Memorandum with preliminary terms and conditions for the offering and additional details regarding the First Avenue Properties. C&W provided these first round bidders with access to Con Edison's due diligence materials, including environmental and title reports.

16. The deadline for submission of first round proposals for the First Avenue Properties was mid-December, 1998. The bid guidelines requested bids on one or more of the First Avenue Properties. C&W received 17 first round proposals, and after carefully reviewing each first round proposal, C&W made recommendations to Con Edison as to which bidders should be invited into the second round of the bidding process and how the second round process should be conducted. It was determined by C&W and Con Edison that significant additional value would be added by including Waterside as part of the sales package. It was also determined that the second round bids should include alternate bids that would contain a price that would be payable upon a successful rezoning (the "Rezoned Price" as defined below), and a guaranteed minimum price ("GMV Price") to be paid to Con Edison irrespective of the rezoning results.

17. After reviewing the financial qualifications of the bidders and considering price, twelve (12) second round bidders were selected in January of 1999 and were invited to bid on either a single property, combined properties or all of the First Avenue Properties. The bidding instructions also asked bidders to include a GMV Price, as well as a Rezoned Price.

18. Eleven (11) prospective purchasers submitted second round bids. Of the eleven bids received, eight bids were received for three or four of the First Avenue Properties and three were received for one property alone. Follow-up meetings were conducted with the bidders to clarify components of the bids and to attempt to improve the pricing and the conditions contained within the bids.

19. After reviewing all of the information and considering price, compliance with the procedures and terms contained within the bid forms, financial qualifications of the bidder and the bidder's ability to fulfill its obligations with respect to the real property to be acquired, Con Edison narrowed the auction to four bidders. In the summer of 1999, a "Selected Issues" document outlining major business issues was forwarded to these bidders for comment as was a proposed form of contract of sale and a non-binding offer to purchase form. Responses from these bidders were received in September 1999. After additional meetings and evaluation, two bidders were selected as finalists.

20. In December of 1999, the two finalists were provided with a Revised Offer to Purchase. Thereafter, additional meetings with the finalists were conducted, and in January 2000, Con Edison informed FSM that it was prepared to move forward with FSM. Over the next ten (10) months, the parties negotiated the Agreement for the sale of the Properties.

21. Merrill Lynch, which was retained by Con Edison to evaluate C&W's recommendations, provided a fairness opinion to the Board of Trustees of Con Edison that the consideration to be received by the Company pursuant to the Agreement is fair from a financial point of view to the Company.

V. APPLICATION OF THE NET PROCEEDS AND PROPOSED RATE TREATMENT

22. As described in the affidavit of Mr. Rasmussen, the sale of the First Avenue Properties is expected to produce a net gain (i.e., total proceeds in excess of the Company's unrecovered investment plus taxes and other sale-related costs), although the precise amount of the net gain is contingent upon several factors and will not be known for several years. Mr. Rasmussen also details the manner in which Con Edison proposes to apply the net gain to the benefit of its electric, gas and steam customers.

VI. THE AGREEMENT BETWEEN PETITIONERS AND RELATED AGREEMENTS

23. Under the terms of the Agreement between Con Edison and FSM, the closing of each Property must occur on or before November 15, 2006 (or if earlier, 60 days after the rezoning of such Property is final), which date is subject to extension under certain limited circumstances as provided in the Agreement (the "Outside Date").

24. The Agreement provides for an initial letter of credit as security for the performance of FSM's obligations, with additional letters of credit to be delivered to Con Edison upon the occurrence of certain events. On the signing of the Agreement, FSM delivered to Con Edison two (2) letters of credit, each in the amount of \$10 million (collectively, the "First L/C"). Upon certification of the ULURP (Uniform Land Use Review Procedure) application to be filed with the New York City Planning Commission in connection with the rezoning, or on September 30, 2001, if earlier, FSM will deliver to Con Edison an additional letter of credit, in the amount of \$30 million (the "Second L/C"). FSM will deliver an additional letter of credit in the amount of \$50 million (the "Third L/C") if all Properties have not been deeded to FSM by May 15, 2004 (unless FSM delivers a letter of credit to Con Edison upon exercising FSM's Call Option, as described below).

25. FSM and Con Edison have agreed upon a GMV Price for each Property, aggregating \$300 million for all of the First Avenue Properties. The GMV is allocated \$150 million to Waterside and \$50 million to each of the other three First Avenue Properties. Con Edison may require FSM to close title before the rezoning is complete and pay the GMV Price for the

particular Property at the following times (but prior to the Outside Date): (1) with respect to either or both of 616 First Avenue and 685 First Avenue, one (1) year after demolition/remediation work commences with respect to any one of the four First Avenue Properties, (2) with respect to (i) either or both of 616 First Avenue and 685 First Avenue and (ii) 708 First Avenue and Waterside together, two years after demolition/remediation work commences with respect to any one of the four First Avenue Properties, and (3) with respect to any or all Properties, three (3) years after demolition/remediation work commences with respect to any one of the four First Avenue Properties. However, no Property can be conveyed at the GMV Price unless the demolition and remediation with respect to such Property has been performed. At each GMV closing, FSM will deliver to Con Edison a mortgage, note and letter of credit as security for payment of the Rezoned Price.

26. FSM will undertake to obtain a rezoning of the Properties, at FSM's expense. If the rezoning is successful, a portion of the purchase price ("Rezoned Price") will be calculated based on a formula of \$125/square foot multiplied by the permitted zoning floor area (based upon the agreed upon lot areas.) If the First Avenue Properties are rezoned to an average floor area ratio ("FAR") of 12, this portion of the purchase price would be approximately \$632,915,000. If a GMV closing has occurred prior to rezoning, FSM is required to pay Con Edison the difference between the GMV and the Rezoned Price (plus 50% of the increase in the fair market value above \$125/square foot of zoning floor area if FSM has not exercised FSM's Call Option, described below).

27. At closing, the purchase price will also include a payment of fifty (\$50) dollars per square foot, subject to adjustment (the "As-Built Amount"), for certain revenue-producing space which is not considered floor area (such as underground retail space) as actually constructed by FSM.

28. If the rezoning is not complete and final beyond appeal by May 15, 2004, FSM will have the option to require the closing of title to all of the First Avenue Properties ("FSM's Call Option") if FSM pays a price (the "FSM Call Price") of approximately \$550,000,000 (representing an average FAR of 10.5, and calculated by multiplying 10.5 by \$125/per square foot of the agreed-upon lot areas) for all of the First Avenue Properties, including any as to which a GMV closing has occurred (although FSM will receive a credit for the prior payment of GMV

Price). However, FSM will pay the balance of the Rezoned Price if rezoning results in an FAR greater than 10.5. If for any reason FSM fails to pay such FSM Call Price on or before May 15, 2004 or to deliver a letter of credit for the portion of the FSM Call Price allocated to any Property that cannot be conveyed as of such date, the Rezoned Price and the GMV Price will be increased (but not decreased) to reflect 50% of the increase in fair market value above \$125/square foot of floor area, and the As-Built Amount will be subject to a CPI adjustment. At the closing of title to each Property pursuant to FSM's Call Option, FSM will deliver a letter of credit to secure payment of the prospective difference (if any) between the Rezoned Price as calculated based on an FAR of 12 and the FSM Call Price.

29. If Con Edison has not required a GMV closing, and if FSM has not exercised the FSM Call Option, the closing of each Property will occur 30 days after the rezoning of such Property is final. If a GMV closing or FSM Call Closing has occurred as to any Property, FSM will pay the Rezoned Price (less the prior payment of GMV Price or FSM Call Price, subject, if applicable, to a fair market value increase) within 30 days after the rezoning of such Property is final. At the closing of each Property, FSM is required to sign a covenant to be recorded against the Property, which provides Con Edison with the right to receive payment (in the amount of \$125/per square foot of additional floor area plus 50% of the fair market value of such floor area in excess of \$125/per square foot), if FSM or its successors in interest obtain and utilize additional floor area for a period of thirty (30) years after the closing date.

30. Provided that title has not already passed to FSM, if the rezoning results in a floor area which will result in an aggregate Rezoned Price for all Properties of less than \$526,266,250 (the "Aggregate Threshold Amount"), Con Edison at its option, may terminate this Agreement or close title based on the actual Rezoned Price as then determined. If the rezoning is not final with respect to any Property by the Outside Date and title has not passed to FSM, the Agreement will terminate as to such Property unless FSM elects to close and pay a purchase price computed as 12 multiplied by \$125/per square foot of the agreed-upon lot areas for all of the First Avenue Properties (\$632,915,000), plus a fair market value adjustment as described above, plus the As-Built Amount with a CPI adjustment.

31. If Con Edison is unable to convey the Waterside property for any reason, including the unavailability of the ERRP to replace the Waterside steam capacity, the Rezoned Price for 708 First Avenue will be reduced by 10% and the rezoned price for 685 First Avenue will be reduced by 20% to reflect the lower market value of land adjacent to or across the street from an operating power plant, and the Aggregate Threshold Amount will be reduced to \$282,865,000. The price to be paid for 616 First Avenue will not be affected by Con Edison's inability to convey Waterside.

32. An additional component of the purchase price in all cases is the \$50 million payment by FSM at contract signing (the "Deposit"). Con Edison may use this Deposit in connection with demolition or remediation of the First Avenue Properties. In the event that the First Avenue Properties are not conveyed to FSM, FSM is entitled a return of a portion or all of the Deposit and letters of credit, as provided in the Agreement.

33. The Agreement is contingent upon Commission approval of the sale. Con Edison can terminate the Agreement if the Commission's approval of the transfer of the First Avenue Properties ("PSC Approval") is not obtained by the Outside Date.

34. Con Edison can also terminate the Agreement if the Commission imposes certain conditions to its approval of the transaction, unless FSM elects to pay for all costs associated with all such conditions. These conditions ("Transaction Conditions") include the imposition of costs, liabilities or other obligations on Con Edison which are not set forth in the Agreement, and/or are otherwise in addition or supplemental to the costs, liabilities, requirements and/or obligations assumed by Con Edison pursuant to the Agreement. However, Transaction Conditions do not include certain Commission actions with respect to such costs such as those associated with the requirement that Con Edison provide replacement generating resources at another facility (before decommissioning Waterside); and conditions imposed by the Commission relating to the allocation of sale proceeds between Con Edison shareholders and ratepayers (unless such conditions impose any costs, charges or obligations on Con Edison's shareholders).

35. If Con Edison terminates the transaction due to Transaction Conditions or because it is unable to obtain PSC Approval by the Outside Date, or if Con Edison is unwilling or unable to

discharge judgments above an agreed amount that are filed against the Properties and FSM terminates the Agreement, Con Edison must reimburse FSM for specified expenses incurred in connection with the proposed transaction up to \$10 million and must return all deposits provided to Con Edison by FSM in connection with the sale of the First Avenue Properties, including the Deposit.

36. FSM can terminate the Agreement with respect to a Property if a GMV closing has not occurred, FSM has not exercised FSM's Call Option and for any of the following reasons (assuming Con Edison has not breached its obligations under the Agreement or its representations and warranties): (1) Con Edison cannot deliver title in an agreed-upon condition; (2) Con Edison has not obtained PSC Approval of the transaction; (3) remediation and demolition have not been completed; or (4) the rezoning is not final beyond appeal, in each case, by the Outside Date.

37. In addition to the Agreement with FSM, Con Edison entered into the TRC Contract dated as of November 15, 2000 for the decommissioning of equipment, demolition of the structures and the remediation of environmental conditions at the Properties (and certain off-site structures) to levels required by the New York State Department of Environmental Conservation ("NYSDEC") and other governmental authorities with jurisdiction. The clean up levels to be achieved by TRC are those applied by NYSDEC for residential and commercial use. TRC's obligations to clean up the First Avenue Properties are independent of the transfer of the First Avenue Properties by Con Edison to FSM.

38. Con Edison states that prior to contracting with TRC: 1) Con Edison sent a request for proposals to six environmental consulting firms who were pre-determined by Con Edison to have the requisite qualifications to handle a project of this size and scope. 2) TRC was the only bidder electing to bid on the request. 3) Con Edison sent out a supplemental request to two additional environmental consulting firms who also declined to bid. 4) In order to assure that bid price submitted by TRC was reasonable, Con Edison retained Stone and Webster to evaluate the TRC proposal. 5) Con Edison also verified that TRC's bid cost was reasonable through its own Cost Estimating Group. 6) After extensive examinations of the bid, evaluations of the work covered

by the contract and negotiating with TRC for reductions in the bid price, both Stone and Webster and the Company's Cost Estimating Group concluded that TRC's bid was reasonable.

39. Under the TRC Contract, TRC assumes all the responsibility for, and certain liability associated with, the physical and environmental conditions of the Properties, including the negotiation of remedial action plans and consent orders, as well as the implementation of the required remedial action. TRC has agreed to perform, by certain deadlines, all demolition and decommissioning work, as well as all negotiations with NYSDEC and other governmental authorities, and all remediation work necessary to satisfy the requirements of governmental authorities, for a fixed price of \$103,500,000 (the "TRC Contract Price").

40. TRC will investigate conditions at the Properties and recommend remediation methods, which will be subject to approval or modifications by governmental authorities and set forth in consent orders. The scope and extent of clean-up will be determined by governmental authorities with jurisdiction over the Properties. Cleanup activities will include excavation and offsite disposal at approved, permitted landfills of contaminated soil from the Properties. Depending on the amount and type of contamination discovered, there may also be other types of remediation required, including groundwater monitoring, pumping and treatment of groundwater, installation of "slurry walls" to prevent contamination from entering (or any residual contamination from leaving) the Properties, and/or installation of engineering controls such as vapor barriers, at one or more of the Properties.

41. The TRC Contract is a fixed-price agreement. The only possible changes to the TRC Contract Price involve certain specified changes in the scope of TRC's work, most of which would result in a reduction of the TRC Contract Price.

42. The TRC Contract Price includes premiums for two types of environmental insurance (of approximately \$13.5 million), which were obtained from Granite State Insurance Company, an affiliate of American International Group.

43. The first, "cost cap" insurance, is available to Con Edison, FSM and TRC to insure against cost overruns in the performance of TRC's work, including any costs associated with government "re-openers." In addition, in the event of a default by TRC, the insurer is responsible

for completion of TRC's work, and payment of indemnification claims against TRC of up to \$10 million. (See paragraph 46, *infra*.) The limits of coverage are \$195 million, with sublimits for certain items, and the term of coverage is thirty (30) years. A feature of this insurance is that the entire TRC Contract Price is paid to the insurer, which holds the funds and pays TRC upon presentation of invoices as work is performed.

44. The second type of insurance, pollution legal liability, is available in two policies. The first provides up to \$100 million coverage to Con Edison, FSM and TRC for certain third-party personal injury, remediation and property damage claims with respect to pre-existing conditions at or emanating from the Properties and payment of delay damages of up to \$25 million. The second is a \$100 million policy insuring Con Edison, FSM and TRC for certain third-party personal injury and property damage claims with respect to new conditions at or emanating from the Properties. The offsite transportation of contaminated materials from the Properties, as well as the disposal sites to which these materials will be taken, will also be covered. The term of this pre-existing condition policy is thirty (30) years and the term for the new conditions policy is ten (10) years.

45. TRC will maintain workers' compensation, employer's liability, commercial general liability, commercial automobile liability, asbestos and lead abatement, and contractor's operations and professional environmental insurance under a "wrap-up" insurance program, covering itself and all of its subcontractors. TRC has also obtained bonds from its subcontractors covering all demolition and decommissioning work.

46. In addition to the protections offered through the insurance programs, TRC has agreed to indemnify Con Edison and FSM against certain potential liability associated with the pre-existing physical and environmental conditions of the Properties, including any liability for future remediation of pre-existing contamination on, under, or emanating to or from the Properties. In addition, in the event that a demand is made against this TRC indemnity and TRC fails to pay such demand within thirty days, the insurer is responsible to cover such indemnification demand (up to \$10 million).

VII. THE SALE OF THE PROPERTIES IS IN THE PUBLIC INTEREST.

47. As described in the affidavit of Mr. Rasmussen, the proposed sale will result in substantial after tax net gains, all of which will be applied for the benefit of customers. Furthermore, Waterside will be retired and be replaced with the ERRP, which will use new, highly efficient, state-of-the-art natural gas-fired combustion turbine generator technology. The retirement of Waterside and the associated installation of the ERRP will result in a reduction in aggregate air emissions and will provide additional electric generation to serve New York City consumers. Importantly, as explained in the affidavit of Mr. Shansky, the sale of the First Avenue Properties will not affect steam system reliability. Other benefits include returning the Properties to the marketplace for meaningful economic development, increasing opportunities for new housing and commercial space in Manhattan, increased waterfront access on the East Side of Manhattan, increased tax revenues as well as rate stability for Con Edison's steam customers and lower electric production costs.

VIII. THE IMPACTS OF THE SALE OF THE FIRST AVENUE PROPERTIES WILL BE REVIEWED IN ACCORDANCE WITH SEQRA.

48. In May 1996, pursuant to the State Environmental Quality Review Act ("SEQRA"),³ the Commission issued a Final Generic Environmental Impact Statement ("FGEIS") that addressed the statewide environmental, social and economic impacts of its policy to open New York's electric markets to competition. Petitioners recognize that the Commission's approval of the transfers is subject to SEQRA, and the Commission's actions must be preceded by preparation of an environmental impact statement. Petitioners are preparing an EAF and a draft scope of an EIS which will detail potential significant adverse impacts of the transfers. These documents are being prepared in contemplation of a Positive Declaration by the Commission and will be supplied shortly to the Commission and will be attached as Exhibit D to this Petition. The environmental impacts of the transfer of the First Avenue Properties will be reviewed by the Commission pursuant to SEQRA prior to its action on this Petition.

³ N.Y. Env'tl. Conserv. §§ 8-0101-8-0117.

IX. CORRESPONDENCE AND COMMUNICATIONS

49. All communications and correspondence with respect to this Joint Petition should be addressed to the following:

For Con Edison:

Chanoch Lubling, Esq.
Associate General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1815-S
New York, New York 10003
Tel: 212-460-3302
Fax: 212-677-5850
Email: Lublingc@coned.com

For FSM:

Martin Edelman, Esq.
Paul, Hastings, Janofsky & Walker, LLP
75 East 55th Street
New York, New York 10022-3205
Tel: 212-318-6500
Fax: 212-318-6956
Email: MartinEdelman@PaulHastings.com

X. REQUEST FOR RELIEF

50. (a) The Petitioners respectfully request that the Commission expeditiously:
- (i) authorize the transfer of the First Avenue Properties pursuant to the terms of the Agreement as in the public interest under Section 70 of the Public Service Law; and
 - (ii) approve in its entirety the Agreement between Con Edison and FSM relating to the proposed transfer of the First Avenue Properties to FSM.
- (b) In addition, Con Edison respectfully requests that the Commission expeditiously:
- (i) approve the proposed accounting and rate treatment for the transfer of the First Avenue Properties, and the transaction costs related thereto, including but not limited to the TRC Contract Price, and the application of the proceeds to be received, as set forth in Mr. Rasmussen's affidavit;

(ii) grant such other and further relief to which Con Edison may be entitled.

Respectfully submitted,

FSM EAST RIVER ASSOCIATES LLC

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

BY: FISHER EAST RIVER ASSOCIATES LLC

By: 

Martin L. Edelman
Member

By: 

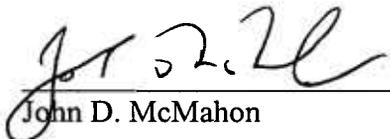
John D. McMahon
Senior Vice President and
General Counsel

Dated: March 17, 2001

VERIFICATION

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

John D. McMahon, being duly sworn, deposes and says that he is the Senior Vice President and General Counsel of Consolidated Edison Company of New York, Inc., one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.



John D. McMahon

JEANMARIE SCHIELER
Notary Public, State of New York
No. 41-4967581
Qualified in Queens County
Commission Expires June 4, 2002

Sworn to before me this
19th of March 2001



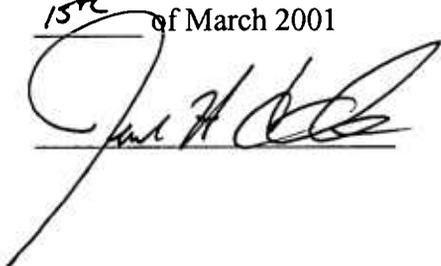
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF *New York*)

Martin L. Edelman, being duly sworn, deposes and says that he is a Member of Fisher East River Associates LLC, which entity is a member of FSM East River Associates LLC, one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.


Martin L. Edelman

Sworn to before me this
15th of March 2001



JEREMIAH H. CANDREVA
Notary Public, State of New York
No. 02CA5074087
Qualified in Westchester County
My Commission Expires 3/10/2001³

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EXHIBITS

Exhibit A – Agreement Between Consolidated Edison Company of New York, Inc, and FSM East River Associates LLC

Exhibit B – Agreement Between Consolidated Edison Company of New York, Inc. and TRC Engineers, Inc. and TRC Environmental Corporation

Exhibit C – Information Required Under Parts 18 and 31 of the Commission’s Rules and Regulations

Exhibit D – Environmental Assessment Form and Draft Scope of an Environmental Impact Statement

AFFIDAVITS

Affidavit of Edward Rasmussen regarding Rate Treatment

Affidavit of Andrew Behymer regarding Auction Protocols

Affidavit of Rick Shansky regarding steam system reliability

Affidavit of Marilyn Selig regarding the developer team and public benefits of sale

VII. THE SALE OF THE PROPERTIES IS IN THE PUBLIC INTEREST.

47. As described in the affidavit of Mr. Rasmussen, the proposed sale will result in substantial after tax net gains, all of which will be applied for the benefit of customers. Furthermore, Waterside will be retired and be replaced with the ERRP, which will use new, highly efficient, state-of-the-art natural gas-fired combustion turbine generator technology. The retirement of Waterside and the associated installation of the ERRP will result in a reduction in aggregate air emissions and will provide additional electric generation to serve New York City consumers. Importantly, as explained in the affidavit of Mr. Shansky, the sale of the First Avenue Properties will not affect steam system reliability. Other benefits include returning the Properties to the marketplace for meaningful economic development, increasing opportunities for new housing and commercial space in Manhattan, increased waterfront access on the East Side of Manhattan, increased tax revenues as well as rate stability for Con Edison's steam customers and lower electric production costs.

VIII. THE IMPACTS OF THE SALE OF THE FIRST AVENUE PROPERTIES WILL BE REVIEWED IN ACCORDANCE WITH SEQRA.

48. In May 1996, pursuant to the State Environmental Quality Review Act ("SEQRA"),³ the Commission issued a Final Generic Environmental Impact Statement ("FGEIS") that addressed the statewide environmental, social and economic impacts of its policy to open New York's electric markets to competition. Petitioners recognize that the Commission's approval of the transfers is subject to SEQRA, and the Commission's actions must be preceded by preparation of an environmental impact statement. Petitioners are preparing an EAF and a draft scope of an EIS which will detail potential significant adverse impacts of the transfers. These documents are being prepared in contemplation of a Positive Declaration by the Commission and will be supplied shortly to the Commission and will be attached as Exhibit D to this Petition. The environmental impacts of the transfer of the First Avenue Properties will be reviewed by the Commission pursuant to SEQRA prior to its action on this Petition.

³ N.Y. Envtl. Conserv. §§ 8-0101-8-0117.

FSM EAST RIVER ASSOCIATES LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

February 26, 2001

VIA HAND DELIVERY

Mr. Robert P. Stelben
Vice President and Treasurer
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 260-5713

Re: Initial Letter of Credit

Dear Mr. Stelben:

Reference is made to that certain Agreement dated as of November 15, 2000 between Consolidated Edison Company of New York, Inc. ("Con Edison") and FSM East River Associates LLC ("Developer"), as amended by that certain First Amendment ("First Amendment") dated as of November 15, 2000 and certain letter agreements dated January 12, 2001 and January 29, 2001 between Con Edison and Developer (collectively, the "Agreement"). Words and phrases used but not defined in this letter shall have the meanings set forth in the Agreement.

Notwithstanding Section 5.8 of the First Amendment, the parties agree that the date for delivery of the single standby letter of credit in the face amount of \$20,000,000 shall be extended until March 16, 2001.

Except as modified by this letter agreement, the Agreement remains otherwise unchanged and in full force and effect.

Very truly yours,

FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: 
Name: Richard L. Fisher
Title: Managing Member

By: East River Realty Development LLC

By: _____
Name: Sheldon H. Solow
Title: Managing Member

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

cc: John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.
Fax: (212) 424-8500

Except as modified by this letter agreement, the Agreement remains otherwise unchanged and in full force and effect.

Very truly yours,

FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: _____
Name: Richard L. Fisher
Title: Managing Member

By: East River Realty Development LLC

By: _____
Name: Sheldon H. Solow
Title: Managing Member

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: Robert L. Solter
Name:
Title:

cc: John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.
Fax: (212) 424-8500

NVCRS50648 1

AGREEMENT

Between

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

and

FSM EAST RIVER
ASSOCIATES LLC

Dated: As of November 15, 2000

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AGREEMENT dated as of November 15, 2000 by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at Four Irving Place, New York, NY 10003 ("Con Edison") and FSM EAST RIVER ASSOCIATES LLC, a New York limited liability company, with an office c/o Fisher Brothers, 299 Park Avenue, New York, NY 10171 ("Developer").

Introductory Statement

Con Edison is the owner of four parcels of real estate in the City of New York (the "City") commonly described as follows: 616 First Avenue, 685 First Avenue, 708 First Avenue, and 700 First Avenue (Waterside). These properties are more particularly described in Schedules "1-A", "1-B" (as to part of 685 First Avenue only), "1-C", and "1-D" hereto (and are defined below as the "Properties" or each as a "Property"). Con Edison desires to sell the Properties to Developer.

Developer and its affiliates are engaged in the development, ownership, financing, and operation of major commercial and residential real estate projects in the City and elsewhere. Developer desires to purchase the Properties from Con Edison.

Developer and Con Edison have agreed upon a "Guaranteed Minimum Value" or "GMV" for each Property, aggregating \$300 million for all the Properties. The GMV, which is allocated among the Properties as set forth below, will be the minimum price to be paid by Developer to purchase the particular Property.

Because Developer and Con Edison believe that substantial additional value will accrue to the Properties if rezoned to obtain the maximum achievable Floor Area, Developer will undertake to obtain a Rezoning (as defined below) of the Properties, at Developer's expense, in accordance with this Agreement. After the Rezoning Approval Date (as defined below) with respect to any Property, the Purchase Price will be increased to \$125 per square foot of Floor Area for such Property as fixed by the Rezoning (the "Rezoned Price" as defined below). The Purchase Price will include, also, payment for certain space as actually constructed by Developer (the "As-Built Amount" as set forth below).

After the expiration of certain time periods, and subject to certain conditions, Con Edison may require Developer to close title before the Rezoning Approval Date and pay the GMV for the particular Property. Any such GMV payment will be credited against the Rezoned Price after the Rezoning Approval Date. At each GMV Closing Developer will deliver to Con Edison security (the "Rezoning Collateral" as defined below) for payment of the Rezoned Price under this Agreement.

If the Rezoning Approval Date has not occurred by May 15, 2004, Developer will also have the right to "call" title to the Properties if Developer pays a price (the "Developer Call Price" as defined below) of \$552,928,313 (computed by multiplying 10.5 times \$125 per square foot of Lot Area, as set forth below) for all Properties, including any as to which a GMV Closing has occurred (although Developer will receive a credit for the prior payment of GMV). However, Developer will pay the balance of the Rezoned Price if Rezoning results in an FAR

greater than 10.5. If for any reason Developer fails to pay such Developer Call Price on or before May 15, 2004-- or to deliver a letter of credit (the "Call Date L/C", as defined below) for the portion of the Developer Call Price allocated to any Property that cannot be conveyed as of such date -- the Rezoned Price and the GMV will be increased (but not decreased) for changes in Fair Market Value, and the As-Built Amount will be subject to a CPI adjustment, all as set forth below. At the Closing of title to each Property pursuant to the Developer Call Option, Developer will deliver a guaranty or a letter of credit to secure payment of the prospective difference (if any) between the Rezoned Price and the Developer Call Price.

On signing of this Agreement, Con Edison and Developer have entered into certain agreements with a contractor and an insurer (the "Exit Insurer" as defined below) as set forth below for the remediation and demolition of Hazardous Substances on the Properties (the "RDE", as defined below) and the issuance of insurance coverages concerning the same. On signing of this Agreement, Developer has paid \$50 million to Con Edison to be applied toward the costs of RDE pursuant to this Agreement (the "RDE Deposit", as defined below).

On the signing of this Agreement, Developer has delivered to Con Edison a letter of credit issued by Citibank, N.A. in the amount of \$20 million (the "First L/C"). Upon ULURP Certification (defined below) or on September 30, 2001, if earlier, Developer will deliver to Con Edison an additional letter of credit issued by a Qualified Bank, in the amount of \$30 million (the "Second L/C" as defined below). Developer will deliver an additional letter of credit issued by a Qualified Bank in the amount of \$50 million (the "Third L/C" as defined below) if all Properties have not been deeded to Developer by May 15, 2004 (unless Developer delivers the Call Date L/C, as set forth below). Each letter of credit shall be security for Developer's obligations under this Agreement.

If Con Edison has not required a GMV Closing, and if Developer has not exercised its Call Option, the Closing of each Property will occur 30 days after the Rezoning Approval Date. If a GMV Closing or the Developer Call Closing has occurred as to any Property, Developer will pay the Rezoned Price (minus the prior payment of GMV or Developer Call Price, subject, if applicable, to a Fair Market Value increase) within 30 days after the Rezoning Approval Date.

Developer will commence the Rezoning process on the signing of this Agreement, and Con Edison will participate in that process, as set forth below. If the Rezoning results in a Floor Area which will result in an aggregate Rezoned Price for all Properties of less than \$526,266,250 (the "Aggregate Threshold Amount", as defined below),² Con Edison may terminate this Agreement or close title based on the actual Rezoned Price as then determined. If the Rezoning Approval Date with respect to any Property does not occur by the Outside Date (as defined below), this Agreement will terminate as to such Property unless Developer elects to close and pay a Purchase Price computed as 12 multiplied by \$125 per square foot of Lot Area for all Properties calculated on the basis of the Lot Areas set forth in Section 3.9, plus the As-Built Amount, plus an FMV and CPI adjustment, all as set forth below).

² Subject to adjustment for a Waterside Termination Event (as defined below).

Con Edison must receive approval from the Public Service Commission to sell the Properties. Con Edison will conduct the process of obtaining PSC Approval, and Developer will participate in that process, as set forth below.

Both Con Edison and Developer believe that the Properties present the opportunity to create world-class developments on some of the most unique real estate in the United States and to achieve values and returns consonant with such an opportunity. This Agreement sets forth the terms and conditions on which they intend to achieve that result.

This Introductory Statement is intended as a general but not comprehensive overview of the terms, covenants, conditions, and provisions of this Agreement which are set forth below.³

NOW, THEREFORE, in consideration of the promises and payments set forth below, and intending to be legally bound hereby, Developer and Con Edison agree as follows:

ARTICLE 1

Certain Definitions

1.1. The following words and phrases have the following meanings in this Agreement:

"AAA" means the American Arbitration Association or a successor organization (and, for all proceedings and applications under this Agreement, the New York City office of the same).

"Aggregate Threshold Amount" means the amount of \$526,266,250, which has been computed by multiplying 10 times \$125 per square foot of Lot Area for each Property specified in Section 3.9. The Aggregate Threshold Amount shall not be reduced to reflect reductions in the Purchase Price, failure to satisfy any Closing condition, or for any other reason.

"Agreement" means this Agreement and the Exhibits and Schedules attached hereto, as amended from time to time.

"Appurtenance" means any easement, covenant, restriction, tenement, hereditament, appurtenance, and other right of every kind whatsoever, benefitting, or appertaining to any Property (and all remainders, rents, issues, and profits thereof). "Appurtenance" includes all right, title and interest of Con Edison, if any in and to: (i) any land lying in the bed of any streets, roads or avenues opened or proposed, public or private, in front of or adjoining to the center line thereof, (ii) all strips, gores, rights of way, reservations, and privileges, and (iii) unpaid awards for any taking by condemnation or any damage to the Properties by reason of a change of grade of any streets or highways.

"Assignment of Ground Lease" means an assignment of the Waterside Lease in the form attached hereto as Exhibit "K."

³ In the event of any inconsistency between this Introductory Statement and the other terms of this Agreement, the other terms shall govern.

"Authorized Representative" means an Authorized Representative of a party identified on Schedule "8" hereto (and any successor designated pursuant to Section 27.9).

"BSA Special Permit" means a certain special permit approved by the Board of Standards and Appeals of the City of New York pursuant to a resolution dated February 2, 1982 under Calendar No. 257-81-BZ.

"Business Day" means any day other than Saturday or Sunday or a New York State or federal holiday and/or the day upon which it is observed.

"Call Date L/C" means an irrevocable letter of credit in the form attached as Exhibit "R" hereto, issued by a New York City branch of a Qualified Bank in an amount equal to the sum of: (a) \$552,928,313, allocated by Property in the amounts specified in Section 3.4, deducting therefrom the Developer Call Price for any Property as to which the Closing will occur on or before the Developer Call Date and the Developer Call Price (less any GMV previously paid for that Property) will be paid before or simultaneously with delivery of the Call Date L/C to Con Edison; plus (b) an amount equal to the interest that would accrue on the amount in (a) above for a period of two and one half years at the Money Market Rate, assuming for purposes of fixing the amount of the L/C that the rate for such two and one-half years would be the Money Market Rate in effect on the date three Business Days before delivery of such L/C subject to supplementation by the additional L/C pursuant to Section 3.4.

"CE Interest Rate" means an annual rate of interest computed without compounding equal to the interest paid by Con Edison from time to time on its 60-day commercial paper borrowings.

"Closing" means, with respect to each Property, the closing of the sale and purchase of such Property and the transfer of the deed, as contemplated under this Agreement.

"Closing Date" means the date scheduled for a Closing pursuant to Article 14.

"Closing Instruments" means each and every instrument, agreement, and document required by this Agreement to be executed and/or delivered by Developer or Con Edison, respectively, at a Closing.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Condemnation" (or to "Condemn") means a taking (whether temporary or permanent) by any Government Entity in condemnation or eminent domain (or any transfer by agreement in lieu thereof).

"Con Edison Indemnitees" means Con Edison and all Persons Controlled by Con Edison, and the officers, directors and employees of each of them.

"Consultant" means an architect, engineer, attorney, accountant, or other consultant, and/or any of their respective subconsultants, engaged by a Person with respect to any transactions contemplated in this Agreement.

"Control" or "controlled by" means (i) the direct or indirect ownership of 20% or more of the common shares, membership interests, partnership interests, or other equity of a Person; and/or (ii) the possession directly or indirectly of the power to direct the management and policies of a Person, whether through voting control, contractual rights, a trust, or otherwise. ("Control" or "controlled by" shall not include voting rights reserved to a member of a limited liability company who, like a limited partner, has no rights other than the right to vote on major capital events such as, for example, sale or mortgaging of a Property).

"CPI" means the Consumer Price Index for All Urban Consumers, which is published by the United States Department of Labor, Bureau of Labor Statistics, relating to consumer prices for all items (1967=100) for New York-Northern N.J.-Long Island, NY-NJ-CT; and the statistical methods used in computing the CPI shall be those chosen by the United States Department of Labor for that purpose (regardless of whether the methods are changed from time to time). If, however, the base for the CPI is so changed that 1967 prices no longer represent 100, an appropriate adjustment will be applied to the published indices in order to relate them to the base in which the 1967 consumer prices represent 100. If the CPI shall cease to be published, CPI shall mean the most comprehensive index of consumer prices (or, if none, of general inflation in the United States economy) published by any agency of the federal government or, if none, a substantially similar index selected by the parties (or by the FAR Arbitrator if the parties cannot agree).

"CPLR" means the New York Civil Practice Law and Rules.

"Deed" means a bargain and sale deed without covenants for each Property in the forms attached as Exhibit "H" hereto.

"Designated Consultants" means Cushman & Wakefield, Inc. and Merrill Lynch & Co., Inc.

"Developer Call Closing" means a Closing initiated by the giving of the Developer Call Notice.

"Developer Call Date" means May 15, 2004.

"Developer Call L/C" means an irrevocable letter of credit in the form included in Exhibit "O" hereto, issued by a New York City branch of a Qualified Bank in the amount of seventy-nine million nine hundred eighty-six thousand one hundred eighty-seven dollars (\$79,986,187) or other similar collateral acceptable to Con Edison in its sole discretion for Developer's obligation to pay the Rezoned Price after a Developer Call Closing.

"Developer Interest Rate" means an annual rate of interest on a Property mortgage or other Development loan obtained by Developer from time to time with respect to any transactions contemplated under this Agreement, to be identified by Developer by notice to Con Edison when interest is payable to Developer hereunder, but in no event to exceed ten percent (10%) per annum.

"Developer Lender" means any Person providing debt financing for the acquisition and/or Development of any of the Properties.

"Developer Principal" means each member and manager of Developer.

"Development" means, with respect to any Property, all buildings and other improvements proposed to be constructed, or actually constructed, by Developer on such Property.

"Development Rights" means, with respect to each Property, the Floor Area pertaining to such Property and all rights to construct on, above, or under such Property permitted by the Zoning Resolution.

"Encumbrance" means a Mortgage, security agreement, security interest, lien, levy, lease, pledge, hypothecation, charge, claim, license, judgment, covenant, easement, survey problem, and/or any other encumbrance or restriction of any and every kind whatsoever.

"Environmental Law" means all laws of any Government Entity (federal, state, local, or otherwise) governing or applicable, or relating in any way, to pollution; the environment (including indoor and outdoor air, surface water, groundwater, underground water, land surface or subsurface strata); the protection, conservation, management and use of land or other natural resources; the protection of human health and safety as relating to the environment; and/or the release, threatened release, manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, including, among others, the Comprehensive Environmental Response Compensation and Liability Act, the Superfund Reauthorization and Amendment Act, the Oil Pollution Act of 1990, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the National Environmental Policy Act, the Coastal Zone Management Act, the Rivers and Harbors Act of 1899, the Endangered Species Act, the Occupational Safety and Health Act, and all analogous state and local laws now or subsequently in effect or as amended from time to time.

"Extraordinary Public Improvement Costs" means the costs of designing, financing, and constructing a significant Public Improvement which (a) is imposed as a condition to the Rezoning; (b) was not contemplated in any document issued publicly, or to Developer, by any Government Entity before September 15, 2000; (c) is not specifically identified in the Zoning Resolution or the New York City building code, or in any other applicable law, as a requirement or condition (mandatory, contingent, or discretionary) for approval by any Government Entity of a rezoning in New York City, other zoning variance or permission, governmental funding or financing, site plan approval, or issuance of a building permit or other similar consent or approval for a project in New York City; (d) was not proposed in writing by any Government Entity to Developer before September 15, 2000; (e) is not a plaza or park or improvements thereon located on or within 200 feet of any Property, or a roadway or street located on or adjoining any Property (excluding any off-ramp from the FDR Drive), or an esplanade above or adjoining the FDR Drive and/or the East River between 38th Street and 41st Street and/or between 35th Street and 36th Street, walkway, tunnel, or other ingress or egress to any such esplanade; and (f) is not a "typical" pedestrian bridge (i.e., similar in size to existing unenclosed pedestrian bridges over the FDR Drive), it being the parties' intention that the costs of constructing a pedestrian bridge like the bridges over West Street adjoining the World Financial Center or over the FDR Drive at 63rd Street and at Corlears Hook Park would be Extraordinary

Public Improvement Costs (but the cost of a standard bridge shall be credited against the cost of any such extraordinary bridge).

"FAR" or "Floor Area Ratio" means floor area ratio as defined in Section 12-10 of the Zoning Resolution. (For example, the FAR is 10 if the Lot Area is 10,000 square feet and the total Floor Area which may be constructed on such lot is 100,000 square feet).

"FAR Arbitrator" means an individual designated by Developer and Con Edison in writing. If the parties fail to agree on designation of the FAR Arbitrator within 10 days after Con Edison has given a Dispute Notice under Section 6.9 (or fail to agree after 10 days' notice from either party on a successor index to the CPI), either party may apply to the AAA for appointment of the FAR Arbitrator. The AAA shall appoint the FAR Arbitrator pursuant to its rules for selection of a single arbitrator in expedited arbitration but shall attempt to identify an individual with significant experience in interpreting or advising on Floor Area calculations under the Zoning Resolution.

"Fees-And-Costs" means reasonable fees of attorneys, architects, engineers, expert witnesses, consultants, and others, and reasonable costs, expenses, and disbursements charged by, or reimbursable to, the foregoing.

"Final Determination" means a decision or determination of (i) any administrative, regulatory or other governmental or quasi-governmental agency or (ii) any court of competent jurisdiction, from which the time in which to take an appeal or to otherwise seek review has expired or from which no appeal can be taken. A "Final Determination" shall be deemed to occur as of the date of such expiration of the appeal period or the date of such unappealable decision or determination, as the case may be.

"First Amendment" means the First Amendment of this Agreement dated as of the date of this Agreement.

"First Mortgage" means, with respect to each Property, a Mortgage granted by Developer or the respective Title LLC to secure payment of the Land Acquisition Loan financing payment by Developer of the GMV allocated to such Property.

"Floor Area" means Floor Area as defined in Section 12-10 of the Zoning Resolution. (Schedule "4" sets forth examples of possible computations of Floor Area for the Properties.)

"Future Rezoning Covenant" means an instrument in the form attached hereto as Exhibit "I" pursuant to which Con Edison shall receive an increase in the Purchase Price for increases in Floor Area of any Property after the Rezoning (or any other rezoning of a Property), as more particularly set forth therein.

"GMV Closing" means a Closing initiated by Con Edison pursuant to this Agreement at which Developer pays the GMV for a particular Property.

"GMV Trigger Date" means the earlier of (a) the date of the PSC Approval of the conveyance of any one Property to Developer pursuant to this Agreement; or (b) the date when RDE commences on any one Property pursuant to the RDE Contract. For this purpose,

"commence" means that the RDE Contractor has submitted to the Exit Insurer a requisition (or requisitions) for payment of at least \$100,000 for any work or services furnished pursuant to the RDE Contract.

"Government Entity" means the United States; the State of New York; the City of New York; any other political subdivision of any of the foregoing; and any agency, authority, department, court, local development corporation, business improvement district, commission or other legal entity of any of the foregoing.

"Hazardous Substance" means "Pollutants" as defined in the RDE Contract.

"Injunction" means any injunction, whether temporary, preliminary, or permanent (excluding, however, any injunctions brought by Con Edison, Developer, or any Person controlling, or controlled by, either of them).

"Lease" means a lease, rental agreement, sublease, license, or other agreement (whether written or oral) which permits or authorizes use and occupancy with respect to a Property.

"L/C" or "letter of credit" means the First L/C, the Second L/C, the Third L/C, the Rezoning L/C, the Call Date L/C, and/or the Developer Call L/C, as used in the particular context.

"Legal Proceeding" means an action, litigation, administrative or other governmental proceeding, or other legal or equitable proceeding of any kind (other than a dispute resolution proceeding under Articles 6 or 21).

"Lot Area" means lot area as defined in Section 12-10 of the Zoning Resolution.

"Material Condemnation" means a Condemnation other than any taking which does not result in a reduction of more than one percent (1%) of the Floor Area or the usable square footage of buildings which can be constructed on a Property, does not increase the cost of constructing the Development planned for the Property by more than \$100,000, and does not otherwise interfere with or detract from (other than in a de minimis way) a proposed Development on a Property.

"Money Market Rate" means the one-day yield on CitiFunds Institutional Liquid Reserves (or any successor account or investment designated from time to time by Citibank, N.A. or any successor thereto), annualized (as of the date of computation) on the basis of a 360-day year.

"Mortgage" means a mortgage or deed of trust.

"NFAS" means all revenue-producing space in each Development constructed in, on, under, or over a Property which is not counted as Floor Area but is intended to generate revenue (such as, for example, space to be rented, leased to space tenants, sold as condominium units, or licensed or operated under management agreements, such as parking areas) measured in each

case by reference to rentable or leaseable area, or saleable area, or area under license or management, as applicable to the particular category of space.

"Outside Date" means November 15, 2006, or, if earlier, 60 days after the Rezoning Approval Date (subject to extension, if necessary, to accommodate the time periods specified in Sections 6.9, 7.2, and 21.3); provided, however, that if on either of the foregoing dates a Legal Proceeding is pending which seeks (a) to prevent or void the conveyance of a Property by Con Edison pursuant to this Agreement, and/or (b) to enjoin, void, or restrict the Rezoning of any Property, as to such Property the Outside Date shall be the earlier of (i) 90 days after a Final Determination with respect to such Legal Proceeding or (ii) November 15, 2008. In this paragraph, Legal Proceeding does not include any Legal Proceeding between Con Edison and Developer.

"Outside Party" means any Person other than Con Edison, Developer, Developer's Principals, Developer's Lenders, the Designated Consultants, and their respective trustees, directors, shareholders, partners, members, managers, employees, Consultants, agents, and representatives.

"PSC Approval" means the Final Determination(s) required by law to be issued by the PSC to allow Con Edison to complete the sale of each Property under this Agreement and to consummate the transactions contemplated under this Agreement.

"Permitted Encumbrances" means, for the respective Property, the Encumbrances and other matters specified as such in Schedules 1-AA, 1-BB, 1-CC, and 1-DD hereto.

"Person" means an individual person, a corporation, partnership, trust, joint venture, limited liability company, proprietorship, estate, association, land trust, other trust, Government Entity or other incorporated or unincorporated enterprise, entity or organization of any kind.

"Property" means, individually, each of the following:

(a) the land and improvements thereon located at and commonly known as 616 First Avenue, New York, New York as more particularly described in Schedule "1-A" hereto ("616 First Avenue") and the Appurtenances thereof and the Development Rights associated therewith;

(b) the portion of the land and improvements thereon located at and commonly known as part or a portion of 685 First Avenue, New York, New York as more particularly described in Schedule "1-B" hereto ("685 First Avenue") and the Appurtenances thereof and the Development Rights associated therewith;

(c) the land and improvements thereon located at and commonly known as 708 First Avenue, New York, New York as more particularly described in Schedule "1-C" hereto ("708 First Avenue") and the Appurtenances thereof and the Development Rights associated therewith;

(d) the land and improvements thereon located at and commonly known as 700 First Avenue, New York, New York as more particularly described in Schedule "1-D" hereto

("700 First Avenue" or "Waterside") and the Appurtenances thereof and the Development Rights associated therewith.

"Properties" means more than one Property.

"Public Improvement" means a building, structure, or other construction intended for public purposes.

"Public Service Commission" or "PSC" means the Public Service Commission of the State of New York.

"Qualified Bank" means any of the following banks: The Chase Manhattan Bank, N.A., Citibank, N.A., Morgan Guaranty Trust Company of New York, HSBC; Bank of America or any other commercial bank headquartered in the United States with a net worth not less than \$25 billion and a Standard & Poor's long term debt rating of AA or better and which is otherwise reasonably acceptable to Con Edison (but any L/C issued by any such bank for purposes of this Agreement must be drawable in New York City).

"RDE" means the remediation and demolition included within the scope of work to be furnished by the RDE Contractor pursuant to the RDE Contract.

"RDE Completion" means Phase I Completion as defined in the RDE Contract.

"RDE Deposit" means a deposit of fifty million dollars (\$50,000,000) to be allocated among the Properties as follows:

(a) 616 First Avenue, eight million three hundred thirty-three thousand three hundred thirty-three dollars (\$8,333,333);

(b) 685 First Avenue, eight million three hundred thirty-three thousand three hundred thirty-three dollars (\$8,333,333);

(c) 708 First Avenue, eight million three hundred thirty-three thousand three hundred thirty-four dollars (\$8,333,334);

(d) Waterside, twenty-five million dollars (\$25,000,000).

"Rezoning" means a decision and/or determination pursuant to the procedures set forth in the New York City Charter and/or such other laws, rules and regulations as are applicable thereto in respect of applications for any change in the zoning map affecting a Property, and/or any special permits, authorizations, and/or certifications under and pursuant to the Zoning Resolution with respect to such Property, creating, revising, or permitting Floor Area and/or other Development Rights as are necessary and/or appropriate for the development on such Property of residential, commercial, community facility or other uses permitted by the Zoning Resolution. The amendment of the BSA Special Permit to remove the restrictions on use of Floor Area shall be deemed part of the Rezoning, subject to Section 3.3.

"Rezoning Approval Date" means the date on which the Rezoning shall be deemed to have occurred and which shall be the date on which Final Determinations with respect to the last of all of the actions, decisions and/or determinations constituting the Rezoning have been taken or made or occur.

"Rezoning Collateral" means (a) each Rezoning Note, each Rezoning L/C, each Rezoning L/C Agreement, each Rezoning Pledge Agreement, and (b) the single Rezoning Mortgage to be recorded against all Properties as to which a GMV Closing occurs.

"Rezoning Documents" means drawings, outline specifications, and other documents and materials to be prepared by Developer and for its consultants to illustrate or define those aspects of Developments on the Properties which are necessary for ULURP or otherwise to achieve the Rezoning.

"Rezoning L/C" means an irrevocable letter of credit issued by a New York City branch of a Qualified Bank in favor of Con Edison, in the form included in Exhibit "C", in an amount equal to the total amount required to pay off the principal indebtedness accrued by the First Mortgage on the particular Property (plus 90 days' interest and 6 months' real property taxes) to be drawn by Con Edison to pay off the First Mortgage if Con Edison has the right to draw against the Rezoning L/C pursuant to the Rezoning L/C Agreement.

"Rezoning L/C Agreement" means an agreement in the form included in Exhibit "C" hereto.

"Rezoning Mortgage" means, with respect to all Properties, a mortgage in the form attached as Exhibit "F" hereto securing an aggregate amount of twenty five million dollars (\$25,000,000).

"Rezoning Note" means a promissory note in the amount of the maximum Rezoned Price (which shall be calculated based on a deemed FAR of 12 and the Lot Area specified in Section 3.9 minus the applicable GMV) for each Property, in the form attached as Exhibit "D" hereto. For the avoidance of doubt, the principal amount actually payable under the Rezoning Note will be the Rezoned Price for the applicable Property, calculated on the basis of the actual Floor Area obtained pursuant to the Proposed Rezoning.

"Rezoning Pledge Agreement" means an Agreement in the form attached as Exhibit "E" hereto.

"Second L/C" means an irrevocable letter of credit in the form attached as Exhibit "A" hereto, issued by a New York City branch of a Qualified Bank in the amount of thirty million dollars (\$30,000,000).

"SEQRA Consultant" means Allee, King, Rosen & Fleming and/or other Consultants who prepare an environmental assessment statement, environmental scoping documents and an environmental impact statement (or any portion thereof) in connection with the application for PSC Approval and/or ULURP (but not any other Consultants retained by any party in connection with the transactions contemplated by the Agreement).

"Service Contract" means any contract or agreement between Con Edison and a Person other than Developer for the furnishing of management, maintenance, repairs, supplies, or other services with respect to a particular Property (excluding, however, any agreements described or referred to in Article 9).

"Statement of Condition" means a letter, dated not more than 15 days prior to the date of delivery to Con Edison, from a certified public accountant who is regularly engaged in the preparation of financial statements for a Person, which states that the accountant is familiar with such Person's financial position, and which includes a statement that the aggregate net worth of such Person is not less than the amount specified therein, which by the terms of the letter is based upon the accountant's knowledge of, and due inquiry and review of, such Person's financial position.

"Third L/C" means an irrevocable letter of credit in the form attached as Exhibit "B" hereto, issued by a New York City branch of a Qualified Bank in the amount of fifty million dollars (\$50,000,000).

"Threshold Limit" means the portion of the Aggregate Threshold Amount for a particular Property, as follows:

(a) as to 616 First Avenue, eighty five million nine hundred sixty-two thousand five hundred dollars (\$85,962,500);

(b) as to 685 First Avenue, ninety three million eight hundred seventy-two thousand five hundred dollars (\$93,872,500);

(c) as to 708 First Avenue, one hundred three million thirty thousand dollars (\$103,030,000); and

(d) as to Waterside, two hundred forty three million four hundred one thousand two hundred fifty dollars (\$243,401,250).

"Title Insurance Policy" means a policy of title insurance (on ALTA current form) from a Title Insurer insuring the fee simple title to a Property (including the ground leasehold created by the Waterside Lease).

"Title Insurer(s)" means Land America as agent for Commonwealth Land Title Insurance Company ("Commonwealth") and Lawyers Title Insurance Company, as the lead title company, Chicago Title Insurance Company, First American Title Insurance Company and such other title insurance companies as Developer shall elect to provide co-insurance or re-insurance coverage.

"Transfer" or "to Transfer" means to sell, transfer, assign, pledge, donate, exchange, swap, hypothecate, grant a security interest in, mortgage, option or otherwise encumber or dispose of, voluntarily or involuntarily, with or without consideration.

"ULURP" means the Uniform Land Use Review Procedure (New York City Charter Section 197).

"ULURP Certification" means the certification by the New York City Department of City Planning described in Section 197 of the New York City Charter that the application filed in connection with the Proposed Rezoning is complete and ready to proceed through the uniform land use review procedure under Section 197 of the New York City Charter.

"Waterside Lease" means that certain lease dated November 11, 1861 from the Mayor, Aldermen and Commonality of the City of New York in favor of William Austin with respect to a portion of Waterside.

"Waterside Termination Event" means a Final Determination by the PSC disapproving the sale of Waterside by Con Edison.

"Wiring Account" means the account or accounts specified for payment of wire transfers of funds to Con Edison, or Developer, if applicable, as the same may be changed by the respective party by notice to the other from time to time, but in each case at least 3 Business Days before the event requiring a wire transfer.

"Zoning Resolution" means the Zoning Resolution of the City of New York (or any successor law), as amended from time to time.

1.2. Wherever used in this Agreement:

(a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";

(b) the word "day" means a calendar day unless otherwise specified;

(c) the phrase "at Developer's expense" or "at Con Edison's expense", means, as applicable, at the sole cost and expense of the particular party;

(d) the word "party" means any signatory to this Agreement;

(e) the word "law" (or "laws") means any law, rule, regulation, order, statute, ordinance, resolution, regulation, code, decree, judgment, injunction, mandate or other legally binding requirement of a Government Entity applicable in the particular context;

(f) the word "notice" shall mean notice in writing (whether or not specifically so stated);

(g) the word "month" means a calendar month unless otherwise specified;

(h) the word "amended" means "amended, modified, extended, renewed, changed, or otherwise revised"; and the word "amendment" means "amendment, modification, extension, change, renewal, or other revision";

(i) the phrase "subject to the terms of this Agreement" means "upon and subject to all terms, covenants, conditions and provisions of this Agreement";

(j) the words "utility" (or "utilities") means gas, water, chilled water, sewer, electricity, steam, power, and other utilities of any kind;

(k) the words "approval", "approve", and "consent" shall mean approval, approve, or consent in writing (whether or not so specified); and

(l) references to "dollars" or "\$" mean United States dollars.

1.3. For purposes of this Agreement, a party shall be deemed to have knowledge or notice of a matter only if such matter is actually known by, or if written notice disclosing such matter has been given: (a) with respect to Con Edison, to an Authorized Representative; or (b) with respect to Developer, to an Authorized Representative, officer, director, individual general partner, member, or limited liability company manager of Developer.

1.4. Other words and phrases are defined elsewhere in this Agreement and in the Schedules and Exhibits hereto.

ARTICLE 2

Agreement to Purchase and Sell

2.1. Subject to the terms of this Agreement: (a) Developer agrees to buy all of the Properties from Con Edison; and (b) Con Edison agrees to sell all of the Properties to Developer.

ARTICLE 3.

Computation and Payment of Purchase Price

3.1. Developer shall pay Con Edison the Purchase Price for each Property subject to the terms of this Agreement. In this Agreement "Purchase Price" means:

(a) before the Rezoning Approval Date with respect to any Property either: (i) the Guaranteed Minimum Value for such Property specified in Section 3.2, subject to Fair Market Value increase if applicable under Section 3.5; or (ii) the Developer Call Price for such Property computed pursuant to Section 3.4; plus

(b) after the Rezoning Approval Date with respect to any Property: (i) the Rezoned Price for such Property, plus the As-Built Amount for such Property, both subject to increase if applicable under Section 3.5; minus (ii) the GMV or Developer Call Price paid by Developer for such Property if a GMV or Developer Call Closing has previously occurred; or

(c) the Outside Date Call Price computed pursuant to Section 14.6; plus

(d) in all cases, all additional amounts becoming due and payable under the Future Rezoning Covenant.

In this Agreement the "Purchase Price then due" or "Purchase Price then due and payable" means the amount or increment of the Purchase Price computed under this Article due and payable as of

the date in question - i.e., at the time of the respective Closing or after the Rezoning Approval Date as applicable, subject to the terms of this Agreement. There shall be no reduction in the GMV or the Developer Call Price if the Rezoned Price is less than any such amount.

3.2. In this Agreement the aggregate "Guaranteed Minimum Value" or "GMV" for all the Properties shall be three hundred million dollars (\$300,000,000); and the Guaranteed Minimum Value or GMV for each Property shall be as follows:

- (a) 616 First Avenue, fifty million dollars (\$50,000,000);
- (b) 685 First Avenue, fifty million dollars (\$50,000,000);
- (c) 708 First Avenue, fifty million dollars (\$50,000,000); and
- (d) Waterside, one hundred fifty million dollars (\$150,000,000).

Developer shall pay the GMV for the particular Property at the GMV Closing for such Property, subject to Section 3.5.

3.3. In this Agreement, subject to Section 3.5:

(a) "Rezoned Price" means, as to each Property, the Floor Area of such Property⁴ after Rezoning (reflecting any adjustments pursuant to the Rezoning) multiplied by one hundred twenty five dollars (\$125) per square foot of such Floor Area; and

(b) "As-Built Amount" means, as to each Property, the total square footage of NFAS multiplied by fifty dollars (\$50) per square foot.

Developer shall pay the Rezoned Price and the As-Built Amount as and when due and payable pursuant to Article 6. (The parties agree that, for purposes of allocating values as between land and Development Rights, any part of the Purchase Price in excess of the GMV for a Property shall be deemed allocable to the Development Rights for such Property and not to land. The foregoing sentence shall have no other legal significance under this Agreement.) If the Rezoning occurs but the BSA Special Permit has not been amended to remove the restrictions on use of Development Rights, the restrictions in the BSA Special Permit will be disregarded in calculating the Rezoned Price.

3.4. "Developer Call Price" means the following amounts, computed as one hundred twenty five dollars (\$125) per square foot times 10.5 FAR, based on the following assumed Floor Areas:

- (a) 616 First Avenue (722,085 sq. ft.), ninety million two hundred sixty thousand six hundred twenty-five dollars (\$90,260,625);

⁴ Note that the Floor Area of 685 First Avenue shall be deemed to include the Floor Area of the 685 Adjacent Parcel minus the Floor Area of the Con Edison substation as set forth in Section 3.9(b).

(b) 685 First Avenue (791,319 sq. ft.), ninety eight million nine hundred fourteen thousand eight hundred seventy-five dollars (\$98,914,875);

(c) 708 First Avenue (865,452 sq. ft.), one hundred eight million one hundred eighty-one thousand five hundred dollars (\$108,181,500);

(d) Waterside (2,044,571 sq. ft.), two hundred fifty-five million five hundred seventy-one thousand three hundred thirteen dollars (\$255,571,313).

For the avoidance of doubt, the Developer Call Price shall not be reduced for any reason, whatever the results of the Rezoning, any changes in Floor Area pursuant to the Rezoning, and any amendment or non-amendment of the BSA Special Permit, or otherwise. Developer shall pay the Developer Call Price on the Developer Call Date for all Properties (and shall pay the excess of the Developer Call Price over the GMV for any Property as to which a GMV Closing has previously occurred) subject to the remainder of this Section. As to any Property with respect to which all conditions to a Developer Call Closing in Articles 10 and 11 have not yet been satisfied (or waived) as of the Developer Call Date, at the Developer Call Closing Developer shall deliver the Call Date L/C.⁵ If and when, before the Outside Date, all Closing conditions have been satisfied (or waived) with respect to any such Property, Con Edison or Developer may notify the other party and on a date mutually acceptable to Developer and Con Edison not more than 30 days after the giving of such notice, the Closing for such Property shall occur. At such a Closing, "Developer Call Price" to be paid by Developer shall also include interest on the price set forth in (a)-(d) above for each Property, computed at the actual Money Market Rate accruing from time to time from the Developer Call Date through the Closing. If such Properties are conveyed on different dates after the Developer Call Date, the Call Date L/C shall be reduced at each Closing in an amount equal to the Developer Call Price for that Property (as set forth in this Section) plus all interest paid thereon at the Closing for such Property; and the Call Date L/C shall be returned upon the last Closing. If the Outside Date is extended beyond November 15, 2006 and Con Edison is holding the Call Date L/C, Developer shall deliver to Con Edison on or before November 30, 2006 (time being of the essence) an additional L/C in the form indicated in Exhibit "S" in an amount equal to two years' interest on the then-unpaid Developer Call Price for each Property⁶ computed at the Money Market Rate (assuming only for purposes of fixing the amount of such additional L/C that the rate for such two years would be the Money Market Rate in effect on the day three Business Days before delivery of such L/C); and thereafter such additional L/C shall be deemed part of the Call Date L/C and the Call Date L/C and such additional L/C shall be referred to together as the "Call Date L/C".)

3.5. If, on or before the Developer Call Date, Developer does not deliver the Call Date L/C for all Properties as to which no Developer Call Closing has previously occurred (for any reason or no reason other than a Con Edison Event of Default, and/or regardless of failure to

⁵ As to any Property for which Developer is then prepared to close title (rather than include the amount for the particular Property in the Call Date L/C) and has begun the work of completing the particular Closing but it then becomes clear that Con Edison will be unable to satisfy a particular condition to such Closing, Developer shall then have five Business Days after notice from Con Edison to include the Developer Call Price and allocable interest amount for such Property in the Call Date L/C.

⁶ i.e., the price for each Property as to which no Developer Call Closing has yet occurred.

satisfy any Closing conditions) the Rezoned Price, the As-Built Amount, and the GMV for each Property shall be subject to increase, as follows:

(a) with respect to the Rezoned Price, Developer shall pay the (i) Rezoned Price plus (ii) fifty percent (50%) of the increase in the Fair Market Value per square foot of Floor Area above one hundred twenty five dollars (\$125) per square foot of Floor Area (as determined under Article 21);

(b) with respect to the As-Built Amount, Developer shall pay (i) the As-Built Amount plus (ii) the CPI increase on such amount computed from Developer Call Date; and

(c) with respect to the GMV, Developer shall pay (i) the GMV for the particular Property plus (ii) fifty percent (50%) of the increase in the Fair Market Value of such Property without Rezoning (as determined under Article 21); and both (i) and (ii) together shall thereafter be deemed the GMV for such Property – meaning that the GMV as thus increased shall be the amount credited against the Rezoned Price after increase under (a) above, if applicable (and to the extent that any credit remains shall be credited against the As-Built Amount).

There shall be no decrease in the Rezoned Price, the As-Built Amount, the Developer Call Price, the Outside Date Call Price or the GMV for any reduction in Fair Market Value or in the CPI. This Section 3.5 shall not apply as to any Property with respect to which a Con Edison Event of Default exists as of the Developer Call Date. If Developer has not delivered the Call Date L/C and/or the Developer Call Closings have not occurred and the Developer Call Price has not been paid within 30 days after the Developer Call Date, Con Edison may make time of the essence with respect to such obligations at any time during or after such 30-day period upon two Business Days' notice to Developer (notwithstanding Section 22.1(c)), which notice may be given during such 30 day period. For the avoidance of doubt, the increases in the Purchase Price pursuant to this Section will become effective automatically after the Developer Call Date, whether the Rezoning Approval Date occurs before or after the Developer Call Date (but subject to Section 6.12), unless Developer has previously paid the Developer Call Price and/or delivered the Call Date L/C, as applicable, upon the terms set forth in this Agreement.

3.6. If and after the total Extraordinary Public Improvement Costs incurred by Developer for all Properties has exceeded twenty million dollars (\$20,000,000), and if Developer has paid the Purchase Price specified in Section 3.1(b) for all Properties after the Rezoning, Con Edison shall reimburse Developer from time to time for the next ten million dollars (\$10,000,000) of Extraordinary Public Improvement Costs as incurred by Developer. If Developer seeks to obtain reimbursement under this Section, Developer shall submit to Con Edison, in reasonable detail: (a) a written description of the significant Public Improvement(s) involved and an explanation why the same are required as part of the Rezoning and why costs attributable to the same satisfy the criteria in this Agreement for Extraordinary Public Improvement Costs; (b) an accounting of the total Extraordinary Public Improvement Costs incurred by Developer as of the date of such submission, including invoices and other documentation that Developer has previously paid at least twenty million dollars (\$20,000,000) toward Extraordinary Public Improvement Costs, certified as true, correct, and complete by the chief financial officer of Developer; and (c) invoices or contractor requisitions for payment

representing the items for which Developer seeks reimbursement from Con Edison under this Section. Within 30 days after receipt of the documentation specified in (a), (b), and (c) above, Con Edison shall pay the amount due under this Section—not to exceed ten million dollars (\$10,000,000) in the aggregate for all Properties. For the avoidance of doubt, this Section is intended only to address adjustments to the Purchase Price under this Agreement and not to obligate Con Edison or Developer in any respect to the City or any other Person with respect to construction or any other aspect of any Public Improvement. If Con Edison fails to pay, when properly due, an amount required under this Section, Con Edison shall pay interest on such amount at the Developer Interest Rate from the due date until payment.

3.7. If, pursuant to the Rezoning, Developer is entitled to build a Floor Area for any Property based on an FAR greater than 12 FAR, but as a condition to building in excess of 12 FAR, Developer is required to provide lower-income housing under Section 23-90 of the City's Zoning Resolution, and if Developer has paid the Purchase Price specified in Section 3.1(b) for all Properties after the Rezoning, Developer shall be entitled to a credit against the Rezoned Price for such Property as follows: (a) 50% of the soft and hard costs of providing such lower-income housing if Developer actually constructs and owns the same; or (b) if Developer does not actually own such lower-income housing, 100% of the cost of purchasing certificates for the construction of such lower-income housing by others or 100% of the soft and hard costs of constructing such low income housing; provided, however, that (c) no such credit shall reduce the Rezoned Price to an amount less than 12 FAR times \$125 times the Lot Area of all Properties (calculated based on the Lot Areas in Section 3.9.) If Developer seeks to obtain credit under this Section, Developer shall submit to Con Edison, in reasonable detail: (a) a written description of the basis for the claimed credit, setting forth the relevant computations as to the amount and cost of lower income housing and a computation of the Floor Area in excess of 12 FAR against which the credit is sought; (b) an accounting of the relevant costs incurred by Developer as of the date of such submission, including invoices and other documentation, certified as true, correct, and complete by the chief financial officer of Developer; and (c) invoices or contractor requisitions for payment representing the items for which Developer seeks reimbursement from Con Edison under this Section (and, if applicable, documentation of the ownership of such housing). Within 30 days after receipt of the documentation specified in (a), (b), and (c) above, Con Edison shall pay the amount due under this Section; provided, however, that in no event shall Con Edison be required to pay any amount that would reduce the Rezoned Price received by Con Edison to an amount less than 12 FAR times \$125 times the Lot Area for any Property (calculated based on the Lot Areas in Section 3.9). For the avoidance of doubt, this Section is intended only to address adjustments to the Purchase Price under this Agreement and not to obligate Con Edison or Developer in any respect to the City or any other Person with respect to construction or any other aspect of any lower-income housing. If Con Edison fails to pay when properly due an amount required under this Section, Con Edison shall pay interest on the same at the Developer Interest Rate from the due date until payment.

3.8. If not otherwise specified, all funds payable by Developer or Con Edison under this Agreement shall be in United States dollars, and payment shall be made by wire transfer of immediately available funds to the party's Wiring Account or as the party shall otherwise direct in writing.

3.9 (a) For all purposes of this Agreement, the parties agree that the Lot Area of each Property is as follows: (i) 616 First Avenue, 68,770 sq. ft.; (ii) 708 First Avenue, 82,424 sq. ft.; and (iii) Waterside, 194,721 sq. ft. The Lot Area of 685 First Avenue is 32,365 sq. ft., and the Lot Area of the adjacent property to be retained by Con Edison (the "685 Adjacent Parcel") is 48,313 sq. ft. The total Lot Areas of all Properties equals 426,593 sq. ft.

(b) The Rezoned Price and the Developer Call Price to be paid by Developer for 685 First Avenue shall be computed by adding the sum of the Floor Area of both 685 First Avenue and the 685 Adjacent Parcel minus the Floor Area of the Con Edison substation on the 685 Adjacent Parcel. For this purpose, the Floor Area of such substation shall be deemed to be 55,800 sq. ft.

3.10 This Section sets forth the consequences of a Waterside Termination Event and in such event this Section shall govern notwithstanding any other provision of this Agreement to the contrary.

(a) Subject to Con Edison's right to terminate pursuant to Section 6.12, if the Closing has not occurred as to Waterside on or before the Outside Date (other than as the result of a Developer Event of Default) or if there is a Waterside Termination Event prior to the Outside Date, and, in either case, if the Rezoning Approval Date has occurred on or before the Outside Date, on the Outside Date (or such earlier date that both a Waterside Termination Event and the Rezoning Approval Date shall have occurred) the Rezoned Price for 708 First Avenue shall be decreased by ten percent (10%) and the Rezoned Price for 685 First Avenue shall be decreased by twenty percent (20%) to account for the decrease in the value of these Properties due to the fact that Waterside cannot be simultaneously developed. If Developer has paid the Rezoned Price or the Developer Call Price with respect to 685 First Avenue and/or 708 First Avenue before the date that the Rezoned Price is decreased pursuant to the preceding sentence of this subsection (a), Con Edison shall reimburse Developer, within 30 days following notice from Developer, an amount equal to the foregoing reduction in the Rezoned Price (or, if greater or if no Rezoning has occurred, the Developer Call Price) of 685 First Avenue and/or 708 First Avenue, as applicable, plus interest at the Developer Interest Rate from the date of payment.

(b) If a Waterside Termination Event occurs after Con Edison has received the Second L/C and the Third L/C or the Call Date L/C:

(i) the face amounts of the First L/C, the Second L/C and the Third L/C shall be reduced by an amount equal to 46% of the lesser of the original amounts thereof, or the reduced amounts thereof (if such L/Cs have been reduced as contemplated elsewhere in this Agreement); provided, however, that in no event shall the aggregate face amount of those L/Cs held by Con Edison under this Agreement be reduced below fifty million dollars (\$50,000,000) at any time before the Closing of title to all Properties has occurred; or

(ii) if the Call Date L/C has previously been substituted for the First L/C, the Second L/C and the Third L/C, the Call Date L/C shall be reduced by an amount equal to the Developer Call Price for Waterside set forth in Section 3.4(d); and

(iii) if the Developer Call L/C has been delivered, the Developer Call L/C shall be reduced by \$36,510,187.

For the avoidance of doubt, none of the GMV, the Outside Date Call Price, nor the Rezoned Price for 616 First Avenue shall be reduced to reflect the 10% and 20% adjustments described above; nor shall the Developer Call Price be reduced for such purpose (although Developer will receive an adjustment after the Rezoning as set forth above).

(c) Upon an occurrence of a Waterside Termination Event:

(i) the GMV for Waterside shall be deleted;

(ii) the Developer Call Price for Waterside set forth in Section 3.4(d) shall be deleted; and

(iii) the Outside Date Call Price shall be calculated without including Waterside; and

(iv) the Aggregate Threshold Amount shall be \$282,865,000 (which has been computed by multiplying 10 times \$125 per square foot of Lot Area specified in Section 3.9 for each Property other than Waterside).

(d) If there is a Waterside Termination Event or if the PSC Approval relating to Waterside has not been obtained by the Outside Date:

(i) the references to \$20,000,000 and \$10,000,000 in Section 3.6 shall be deemed automatically reduced to \$10,800,000 and \$5,400,000, respectively; and

(ii) the Floor Area of Waterside shall be excluded from any computation under Section 3.7 and references to "all Properties" in Section 3.7 shall be changed to mean "all Properties other than Waterside".

(e) If a Waterside Termination Event has occurred, the Rezoning of Waterside shall not be a Closing condition for either party.

ARTICLE 4.

Deliveries of Letters of Credit

4.1. Developer has delivered the First L/C (and has paid the RDE Deposit) to Con Edison on the signing of this Agreement, subject to the terms of this Agreement.

4.2. Upon ULURP Certification for any Property or on September 30, 2001, if earlier (the "Second L/C Due Date"), Developer shall deliver the Second L/C to Con Edison, subject to the terms of this Agreement.

4.3. On or before May 15, 2004 (the "Third L/C Due Date"), Developer shall deliver the Third L/C to Con Edison, subject to the terms of this Agreement, unless Closings have occurred (or the Call Date L/C has been delivered) for every Property before that date.

4.4. Developer shall deliver the Rezoning L/C to Con Edison when required under Section 6.13.

4.5. If a GMV Closing occurs with respect to a Property, the face amounts of the First L/C, the Second L/C and the Third L/C shall be reduced after the respective Closing by an amount equal to a percentage computed as the GMV for the particular Property divided by the total GMV for all Properties; provided, however, that in no event shall the aggregate face amount of all L/Cs held by Con Edison under this Agreement be reduced below fifty million dollars (\$50,000,000) at any time before the Closing of title to all Properties has occurred.

4.6 Upon delivery of the Call Date L/C by Developer to Con Edison (and simultaneous payment of any portion of the Developer Call Price then due, if applicable), Con Edison shall return to Developer the First L/C and the Second L/C to the extent not previously drawn or reduced. If a Developer Call Closing occurs after the Developer Call Date, the face amount of the Call Date L/C shall be reduced after such Closing by the portion of the Developer Call Price for the applicable Property (as set forth in Section 3.4) plus all interest paid to Con Edison thereon at the Closing.

4.7 At the Closing of the last Property pursuant to this Agreement, subject to Section 6.15, Con Edison will return to Developer all L/Cs then held by Con Edison; provided, however, that if such Closing occurred prior to the Rezoning Approval Date and the Rezoning L/C has not been replaced with the Developer Call L/C pursuant to Section 6.13, Con Edison shall be entitled to hold the Rezoning L/C until the date on which the Rezoning L/C is required to be returned to Developer pursuant to the Rezoning L/C Agreement.

4.8 In any case where Con Edison is required to return an L/C pursuant to this Agreement, or if the reduction of any L/C pursuant to this Agreement requires confirmation from Con Edison, Con Edison shall execute and deliver such documents as are reasonably necessary to permit the same to be cancelled or terminated.

ARTICLE 5.

Draws Under Letters of Credit

5.1. Con Edison shall have the right to draw against the First L/C in the full amount thereof if Developer fails to deliver the Second L/C to Con Edison on or before the Second L/C Due Date, time being of the essence.

5.2. Con Edison shall have the right to draw against the First L/C and the Second L/C in the full amount thereof (and to make time of the essence as set forth in Section 3.5) if Developer fails to deliver the Third L/C to Con Edison on or before the Third L/C Due Date, unless Developer delivers the Call Date L/C on or before such date.

5.3. Con Edison shall have the right to draw against the First L/C, the Second L/C, and the Third L/C in the full amount thereof if, after delivering the Second L/C and the Third L/C, Developer fails to pay the Purchase Price for any Property when due and payable to Con Edison pursuant to this Agreement.

5.4. Con Edison shall have the right to draw against the Call Date L/C as set forth in Article 22 and elsewhere in this Agreement.

5.5. Con Edison shall have the right to draw against the Rezoning L/C as specified in the Rezoning L/C Agreement. Con Edison shall have the right to draw against the Developer Call L/C in the full amount thereof if Developer or Title LLC defaults in paying the Rezoned Price with respect to the applicable Property or Properties when due and payable hereunder.

5.6. Con Edison shall have the right to draw the full amount undrawn under the First L/C, the Second L/C, the Third L/C, the Developer Call L/C, the Call Date L/C, and/or the Rezoning L/C, as applicable; if at any time (i) the particular letter of credit will expire in less than 30 days from the date of such draw and if (for any reason or no reason) Developer has not given Con Edison a replacement letter of credit, in form and substance the same as the expiring letter of credit, issued by a Qualified Bank, in an amount equal to the amount then undrawn under the expiring letter of credit and having an expiration date at least 364 days after the expiration date of the expiring instrument (each such, a "Replacement L/C") or (ii) any Title LLC or Developer makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law is filed against any Title LLC or Developer and such involuntary petition is not dismissed within 90 days after filing; or a petition is filed by or against any Title LLC or Developer under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition is not dismissed within 90 days after filing; or a receiver, trustee or liquidator shall be appointed for any Title LLC or Developer or the property of either of them and such receiver, trustee or liquidator shall not have been discharged within 90 days from the date of his/her appointment. If Developer furnishes a Replacement L/C at least 30 days before the expiration date of the respective letter of credit, such Replacement L/C will be and be deemed the L/C for which the Replacement L/C was substituted under this Section. Con Edison shall hold and apply any funds drawn under an L/C pursuant to this Section, and any interest or other income accruing thereon, upon the same terms and conditions as apply to the L/C under which such funds were drawn.

5.7. Notwithstanding anything to the contrary in this Agreement, Con Edison shall notify Developer at least 3 Business Days before drawing on any L/C by giving one copy of a written notice to the following address only:

FSM East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, NY 10171
Attention: Mr. Richard L. Fisher

(Developer may change the party to receive the notice under this Section, or the address for receipt of such notice, by notice given in accordance with Section 25.1.)

5.8. Con Edison shall also have the right to draw against the L/Cs as expressly set forth in Article 22 or elsewhere in this Agreement, in the Rezoning L/C Agreement, and/or in the respective L/C.

ARTICLE 6.

Rezoning and PSC Processes; Related Matters

6.1. Developer and Con Edison believe that substantial additional value will accrue to the Properties if the City of New York approves a change in the zoning status of the Properties so as to increase the Floor Area of residential, commercial, and other improvements that can be constructed on the Properties. On signing this Agreement, Developer and Con Edison have agreed on a scope of the change in the zoning status of the Properties (including a schedule for ULURP activities) attached as Schedule "4" hereto (the "Proposed Rezoning"), which sets forth, among other things, the desired increase in Floor Area for each Property and milestones for the ULURP process and the Rezoned Price intended to be achieved for each Property.

6.2. After signing this Agreement, Developer shall undertake, at Developer's expense, subject to Section 6.5, all actions necessary or appropriate to obtain a change in the zoning of the Properties consistent with the Proposed Rezoning, with the intent of achieving a Floor Area for each Property equal to or exceeding 12 FAR (as set forth more particularly in Schedule "4" hereto). Such actions shall include, among other things, making all necessary filings with Government Entities; attending and making presentations at meetings and/or hearings with Government Entities; engaging and supervising architects, planners, and other consultants of appropriate expertise; consulting with public officials and community groups, etc. While Developer cannot guarantee the result, Developer agrees to use Developer's best efforts for such purpose (including compliance with the schedule for ULURP activities). In this Agreement, "Rezoning Matter" means any matter, subject, activity, or thing in connection with the Proposed Rezoning, any aspect thereof, or any matter reasonably relating thereto (including, for example, the activities described above). Developer shall promptly give Con Edison copies of material Rezoning Documents, correspondence, governmental filings, and other documents and other materials in connection with any Rezoning Matter, delivered by Developer to, or received by Developer, from any Government Entity or Outside Party. Con Edison and Con Edison's officers, representatives, and counsel shall be invited to attend all meetings between Developer and any Government Entity or Outside Party in connection with any Rezoning Matter other than informal meetings (although such attendance shall not be required unless specifically so indicated by Developer). Developer's obligations under this Section shall continue until the earlier of (a) the Rezoning Approval Date; (b) payment of the Developer Call Price and/or delivery of the Call Date L/C as to all Properties on or before the Developer Call Date; (c) the Outside Date; or (d) termination of this Agreement. For purposes of this Section and Section 6.4, "informal meeting" means a meeting attended by two or fewer representatives (including counsel) of either Developer or Con Edison at which issues, strategy, or policy will be discussed informally but no decisions will be made or official action taken. Developer shall report to Con Edison as to topics discussed at any informal meeting.

6.3. Unless and until payment of the Developer Call Price and/or delivery of the Call Date L/C has occurred with respect to all Properties, Developer shall not agree with any Government Entity or Outside Party to amend or revise the Proposed Rezoning (or any application to obtain the Proposed Rezoning) without Con Edison's consent if the effect of such agreement is to reduce the aggregate Rezoned Price which would be payable by Developer hereunder below the Aggregate Threshold Amount.

6.4. After signing this Agreement, Con Edison shall undertake, at Con Edison's expense, subject to Section 6.5, all actions necessary or appropriate to obtain PSC Approval. Such actions shall include, among other things, making all necessary filings with Government Entities; attending and making presentations at meetings and/or hearings with Government Entities; engaging and supervising consultants of appropriate expertise; consulting with public officials and community groups, etc. While Con Edison cannot guarantee the result, Con Edison agrees to use Con Edison's best efforts for such purpose. In this Agreement, "PSC Matter" means any matter, subject, activity, or thing in connection with the proposed PSC Approval, any aspect thereof, or any matter reasonably relating thereto (including, for example, the activities described above). Con Edison shall promptly give Developer copies of material correspondence, governmental filings, and other documents and other materials in connection with any PSC Matter, delivered by Con Edison to, or received by Con Edison, from any Government Entity or Outside Party. Developer and Developer's officers, representatives, and counsel shall be invited to attend all meetings between Con Edison and any Government Entity or Outside Party in connection with any PSC Matter other than informal meetings (although such attendance shall not be required unless specifically so indicated by Con Edison). Con Edison shall report to Developer as to topics discussed at any informal meeting. Con Edison shall give notice to Developer (the "PSC Approval Notice") after the PSC Approval. Con Edison's obligations under this Section shall continue until the earlier of (a) PSC Approval; (b) the Outside Date; or (c) termination of this Agreement.

6.5. Con Edison and Developer shall cooperate and consult regularly with each other to coordinate their respective efforts with respect to the Proposed Rezoning and the PSC Approval. Con Edison agrees to sign upon request applications and other documents required to be signed by the fee owner of the Property in connection with the Rezoning, without responsibility or liability to Developer or others for the substantive outcome of such applications or other documents. Developer agrees to sign upon request applications and other documents required to be signed by Developer, and to furnish upon request all information required by the PSC, in connection with the PSC Approval, without responsibility or liability to Con Edison or others for the substantive outcome of such applications or other documents. Although each will pay the Fees-And-Costs of their respective Consultants, Developer shall pay two-thirds of the cost and Con Edison shall pay one-third (not to exceed \$500,000) of the cost of all environmental impact statements to be prepared by SEQRA Consultant (including environmental assessment forms and scoping documents) in connection with the Proposed Rezoning and the PSC Approval. For purposes of Sections 6.2 and 6.4, the parties' agreement to use their best efforts to achieve the intended purpose is meant as an expression of their seriousness and *bona fides* but neither party shall have liability to the other in damages or otherwise by reason of failure to achieve their intended purpose or otherwise to comply with the requirements of Sections 6.2 or 6.4; except, however, that if Developer fails (i) to engage its master planning architect or to make Developer's initial ULURP filing on or before the respective milestone date

specified for the particular action in Schedule "4" hereto; or (ii) to file Developer's environmental impact statement with the lead agency prior to the applicable milestone date specified in Schedule "4" hereto (which shall be extended day for day if failure to complete by such milestone date is due to delays by Allee, King, Rosen & Fleming in submitting a draft or final environmental assessment form for the PSC Approval); then Developer shall be responsible for payment of all SEQRA Consultant fees (and Developer shall promptly reimburse Con Edison for all amounts previously paid by Con Edison for SEQRA Consultant's services).

6.6. If any Government Entity or other Person commences a Legal Proceeding against Developer and/or Con Edison in connection with any Rezoning Matter, and/or PSC Matter, Developer and Con Edison shall cooperate to coordinate their defense against such Legal Proceeding to the extent that their interests coincide, although each shall be represented by separate counsel and each shall pay its own Fees-And-Costs incurred with respect to such Legal Proceeding.

6.7. Within 15 days after the Rezoning Approval Date, Developer shall give notice to Con Edison and Con Edison may give notice to Developer (the "Rezoning Notice") showing such party's computation of the Rezoned Price for the affected Property. Within 30 days after the Rezoning Approval Date: (a) the Closing shall occur for the respective Property (subject to the terms of this Agreement); or (b) if a GMV Closing or Developer Call Closing has previously occurred, Developer shall pay Con Edison the Rezoned Price minus the GMV or Developer Call Price previously paid for the Property as set forth in Article 3.

6.8. Developer will give notice to Con Edison (an "As-Built Amount Notice") showing Developer's good faith estimate of the As-Built Amount for any Development on a Property if known on the Rezoning Approval Date for such Property (with plans as then available); and Developer shall pay such As-Built Amount to Con Edison when the Rezoned Price is payable under Section 6.7. Thereafter, as each Development is constructed on the Property, Developer shall pay to Con Edison the As-Built Amount—if any—due (with credit for any prior payments) with respect to such Development within 30 days after issuance of a temporary certificate of occupancy for the particular Development (or, if Developer has previously overpaid the As-Built Amount with respect to the particular Development, Con Edison shall refund the amount of such overpayment within 30 days after notice from Developer explaining the amount of the overpayment, with interest at the Developer Interest Rate from the date of payment). Developer shall advise Con Edison at least quarterly as to the status of the actual construction of the Developments on the Properties and shall give Con Edison notice (also an "As-Built Notice") with a copy of the temporary certificate of occupancy when such certificate is issued for any part of such Development. Con Edison may also give Developer notice when Con Edison believes any temporary certificate of occupancy has been issued. If the As-Built Amount for a Property is not paid in full at the Closing of such Property, Developer shall deliver to Con Edison an As-Built Amount Guaranty in the form attached as Exhibit "J" hereto from each Developer Principal guaranteeing payment of the As-Built Amount for such Property as and when due and payable pursuant to this Agreement (the "As-Built Amount Guaranty"). If either Developer or Con Edison fails to pay within the respective 30 day period an amount properly due to the other party under this Section, the payor shall pay interest on such amount from the due date at the Developer Interest Rate.

6.9. If Con Edison disputes Developer's computation of the Rezoned Price or the As-Built Amount, respectively, for any Property, Con Edison may give notice (a "Dispute Notice") to Developer within 21 days after Con Edison has received, as applicable, the Rezoning Notice for such Property or the As-Built Notice for such Property (or Con Edison has given Developer notice that a temporary certificate of occupancy has been issued for a Development on a Property). If the parties do not resolve their dispute by agreement in writing within 15 days after Con Edison gives a Dispute Notice concerning the Rezoned Price or the As-Built Amount, either party may invoke the dispute resolution procedures of this Section and Section 6.10 by notice to the other party. Within 15 days after submission of the dispute to the FAR Arbitrator (taking into account, if applicable, any time needed for appointment of the FAR Arbitrator by the AAA), each party may submit to the FAR Arbitrator any briefs, analyses, plans, graphic materials, or other documents that such party deems material or relevant to its position. Within 10 days after such submissions, the FAR Arbitrator shall hear oral argument, with both parties present; and within 10 days thereafter the FAR Arbitrator shall render a reasoned written decision specifying his computation of the Rezoned Price or the As-Built Amount, as applicable; and such decision shall be conclusive and binding on the parties as the decision of an arbitrator under the CPLR. Each party shall pay fifty percent (50%) of the fees and charges of the FAR Arbitrator. If necessary, the respective Closing or other due date for the particular Rezoned Price or As-Built Amount shall be postponed to allow the time periods specified in this Section, subject to Section 6.10. (Where not inconsistent with this Section, the AAA rules for expedited arbitration shall apply.)

6.10. If Con Edison has given a Dispute Notice concerning Developer's computation of the Rezoned Price or the As-Built amount for any Property and if the parties have not agreed on (or the FAR Arbitrator has not determined) the applicable amount within 60 days after the giving of a Dispute Notice under Section 6.9 (whatever the reason for the lack of resolution), time being of the essence, within 15 days thereafter Developer shall pay to Con Edison the full amount of the Rezoned Price and the As-Built Amount including the amounts in dispute; and, if applicable, the Closing shall occur; and if the FAR Arbitrator thereafter determines that Developer has made an overpayment on account of either such Rezoned Price or As-Built Amount, Con Edison shall refund such overpayment to Developer within 15 days after the FAR Arbitrator's decision, with interest at the Developer Interest Rate.

6.11. Because both Developer and Con Edison desire to achieve Developments of superior design and architectural quality on the Properties, Developer agrees that it will hold a competition at its expense among up to 10 nationally and/or internationally renowned firms specializing in architecture and/or urban planning to select the master planner for future development on the Properties. Developer will consult regularly with Con Edison as to the firms to be interviewed or selected for this purpose and subsequently, also, the architects to be selected for the design of each Development on a Property (although selection of all such architects and other consultants shall be in Developer's discretion).

6.12. With respect to any Property as to which no GMV Closing or Developer Call Closing has yet occurred (and/or the Call Date L/C has not been delivered), Con Edison shall have the right (at its election) to terminate this Agreement as to any Property or all Properties upon notice to Developer given within 30 days following the Rezoning Approval Date, if the Floor Area obtained in the Rezoning would result in a Rezoned Price for all Properties of less

than the Aggregate Threshold Amount. Within 30 days after delivery to Developer of such termination notice, provided that the Developer Call Date has not yet passed, Developer may elect on notice to Con Edison to exercise the Developer Call Option (time being of the essence with respect to such notice) with respect to all Properties covered by the termination notice, in which case the Developer Call Date shall be deemed to be the date that is 30 days after the date of the Call Notice. Upon Developer's election to exercise the Developer Call Option pursuant to the preceding sentence, the provisions of Section 3.4 and the other applicable provisions of this Agreement shall apply; provided, however, that notwithstanding Section 3.5, the failure of Developer to deliver the Call Date L/C and/or close and pay the Developer Call Price when required shall be a Developer Event of Default. If Con Edison terminates the Agreement pursuant to this Section, the First L/C, the Second L/C, the Third L/C (and any portion of the RDE Deposit allocable to Properties not yet deeded to Developer, with interest at the CE Interest Rate) and the Rezoning L/C, as applicable, shall be reduced as provided in Section 4.5 or returned to Developer, as applicable; and thereafter neither party shall have any liability to the other under this Agreement with respect to the applicable Properties except as specified in Articles 8, 22 (as to any Developer Event of Default existing prior to such date) and 24. If and to the extent that Con Edison does not exercise its rights of termination under this Section, this Agreement shall remain in effect.

6.13. At the GMV Closing for any Property, to secure Developer's obligation to pay the Rezoned Price if, as, and when due under this Agreement, Developer and the respective Title LLC shall execute and/or deliver to Con Edison the Rezoning Note, the Rezoning L/C, the Rezoning L/C Agreement, the Rezoning Pledge Agreement, and the Rezoning Mortgage for such Property. The indebtedness under each Rezoning Note shall be the maximum Rezoned Price (i.e., computed on the basis of a deemed FAR of 12 and the Lot Area specified in Section 3.9) due and payable to Con Edison upon the Rezoning of the Property (less the GMV previously paid as to such Property). At the Closing, Developer shall pay all mortgage recording taxes due for the recording of the respective Rezoning Mortgage and also the premiums charged by the Title Insurer(s) for the issuance to Con Edison of a mortgagee policy of title insurance insuring Con Edison's lien under the Rezoning Mortgage. The Rezoning Mortgage shall be subordinate to the First Mortgage of each Property granted by Developer or the respective Title LLC to secure a loan of all or part of the GMV for such Property (a "Land Acquisition Loan"), upon terms and conditions as more particularly set forth in such Rezoning Mortgage. The Rezoning Pledge Agreement shall be subordinate to a pledge of the equity in Developer or the respective Title LLC granted by Developer to secure the same Land Acquisition Loan, upon terms and conditions as more particularly set forth in such Rezoning Pledge Agreement. (Although Developer and the applicable Title LLC may not grant more than one First Mortgage and First Pledge for each Property, the respective lender(s) thereunder shall be permitted to grant to one or more Persons a participation interest in each such instrument and the underlying Land Acquisition Loan, or to syndicate such Land Acquisition Loan). Developer and/or the respective Title LLC shall pay, keep, and perform all obligations to be paid, kept, and performed under the Rezoning Collateral. For the avoidance of doubt, there will be a single Rezoning Mortgage securing twenty five million dollars (\$25,000,000) in the aggregate as to all Properties which will be granted by Developer and the respective Title LLC against each and every Property. Upon receipt of: (i) the Rezoned Price for any Property or (ii) the Developer Call Price and the Developer Call L/C for the Properties, as applicable, Con Edison shall sign instruments

necessary to assign without recourse or terminate and discharge, and shall return, as applicable, the Rezoning Collateral for such Property or Properties to Developer.

6.14. In this Agreement, "Title LLC" means a limited liability company of which Developer owns directly or indirectly all (100% of) the membership interests, subject to Article 26, and which satisfies the "single purpose entity" requirements set forth in Schedule "5" hereto. Any references to, or obligations of, Developer in this Agreement shall be deemed to include each "Title LLC"; and each Title LLC shall be subject to the terms of this Agreement and bound by this Agreement to the same extent as Developer. With respect to each GMV Closing, Developer shall cause a Title LLC to take title pursuant to this Agreement in place of Developer; and Developer shall cause each Title LLC to comply with the single purpose entity requirements of Schedule "5" hereto until Con Edison has received the full Purchase Price pursuant to Section 3.1(b) for the respective Property, or Con Edison has received payment of the Developer Call Price (and/or delivery of the Call Price L/C) or the Outside Date Call Price with respect to all Properties, or the Outside Date has occurred.

6.15 At the Developer Call Closing, to secure Developer's obligation to pay any portion of the Rezoned Price in excess of the Developer Call Price for the applicable Property if, as, and when due under this Agreement, Developer shall deliver to Con Edison the Developer Call L/C. If the Rezoned Price has not become due as of the Outside Date, Con Edison shall promptly return the Developer Call L/C to Developer.

ARTICLE 7.

Title to the Properties; Possession

7.1. Developer will not be required to accept title to any Property subject to any Encumbrance other than the Permitted Encumbrances. In this Agreement, "Title Defect" means any Encumbrance other than a Permitted Encumbrance.

7.2. On or before a Closing Date, Developer may give Con Edison notice of a Title Defect with respect to the Property or Properties which are the subjects of such Closing. If Developer gives notice to Con Edison of any such Title Defect, Con Edison may adjourn the Closing (and the Outside Date, if applicable) for a period or periods not exceeding 60 days in the aggregate to remove the Title Defect(s) specified in Developer's notice. If Con Edison is unable (or unwilling), subject to Section 7.3, to remove such Title Defect(s) before such period expires, and if Developer has not agreed in writing to accept such title as Con Edison is then able to convey, this Agreement shall terminate with respect to the particular Property. Notwithstanding the foregoing, if the applicable Title Defect is a judgment or judgments that Con Edison is not required to remove pursuant to Section 7.3(b) and is not willing to Remove, Con Edison shall not be entitled to terminate this Agreement as to such Property before November 15, 2006 without the prior written consent of Developer; it being understood that during such period Con Edison shall not be required to Remove or endeavor to Remove such Title Defect, but that if Con Edison Removes such Title Defect prior to November 15, 2006, Con Edison shall be required to convey and Developer shall be required to purchase such Property, subject to the terms of this Agreement.

7.3. If Con Edison receives notice under Section 7.2 of a Title Defect which is a lien for payment of money only, Con Edison agrees as follows:

(a) to Remove mechanics' liens which are asserted against one or more of the Properties other than any liens asserted against a Property by, through, or under the RDE Contractor; and/or

(b) to Remove judgments for liquidated sums of money asserted against the Property which is the subject of the respective Closing, provided that the liquidated sums evidenced by all such judgments do not exceed thirty seven million five hundred thousand dollars (\$37,500,000) in the aggregate for the first two Properties to be conveyed and provided further that the liquidated sums evidenced by all such judgments for all Properties do not exceed seventy-five million dollars (\$75,000,000) in the aggregate; and/or

(c) to Remove any amounts due the City of New York for violations of law previously asserted against a Property before the respective Closing if those amounts (i) would be collectable as a lien or other obligation against the Property after conveyance by Con Edison and (ii) would not be cancelled as the result of the demolition of improvements on the Property in the RDE or the construction of a Development on the Property, provided that the aggregate of all such amounts for all Properties does not exceed five hundred thousand dollars (\$500,000).

In this Article, "Remove" means either (x) to remove and discharge of record by payment, bonding, or otherwise or (y) to give the Title Insurer an indemnity sufficient to induce the Title Insurer to insure title free and clear of the particular lien or other charge.

7.4 With respect to each Property which is the subject of a Closing, on or before the Closing Date, Con Edison shall:

(a) pay all real property taxes due prior to a Closing, subject to Article 13;

(b) Remove any Mortgage against such Property;

(c) terminate (or otherwise cause to be terminated and surrendered) any Lease on such Property (other than the Waterside Lease); and

(d) terminate (or otherwise cause to be terminated and surrendered) any easement which is not a Permitted Encumbrance and has been granted in violation of Section 7.9.

7.5. Except as specified in Sections 7.3 and 7.4, and notwithstanding any other provision of this Agreement (express or implied), Con Edison shall have no obligation whatsoever to cure, correct, satisfy, or discharge any Title Defect.

7.6. Subject to the foregoing and otherwise subject to the terms of this Agreement, Con Edison shall deliver possession of each Property to Developer at the Closing of such Property, subject to the Permitted Encumbrances.

7.7. For the avoidance of doubt, the activities of the RDE Contractor on any Property and any agreements, covenants, orders, judgments or decrees, institutional controls, engineering controls, or other Encumbrances signed, entered into, or accepted by Con Edison, the RDE Contractor, the Exit Insurer and/or any Government Entity pursuant to and in accordance with the RDE Contract and/or the Exit Insurance, and any mechanic's liens asserted against a Property by, through, or under the RDE Contractor shall be "Permitted Encumbrances" for purposes of this Agreement.

7.8. Con Edison may give Developer notice (each, a "Title Report Notice") on or before January 15 of each year after the date of this Agreement and before the Closing of title to each Property to request that Developer give Con Edison notice of any Title Defect which has come into existence against the respective Property since the prior January 15th (or since the signing of this Agreement prior to January 15, 2001, as applicable). Developer shall give Con Edison notice within 30 days thereafter of any such Title Defect, which shall be deemed a notice given under Section 7.2 with respect to the particular Property. If Con Edison delivers a Title Report Notice, Developer's failure to give a notice under this Section as to a Title Defect which arose prior to the applicable January 15th and was not the subject of a previous notice under this Section shall be deemed acceptance and a waiver of the particular Title Defect (but only if such Title Defect is a lien which cannot be discharged by the payment of money, whether or not Con Edison must Remove same pursuant to Section 7.3 or 7.4), which shall then be deemed a Permitted Encumbrance.

7.9. If Con Edison is requested by third parties to grant utility or access easements across any Property and in Con Edison's opinion it is necessary or advisable to grant such easements, Con Edison shall notify Developer that such easements are necessary or advisable, and Con Edison and Developer shall work together in good faith to agree upon the location of and terms of such easements to the end that such easements (i) do not interfere with the planned Developments on the applicable Property or Properties, and (ii) do not violate the applicable provisions of the RDE Contract or require extra payments under the RDE Contract. Upon Developer's written approval of any such easement (such approval not to be unreasonably withheld subject to clauses (i) and (ii) of the preceding sentence), such easement shall be deemed a Permitted Encumbrance for purposes of this Agreement. (Notwithstanding the foregoing, it is understood and agreed that Con Edison shall not be required to obtain Developer's approval to any easement which by its terms is terminated on or prior to the Closing Date with respect to such Property, provided that such easements shall not be Permitted Encumbrances.)

ARTICLE 8. Condition of the Properties; Right to Remove Fixtures and Equipment

8.1. Except as set forth in Article 9 and in all cases subject to Section 10.1(i): (a) Developer agrees that each Property is to be conveyed "as is, where is"—i.e., in the physical condition existing on the Closing Date; (b) for the avoidance of doubt, Developer accepts the risk of all change, deterioration or destruction of every kind as to each Property and the improvements on such Property from and after the date of this Agreement, and Developer agrees that Con Edison has no responsibility to maintain or operate the Property in any condition whatsoever by reason of this Agreement; and (c) Developer acknowledges that Developer will

rely on the results of Developer's own inspections and observations of the Property regarding the physical and environmental condition thereof. Con Edison makes (and has made) no representations or warranties, direct or indirect, express or implied, oral or written, of habitability, merchantability, usability, fitness for a particular purpose, environmental condition, presence or absence of Hazardous Substances, profitability, compliance with laws, or of any other kind with respect to any Property or otherwise concerning the subject matter of this Agreement. Developer also acknowledges that no agent or other representative of Con Edison has made any such representations or warranties to Developer.

8.2. Developer shall have the right to make non-invasive inspections, investigations and tests on the Properties, and Con Edison and its representatives shall cooperate reasonably in such matters; provided, however, that such activities shall be subject to (and not interfere with) site control and other rights of the RDE Contractor and the Exit Insurer under their respective agreements and shall not interfere with the operations of Con Edison, the RDE Contractor, or the Exit Insurer. "Non-invasive" means that such inspections, investigations, and tests shall not involve digging, boring, or other activities which involve physical invasion, excavation, disturbance, or penetration of a Property. For such purposes, Con Edison shall provide reasonable access to any Property to Developer and Developer's contractors, agents and representatives during normal business hours on Business Days subject to Con Edison's standard operating procedures and requirements (including its health and safety procedures) and subject to the rights of the RDE Contractor and the Exit Insurer under their respective agreements. Before entering the Property to do any testing or inspections, Developer shall give Con Edison certificate(s) of insurance evidencing that Developer has in effect commercial general liability insurance, written on the "occurrence" basis, with minimum coverage limits of at least \$10,000,000 written by insurers reasonably acceptable to Con Edison and licensed or authorized to do business in the State of New York with a Best's rating of A or better, that cover Developer's obligations under this Section (although such coverages are not intended to limit Developer's obligation under this Section). Developer agrees to indemnify Con Edison and the Con Edison Indemnitees from and against all loss, cost, expense, damage, charge, claim or liability (including Fees-And-Costs) which they may suffer, incur, or pay out by reason of the acts or omissions of Developer, its contractors, agents and representatives on the Property pursuant to this Section. This Section shall survive any termination of this Agreement. If the Closing does not occur with respect to a particular Property, Developer also agrees to return the Property free of debris caused by Developer and with any unsafe conditions created by Developer covered securely or otherwise made safe or repaired. For the avoidance of doubt, Developer agrees that this Section is intended for Developer's planning and convenience only and shall not be construed to give Developer any right to terminate Developer's obligations under this Agreement based on any conditions or other physical matters affecting any Property (and whether or not any Property is conveyed before or after any other Property).

8.3. Before the Closing Date, subject to the rights and time schedule of the RDE Contractor and the Exit Insurer, Con Edison may (but shall not be obligated to) remove from each Property, at Con Edison's expense, any and all fixtures, equipment, and other personal property of any kind whatsoever, whether existing on the date of this Agreement or later installed or located on the respective Property. Any fixtures, equipment, and personal property in or on a particular Property and not removed by Con Edison before the Closing Date for such Property (or, if earlier, the date when the RDE Contractor assumes control of, or demolishes, the same)

shall be deemed abandoned, and Con Edison shall have no obligation to remove the same. Moreover, Con Edison shall have no obligation or liability for the condition of a Property resulting from the removal of—or failure to remove—any such fixtures, equipment, or personal property.

8.4. Subject to Article 9 and Section 10.1(i), Con Edison will have no liability or obligation with respect to demolition of existing structures or excavation on any Property.

8.5. This Article supplements (and is not intended to limit) Article 9.

ARTICLE 9.

RDE Strategy

9.1. Con Edison has advised Developer that the Properties have environmental histories and that Hazardous Substances are now (or in the past have been) present on some or all of the Properties. Before the signing of this Agreement, Con Edison has given Developer reports and materials of various types pertaining to Hazardous Substances on the Properties. Con Edison does not represent or warrant that any such reports or other materials identify any or all Hazardous Substances on any or all of the Properties or are accurate or complete; and Developer agrees that Con Edison shall have no responsibility for any such reports and materials.

9.2. Simultaneously herewith, Con Edison has entered into an agreement (the "RDE Contract") with TRC Engineers, Inc. and TRC Environmental Corporation (together, the "RDE Contractor") to perform the RDE on each Property, as more particularly set forth in the RDE Contract. References to the RDE Contractor in this Agreement shall be deemed to include the subcontractors of the RDE Contractor.

9.3. Simultaneously herewith, Con Edison has obtained a policy or policies of insurance described as "Consolidated Edison Companies of New York, Inc. First Avenue Properties Insurance Policy" (the "Exit Insurance") from Granite State Insurance Company (the "Exit Insurer") covering, with respect to each Property: (a) direct payment of costs of the RDE Contract and (b) various liabilities asserted against Con Edison, Developer, and the other Persons insured under such policy by reason of or relating to Hazardous Substances with respect to the Properties, all as more particularly set forth in the Exit Insurance. The Exit Insurance names Developer as a named insured. Pursuant to the Exit Insurance, the Exit Insurer has assumed responsibility for all payments due to the RDE Contractor and has guaranteed performance by the RDE Contractor of the RDE Contractor's obligations, under the RDE Contract. The parties have paid, and shall pay, the costs of the RDE Contract and the Exit Insurance as follows:

(a) on the signing of this Agreement: (i) the RDE Deposit from Developer has been paid to the RDE Contractor, subject to Section 9.6 below; (ii) Con Edison has paid thirty five million dollars (\$35,000,000) to the RDE Contractor; and (iii) each of Con Edison and Developer has paid six million seven hundred fifty thousand dollars (\$6,750,000) to the Exit Insurer towards the insurance premiums for the Exit Insurance;

(b) after the signing of this Agreement, Con Edison will pay the Exit Insurer three million six hundred thirty three thousand dollars (\$3,633,000) if asbestos is found in certain stacks at Waterside; and

(c) after the signing of this Agreement, Developer and Con Edison will share the costs of the "ERDE Work" (as described in Article 3 of the First Amendment) relating to Waterside upon the terms and conditions set forth in the First Amendment.

Also, the parties agree that Con Edison shall receive any refunds from the RDE Contractor or the Exit Insurer relating to so-called "deducts" under Exhibit I to the RDE Contract.

9.4. Simultaneously herewith, also, TRC Companies, Inc., the parent corporation of the RDE Contractor has executed and delivered the RDE Contract to establish its joint and several liability with the RDE Contractor for the performance by the RDE Contractor of the RDE Contractor's obligations under the RDE Contract.

9.5. Developer: (a) acknowledges that Developer has reviewed and participated in the negotiation of the RDE Contract, the Exit Insurance, and the RDE Parent Indemnity; (b) agrees subject to 10.1(i), that Con Edison has no responsibility for the performance of the work described in the RDE Contract, any other remediation, demolition or excavation work with respect to the Properties, or the compliance of the Properties with Environmental Laws (although Con Edison is responsible under the RDE Contract to turn over the Properties to the RDE Contractor as and when required under the RDE Contract); and (c) waives and releases all rights, claims and actions of every kind or matter whatsoever which Developer and/or its successors, assigns and/or legal representatives shall or may have against Con Edison and the Con Edison Indemnitees, at law or in equity, with respect to or in connection with Hazardous Substances, whether on the Properties or off-site, and whether arising or accruing before, on or after the date hereof, subject to Section 9.7 and Article 6 of the First Amendment.

9.6. On the signing of this Agreement, Con Edison has received from Developer and paid to the RDE Contractor and the Exit Insurer the RDE Deposit to be applied to the amounts due and payable to the RDE Contractor and the Exit Insurer with respect to the RDE Contract and/or the Exit Insurance. The RDE Deposit shall be allocated to the respective Properties as set forth in the definition of the RDE Deposit. If this Agreement terminates as to any Property (other than by reason of a Developer Event of Default), Con Edison shall repay to Developer the portion of the RDE Deposit allocable to such Property, together with interest from the date of this Agreement computed at the CE Interest Rate (but at the Developer Interest Rate if the Agreement terminates under Section 22.4). However, the balance of the RDE Deposit shall remain with the RDE Contractor or the Exit Insurer, as applicable, subject to the terms and conditions of this Agreement (including Section 22.2) and of the RDE Contract and the Exit Insurance with respect to all Properties as to which this Agreement remains in effect.

9.7 The First Amendment makes provision for sharing of responsibility for certain liabilities relating to Hazardous Substances if and to the extent not covered by the RDE Contract and/or the Exit Insurance.

10.1. Developer's obligation to perform and complete Developer's obligations at the Closing of the respective purchase and sale of each Property under this Agreement shall be subject to satisfaction of each of the following conditions at or before the particular Closing:

- (a) Title to the respective Property shall be subject to no Encumbrances other than Permitted Encumbrances (but a failure of this condition as to one Property shall not be a failure as to any other Property).
- (b) Con Edison shall have executed and delivered to Developer the Deed for the particular Property and all other Closing Instruments required to be executed and delivered by Con Edison at or prior to the Closing.
- (c) The respective Property shall be vacant and free of Leases (other than the Waterside Lease).
- (d) All representations and warranties of Con Edison in this Agreement shall be true, correct and complete in all material respects as of the Closing Date.
- (e) No Con Edison Event of Default shall have occurred and be continuing as of the Closing Date.
- (f) Except as to a Developer Call Closing, there shall have occurred no Material Condemnation under Article 19 with respect to the particular Property.
- (g) The PSC Approval applicable to, or required for, the particular transaction shall have been issued.
- (h) There shall be no Service Contracts in effect as of the Closing Date with respect to the Property.
- (i) Except as to a Developer Call Closing, RDE Completion shall have occurred with respect to the particular Property.
- (j) Except as to (A) any GMV Closing, or (B) the Developer Call Closing or (C) the Outside Date Closing, the Rezoning Approval Date shall have occurred for each and every Property.
- (k) There shall be no Injunction restraining the Closing as to the particular Property.
- (l) Any other conditions to Developer's obligations as to such Property which are set forth elsewhere in this Agreement shall have been satisfied.

11.1. Con Edison's obligation to perform and complete Con Edison's obligations at the Closing of the respective Property under this Agreement shall be subject to satisfaction of each of the following conditions at or before Closing:

(a) Developer shall have paid the Purchase Price then due for such Property and all other Properties as to which the Purchase Price is then due.

(b) If the Rezoning Approval Date has not yet occurred, Developer shall have delivered to Con Edison: (i) for a GMV Closing, the Rezoning Note, the Rezoning L/C, the Rezoning L/C Agreement, the Rezoning Pledge Agreement, and the Rezoning Mortgage; and no Event of Default (as defined therein) shall have occurred (and be continuing as of the Closing Date) under any Rezoning Collateral, with respect to any Property; or, (ii) for a Developer Call Closing, the Call Date L/C (for any Property for which the Developer Call Price has not been paid) and the Developer Call L/C.

(c) The Developer shall have executed and delivered to Con Edison all other Closing Instruments required to be executed and delivered by Developer at or prior to the Closing.

(d) No Developer Event of Default shall have occurred and be continuing as of the Closing Date.

(e) All representations and warranties of Developer in this Agreement shall be true, correct, and complete in all material respects as of the date(s) when made or deemed to be made and as of the Closing Date.

(f) [omitted]

(g) [omitted]

(h) Except as to (A) any GMV Closing or (B) the Developer Call Closing or (C) the Outside Date Closing, the Rezoning Approval Date shall have occurred for each and every Property. For this purpose, Rezoning shall not be deemed to include the amendment of the BSA Special Permit (meaning that Con Edison shall not have the right to require that amendment of the BSA Special Permit shall have occurred by the Rezoning Approval Date).

(i) Developer shall have executed and delivered the Future Rezoning Covenant to Con Edison.

(j) The PSC Approval required for the particular transaction shall have been issued.

(k) The Board of Trustees of Con Edison shall have adopted a resolution approving this Agreement and the transactions contemplated hereunder.

(l) There shall have occurred no bankruptcy, insolvency or other material adverse change in the financial condition of Developer or any Developer Principal which would prevent or materially impair Developer from performing Developer's obligations under this Agreement. (If any such event occurs as to a Developer Principal, Developer may satisfy this condition by effecting the withdrawal of such Developer Principal and the substitution in its stead of another Developer Principal (or of financial security) reasonably satisfactory to Con Edison.)

(m) There shall be no Injunction restraining the Closing as to the particular Property.

(n) Any other conditions to Con Edison's obligations which are set forth elsewhere in this Agreement shall have been satisfied.

ARTICLE 12.

Waiver of Conditions

12.1. Con Edison shall have the right to waive compliance by Developer with any condition set forth in Article 11 other than in Section 11.1(h), (j), and (k). For the avoidance of doubt, Con Edison may waive any such condition or conditions with respect to one or more (or all) of the Properties.

12.2. Developer shall have the right to waive compliance by Con Edison with any condition set forth in Article 10 other than in Section 10.1(g). (For the avoidance of doubt, this means that Developer may waive the requirement that amendment of the BSA Special permit shall have occurred as part of the Rezoning by the Rezoning Approval Date for purposes of Section 10.1(j).)

12.3. Any waiver under Section 12.1 or 12.2 must be in writing and must refer specifically to the condition being waived. However, if the respective Closing occurs, the respective conditions in Articles 10 and 11 shall be deemed to have been satisfied as to the particular Property unless specified to the contrary in writing before such Closing; provided, however, that neither party shall be released from any obligations which survive the Closing.

12.4. If, before the Closing Date, Developer becomes aware that any of Developer's representations and warranties in this Agreement are untrue, incorrect, or incomplete in any material respect, Developer shall give notice to Con Edison as promptly as practicable. Thereafter, Developer shall have the right to cure or correct the problem prior to the Closing Date.

12.5. If, before the Closing Date, Con Edison becomes aware that any of Con Edison's representations and warranties in this Agreement are untrue, incorrect, or incomplete in any material respect, Con Edison shall give notice to Developer as promptly as practicable. Thereafter, Con Edison shall have the right to cure or correct the problem prior to the Closing Date.

13.1. All real property taxes, general or special (and whether foreseen or unforeseen, ordinary or extraordinary), water and sewer rents (if any), and all other public or governmental charges or assessments levied against each Property (collectively, "Real Property Taxes") shall be adjusted and apportioned between Con Edison and Developer as of midnight the day before the Closing Date and will be assumed and paid thereafter by Developer.

13.2. If any error has been made with respect to any apportionment, such item shall be corrected as soon as the same is fully ascertained, but no later than 365 days after the Closing.

13.3. After the date of this Agreement and before the Closing, Con Edison shall make necessary filings to protest or reduce Real Property Taxes as to each Property for the fiscal year starting July 1, 2002 and each subsequent fiscal year of New York City until the Closing of such Property. Con Edison shall have full authority (in its sole discretion) to settle or otherwise compromise any proceeding to protest or reduce Real Property Taxes which is now or subsequently pending, but Con Edison shall not without the prior written consent of Developer (not to be unreasonably withheld), after the giving of any notice scheduling a Closing pursuant to this Agreement, withdraw, terminate, or settle any such proceeding affecting the year in which such Closing will occur unless a Developer Event of Default has occurred. Real Property Tax refunds (if any) received by either party after the Closing, after deduction for Fees-And-Costs of collecting the same, which are: (a) attributable to any fiscal year before the Closing, shall be paid to Con Edison; and (b) attributable to the fiscal or tax year in which the Closing occurs, shall be apportioned between Con Edison and Developer under Section 13.1. A party who receives a refund of Real Property Tax which is subject to this Section shall pay the amount (if any) due to the other party within 10 Business Days after receipt.

13.4. This Article shall survive the Closing.

13.5. The customs in respect of title closings of The Real Estate Board of New York, Inc. shall apply to apportionments under this Article unless otherwise specified.

13.6. In the event that separate permanent tax lot numbers have not been issued for 685 First Avenue or 708 First Avenue/WaterSide before the applicable Closing Date, Developer and Con Edison agree that from the Closing Date of each such Property until the date of issuance of a tax bill reflecting the issuance of separate permanent tax lot numbers, Con Edison and the applicable Title LLC shall execute and deliver all required documents and use good faith efforts to obtain an apportionment by the New York City Department of Finance of Real Property Taxes between 708 First Avenue and WaterSide, or 685 First Avenue and the adjacent property, as applicable, and shall pay their respective proportionate shares of Real Property Taxes before the same become delinquent; and each party shall indemnify the other for the portion of Real Property Taxes attributable to such party's parcel and for penalties or Fees-And-Costs resulting from a party's failure to pay such share on a timely basis. If Con Edison and the applicable Title LLC are unable to obtain such an apportionment from the Department of Finance, they shall apportion the Real Property Taxes attributable to land based

on the relative fair market values of the parcels. This Section shall not apply after the issuance of permanent tax lot numbers for each such parcel. Con Edison and the applicable Title LLC shall cooperate with each other in instituting any tax certiorari proceedings applicable to periods when both Con Edison and the Title LLC both have interests in the same tax lot. If the parties are unable to agree on the relative fair market values of their parcels, the issue shall be determined under the procedures applicable to a determination of FMV under Article 21, which shall be deemed to apply for this purpose. In such event, "FMV" under Article 21 shall mean fair market value of each party's interest in the respective Property which is the subject of the dispute under this Section.

13.7. Promptly following the execution and delivery of this Agreement, Con Edison shall commence good faith efforts to obtain tax lot subdivisions of 708 First Avenue and Waterside, and 685 First Avenue and its adjacent property, before the applicable Closing Dates for such Properties (provided, however, that Con Edison shall have no liability for any failure to seek or obtain any such subdivision).

ARTICLE 14.

Closing Dates; Closings

14.1. The Closing Dates for the Closings under this Agreement shall be as follows (subject to Sections 6.9, 7.2, and 21.3):

(a) as to any GMV Closing, 30 days after Con Edison gives a GMV Closing Notice under Section 14.5;

(b) as to the Developer Call Closings, on the date determined pursuant to Section 14.4;

(c) as to the Outside Date Closing, on the date specified in Section 14.6;

(d) as to all other Closings, on the 30th day after the Rezoning Approval Date;
but

(e) in no event shall any Closing occur after the Outside Date.

14.2. As to each Property, the Closing shall take place at 10:00 a.m. on the applicable Closing Date at the offices of Con Edison's counsel (or at another location in the City designated by Con Edison).

14.3. If and to the extent that the conditions to Developer's obligations in Section 10.1 are not satisfied as to a particular Property on or before the Outside Date (other than as a result of a Developer Event of Default), then, upon Developer's written demand, the First L/C, the Second L/C, the Third L/C, and the Call Date L/C (each to the extent not previously paid or drawn for any Property as to which Closing of title has occurred) shall be returned to Developer (and the RDE Deposit shall be apportioned as set forth in Section 9.6); and thereafter

neither party shall have any liability to the other party with respect to the particular Property except as specified in Articles 8, 22 and 24.

14.4. Developer shall have the right ("Developer Call Option") to require Con Edison to convey the Properties to Developer for payment of the Developer Call Price upon the following conditions and otherwise subject to the terms of this Agreement:

(a) Developer must exercise the Developer Call Option as to all Properties not yet deeded to Developer at a GMV Closing;

(b) If Developer exercises the Developer Call Option, Developer shall accept each Property "as-is"—i.e., subject to the current physical condition of each Property regardless of and whatever the status of RDE under the RDE Contract and regardless of and whatever the status of the Exit Insurance (whether in effect, in compliance, or in dispute), although this provision shall not be deemed a waiver of any rights of Developer or Con Edison under the RDE Contract or the Exit Insurance;

(c) All Closings of title under the Developer Call Option shall occur on or before the Developer Call Date, subject to Section 14.4(e);

(d) Developer shall exercise the Developer Call Option by notice (the "Call Notice") to Con Edison at least 45 days before the Developer Call Date (time being of the essence with respect to the delivery of such notice);

(e) if, for any reason or no reason (other than a Con Edison or a Developer Event of Default), all Closings of title under the Developer Call Option do not occur on or before the Developer Call Date, Developer shall remain obligated to complete such Closings (subject to Section 14.1(d)); but the Rezoned Price and the As-Built Amount shall be subject to increase pursuant to Section 3.5 unless Developer has delivered the Call Date L/C on or prior to the Developer Call Date with respect to all Properties for which Closings have not occurred on or prior to the Developer Call Date; and

(f) Except for a Financing Transfer to a Developer Lender (subject to the conditions of Article 26), Developer shall not be permitted to Transfer any Development Rights appurtenant to the Properties (i) until Developer has paid Con Edison the Rezoned Price, or (ii) if the Rezoning Approval Date has not occurred before the Outside Date, until after the Outside Date.

14.5. Subject to the terms of this Agreement, Con Edison will have the right to require GMV Closings by giving notice to Developer (each such, a "GMV Closing Notice") at any time after the following dates and before the Outside Date: (a) with respect to either or both of 616 First Avenue and 685 First Avenue, one year after the GMV Trigger Date if RDE Completion has occurred; (b) with respect to (i) either or both of 616 First Avenue and 685 First Avenue and (ii) 708 First Avenue and Waterside together, two years after the GMV Trigger Date if RDE Completion has occurred; and (c) with respect to any and all Properties, three years after the GMV Trigger Date if RDE Completion has occurred.

14.6 If the Rezoning Approval Date has not occurred by the Outside Date and Developer has not exercised the Developer Call Option, Developer shall have the option to purchase all Properties not previously deeded to Developer (the "Outside Date Option"), to be exercised by notice given to Con Edison at least 120 days before the Outside Date (the "Outside Date Notice"), time being of the essence with respect to the giving of such Notice. If Developer exercises the Outside Date Option, the Purchase Price for each Property (the "Outside Date Call Price") shall be an amount equal to: (a) \$125 times 12 FAR times the Lot Area for each Property in Section 3.9 (plus 50% of the FMV thereof above \$125 per square foot of 12 FAR times such Lot Area as of the Outside Date, as determined pursuant to Article 21); plus (b) the As-Built Amount (plus CPI thereon from Developer Call Date); plus (c) any additional amounts becoming due and payable thereafter under the Future Rezoning Covenant. The Closing of the Outside Date Option shall occur on a date specified by Developer, but within 30 days after the date of delivery of the Outside Date Notice (the "Outside Date Closing"). If there is a pending Legal Proceeding on the 120th day prior to the Outside Date (which would have the effect of extending the Outside Date if same were pending on the Outside Date), Developer shall be entitled to give the Outside Date Notice within 30 days following a Final Determination of such Legal Proceeding (and if such Final Determination occurs before November 15, 2006 the Outside Date shall be extended as necessary to permit the Outside Date Closing to occur prior to expiration of this Agreement, but not beyond November 15, 2008). If Developer exercises the Outside Date Option, Developer shall accept each Property "as is"—*i.e.*, in the physical condition described in Section 14.4(b) but otherwise subject to the terms of this Agreement -- although such acceptance shall not be deemed a waiver of any rights of Developer or Con Edison under the RDE Contract or the Exit Insurance.

ARTICLE 15.

Closing Deliveries; Related Matters

15.1. Subject to the terms of this Agreement, Con Edison shall execute and deliver to Developer at each Closing:

- (a) the Deed to the respective Property (and, as to Waterside, the Assignment of Ground Lease);
- (b) as to 685 First Avenue and 708 First Avenue/Waterside, the Zoning Lot Agreement in the applicable form attached hereto as Exhibit "L";
- (c) the other Closing Instruments to be executed and/or delivered by Con Edison pursuant to Schedule "7" or other provisions of this Agreement.

15.2. Subject to the terms of this Agreement, Developer shall execute and/or deliver to Con Edison at each Closing:

- (a) payment of the Purchase Price then due and payable with respect to the particular Property;
- (b) for any GMV Closing, the Rezoning Collateral;

- (c) the Future Rezoning Covenant for each Property;
- (d) for any Developer Call Closing, the Developer Call L/C;
- (e) if RDE Completion has occurred, Con Edison may retain (and receive payment from the RDE Contractor and/or the Exit Insurer) any portion of the RDE Deposit allocated to such Property but not previously expended; and
- (f) the other Closing Instruments to be executed and/or delivered by Developer pursuant to Schedule "7" or other provisions of this Agreement.

15.3. At each Closing, Developer and Con Edison shall keep and perform their respective covenants and responsibilities to be performed at the Closing under this Agreement.

ARTICLE 16. Representations and Warranties of Con Edison

16.1. Con Edison makes the representations and warranties set forth below as of the date of this Agreement and as of each Closing Date:

(a) Schedule "9", Part Two, which sets forth representations and warranties by Con Edison concerning its organization and ownership, authorization of this Agreement, and other matters, is incorporated herein by reference.

(b) Except as set forth in Schedule "6", to Con Edison's actual knowledge, there are no pending Legal Proceedings against Con Edison in connection with the Property or Properties to be conveyed at the particular Closing that would prevent or prohibit: (i) Con Edison from obtaining the PSC Approval; (ii) Developer from obtaining the Proposed Rezoning; or (iii) the conveyance of the Property or Properties to a Title LLC. For purposes of this Section 16.1(b), Con Edison's actual knowledge shall be deemed to include, also, the actual knowledge of Con Edison's General Counsel.

(c) Con Edison has received no written notice of any Condemnation with respect to any Property to be conveyed at the particular Closing except as set forth in Schedule "6".

(d) The only approval (other than the approval of Con Edison's Board of Trustees, which has been obtained, and other than any approvals of any Government Entities in connection with the performance of RDE under the RDE Contract) that Con Edison requires in order to convey the Properties is a Final Determination of the PSC approving the sale of the Properties pursuant to the New York Public Service Law (and satisfaction of all conditions imposed by the PSC in connection with such Final Determination).

16.2. At or prior to each Closing, Con Edison shall terminate Service Contracts (if any) with respect to the particular Property and shall pay all termination costs in connection therewith.

16.3. Con Edison will have no employees engaged in the operation, management, or repair of a Property who are required to become employees of Developer at or after the Closing of such Property; and Developer has no obligation to employ any employees of Con Edison.

16.4. At each Closing Con Edison shall furnish a certificate to Developer updating Con Edison's representations and warranties in Section 16.1 to reflect any changes occurring after the date of this Agreement. Con Edison agrees, however, that no such change within Con Edison's control shall adversely impact Con Edison's ability to perform Con Edison's obligations under this Agreement.

ARTICLE 17. Representations and Warranties of Developer, Certain Agreements

17.1. Developer makes the representations and warranties set forth below to Con Edison as of the date of this Agreement and as of each Closing Date:

(a) Schedule "9", Part One, which sets forth representations and warranties by Developer concerning its organization and ownership, authorization of this Agreement, and other matters is incorporated herein by reference. Representations and warranties of each Developer Principal in Schedule "9", Part One, shall be deemed representations and warranties of Developer for all purposes of this Agreement.

(b) To Developer's actual knowledge, there are no outstanding judgments, injunctions, or orders of any Government Entity, and no pending Legal Proceedings or material threats of Legal Proceedings, against Developer, any Developer Principal, any of the Fishers or Solow which would have a material adverse effect on the performance by any of them of the obligations of any of them under this Agreement or the Closing Instruments.

(c) Schedule "10" hereto lists certain financial statements furnished to Con Edison by Developer and Statements of Condition furnished by the Developer Principals and the individuals who are the ultimate direct or indirect beneficial owners of the Developer Principals Controlled by Solow and the Fishers, including the date as of which each such statement was prepared and the independent certified public accountants who prepared such statement. Developer has delivered true, correct, and complete copies of each of these financial statements and Statements of Condition to Con Edison before the signing of this Agreement. Developer shall furnish an update of⁷ each such financial statement and Statement of Condition, as well as financial statements of the applicable Title LLC, at the Closing of each Property. Each Statement of Condition listed in Schedule "10" (and each update) is true and correct. Each financial statement listed on Schedule "10" (and each update) fairly presents the financial

⁷ As to a financial statement, "update" shall mean an audited statement as of the end of the most recent fiscal year, except that between January 1st and April 1st of any year, "update" shall mean an unaudited statement for the most recent fiscal year. In either case, Developer shall also deliver (or cause to be delivered) a letter from the respective chief financial officer (or equivalent functionary) that as of the date of delivery the Person for whom the statement is delivered had no change in financial condition from the date of the last audited statement that would adversely impact Developer's (or the respective Title LLC's) ability to perform Developer's (or the respective Title LLC's) obligations under this Agreement.

condition of the Person whose business and finances are covered by such statement; and as of the date of such statement such Person had no material liabilities, fixed or contingent or otherwise, except as set forth in such statement. Developer agrees that Con Edison may submit any such financial statement and Statement of Condition to the PSC in connection with the process of seeking PSC Approval; and Developer agrees to furnish such additional financial statements and Statements of Condition as the PSC may require in connection with the application for, or issuance of, PSC Approval.

17.2. At the Closing of each Property Developer shall furnish a certificate to Con Edison updating Developer's representations and warranties in Section 17.1 and Schedule "9" to reflect any changes occurring after the date of this Agreement. Developer agrees, however, that: (a) no such change within Developer's control shall adversely impact Developer's ability to perform Developer's obligations under this Agreement; and (b) each such change shall be subject to Con Edison's approval as a condition to Closing, subject to the terms of this Agreement.

ARTICLE 18.

Transfer Taxes; Transaction Expenses

18.1. Except as specified elsewhere in this Agreement, each party shall pay the Fees-And-Costs of its own attorneys and Consultants in connection with this Agreement and the transactions contemplated hereunder.

18.2. Developer shall pay the costs for the issuance of each Title Insurance Policy and any surveys obtained by Developer.

18.3. Con Edison shall pay the New York State Real Estate Transfer Tax and New York City Real Property Transfer Tax due with respect to the entire Purchase Price (as, when and if due and payable) in connection with the conveyance of each Property. Developer shall pay recording fees for recording the Deeds.

18.4. The parties believe that no sales or use tax will be payable with respect to the conveyance of the Properties because no personal property is intended to be conveyed and no portion of the Purchase Price has been allocated to any personal property.

18.5. Developer shall pay all Fees-And-Costs, and other fees, costs, and charges of any kind, associated with (a) each and every L/C and guaranty (and, if applicable, any amendment thereof) issued pursuant to or with respect to this Agreement; and (b) all Rezoning Collateral issued pursuant to or with respect to this Agreement. Also, Developer shall pay (or reimburse Con Edison for) Fees-and-Costs incurred by Con Edison in connection with the preparation of any additional Rezoning Pledge Agreements and related documentation for any and each new equity owner and the preparation and filing of any additional Uniform Commercial Code financing statements in connection therewith (to the extent necessary to grant Con Edison a pledge of the membership interests in each Title LLC and to perfect such pledge).

18.6. Developer shall pay all mortgage recording taxes and filing and/or recording costs with respect to the Rezoning Mortgage and all UCCs executed in connection with the Rezoning Pledge Agreement or pursuant to Article 26.

18.7. Developer shall pay all interest due the issuer on the proceeds of any L/C drawn by or for the benefit of Con Edison pursuant or with respect to this Agreement or any Rezoning Collateral or other Closing Instrument.

ARTICLE 19.

No Casualty Condition; Material Condemnation

19.1. Because it is expected that all improvements on the Properties will be demolished for development and/or because the parties have assigned no value to any such improvements, Developer will have no right to terminate this Agreement, or any of Developer's obligations under this Agreement, by reason of any damage to, or deterioration or destruction of, any Property or any improvements thereon from any cause whatsoever.

19.2. If, before the Closing of a Property, a Government Entity issues written notice of a Material Condemnation or a proposed Material Condemnation with respect to such Property, Developer may terminate this Agreement with respect to such Property by giving notice to Con Edison within 60 days after Developer's receipt of such notice (or before the earlier of the effective date of Condemnation or the Closing, if sooner). Upon the giving of such notice, this Agreement shall terminate with respect to the particular Property (but not as to any other Properties); the portion of the RDE Deposit previously paid as to the particular Property shall be returned to Developer (with interest thereon at the CE Interest Rate from the date of the respective draws); the other L/Cs then held by Con Edison shall be proportionately reduced (as if in accordance with, and subject to, Section 4.5); and thereafter neither party shall have further liability under this Agreement with respect to such Property, subject to Articles 8 and 24. This Section 19.2 shall not apply to any Material Condemnation of which a Government Entity issues written notice after the giving of Developer's Call Notice under Section 14.4.

19.3. All proceeds of insurance payable by reason of any fire or other casualty affecting any Property (other than proceeds relating to fixtures, equipment and personal property) before the Closing as to a Property shall belong (and be payable) exclusively to Con Edison.

19.4. If after receiving notice of a Material Condemnation, Developer does not elect to terminate this Agreement with respect to the particular Property (or Developer has given a Developer Call Notice), this Agreement shall remain in full force and effect; there shall be no adjustment to the Purchase Price under this Agreement; any Encumbrances resulting from such Condemnation shall be Permitted Encumbrances; and Con Edison shall assign any awards relating to such Condemnation (and will make no claim for the value of its improvements other than awards relating to fixtures, equipment and personal property, to the extent same do not reduce the award otherwise payable with respect to the land) to Developer at the Closing of the particular Property.

19.5 After Con Edison or Developer receives written notice of any Condemnation with respect to a Property, each party's officers, representatives, and counsel shall be invited to attend all meetings (other than informal meetings) between such party and any Government Entity to discuss such Condemnation. Also, each party shall give the other copies of material correspondence or governmental filings received or sent by such party in connection with any such Condemnation. After the effective date of any such Condemnation, if Developer has not elected (or has no right) to terminate this Agreement under Section 19.2, Con Edison shall have the right to contest by Legal Proceedings the amount offered for the respective Property in such Condemnation. If, at any time thereafter, Con Edison elects not to continue any such contest and/or to accept the amount offered in compensation by the respective Government Entity but Developer is not prepared to accept such offer, Con Edison shall permit Developer to seek higher compensation by appropriate Legal Proceedings provided that:

(a) Developer shall bear all expenses of any such Legal Proceeding and shall reimburse Con Edison for any Fees-And-Costs incurred by Con Edison in connection therewith;

(b) such Legal Proceeding shall be conducted by counsel reasonably satisfactory to Con Edison;

(c) if, as, and when there is a Final Determination in such Legal Proceeding, Con Edison shall receive the amount which Con Edison was prepared to accept before the commencement of such Legal Proceeding; and at the Closing for the particular Property Developer shall pay Con Edison any deficiency between that amount and the final amount actually payable by reason of such Condemnation (unless Developer has previously paid Con Edison the Purchase Price for such Property);

(d) the only issue in such Legal Proceeding shall be the amount of compensation to be paid by the respective Government Entity for the particular Condemnation; and

(e) unless Developer has previously paid Con Edison the Purchase Price for such Property, all awards or other amounts payable by the respective Government Entity shall be paid first to Con Edison, who shall then pay Developer the amounts (if any) due to Developer under this Article at the Closing for the particular Property if, as, and when such Closing occurs.

19.6 In the event of any Condemnation which is temporary (i.e., effective or intended to be effective for a limited period of time), Con Edison shall receive (and may retain) the entire award with respect thereto unless the period of such Condemnation continues after the Closing of the respective Property. In the latter event, the Condemnation award shall be prorated between Con Edison and Developer in proportion to the relative times of such Condemnation before and after the Closing for such Property, which shall be estimated by the parties if such periods are not definitely ascertainable on the Closing Date. As to any such estimate, upon the conclusion of the particular Condemnation, if the estimated apportionment at Closing resulted in any overpayment to either party, the overpaid party shall repay the overpayment to the other party within 30 days after the conclusion of such Condemnation, with interest on the overpayment at the Money Market Rate from the date of the overpayment.

19.7. This Article constitutes an express waiver by the parties of any law apportioning risk of casualty or other loss and/or condemnation under contracts for the sale or purchase of real property (including §5-1311 of the New York State General Obligations Law).

ARTICLE 20.

Certain Regulatory Matters

20.1 If the PSC imposes any Transaction Conditions on Con Edison in connection with the granting of the PSC Approval, and if Con Edison does not choose (in its discretion) to accept any such Transaction Conditions, Con Edison shall have the right (at Con Edison's expense) to contest any or all such Transaction Conditions by Legal Proceedings. However, if Con Edison makes such election, Con Edison shall prosecute the particular Legal Proceedings to Final Determination unless (a) Con Edison decides at any time (in its discretion) to accept the contested Transaction Conditions (including by settlement with the PSC) or (b) Developer elects to pay and be responsible for all such Transaction Conditions as set forth below.

20.2 If, as, and when any Legal Proceeding under Section 20.1 results in a Final Determination that imposes any Transaction Conditions on Con Edison, Con Edison may terminate this Agreement by notice to Developer given within 30 days after such Final Determination unless, within 21 days after the giving of Con Edison's notice, Developer (in its discretion) gives notice to Con Edison electing to keep this Agreement in effect and to pay and be responsible for all such Transaction Conditions, subject to Sections 20.3 and 20.4. If Developer does not give such notice, this Agreement shall terminate on the 31st day after the giving of Con Edison's termination notice; and thereafter neither party shall have any further liability to the other (subject to Articles 8 and 24) except that Con Edison shall pay Developer's Fees-And-Costs incurred to negotiate, and perform Developer's obligations under, and to accomplish the purposes of, this Agreement and the RDE Contract (including attorney's fees, amounts paid to SEQRA Consultant, costs incurred in the master planning design competition, and architectural fees) but not to exceed ten million dollars (\$10,000,000) in the aggregate for all such Fees-And-Costs. (Any payment under this Section shall preclude any payment under Section 22.8.)

20.3 Subject to Section 20.4, at any time after Con Edison commences a Legal Proceeding to contest Transaction Conditions under this Article 20 and before 21 days after the giving of a termination notice by Con Edison under Section 20.2, Developer may elect, by notice to Con Edison, at Developer's expense, to pay and/or satisfy all such Transaction Conditions which Con Edison is then contesting. In such event Con Edison shall end the applicable Legal Proceedings; and Developer's payment and/or satisfaction of all Transaction Conditions shall be a condition to the Closing of all Properties (or to those Properties as to which the particular Transaction Conditions exclusively apply).

20.4 Notwithstanding anything to the contrary in this Article 20, Developer shall not have the right to continue this Agreement, and Con Edison's notice of termination under Section 20.2 shall be final, as to any Transaction Condition which cannot be satisfied by the payment of money only unless (a) the same pertains only to the Property or Properties which Developer will acquire under this Agreement and (b) either Con Edison will have no liability

with respect to all Transaction Conditions after the Closing of the Property or Properties to which the same apply or, as a condition to the respective Closing, Developer executes and delivers an agreement (with security reasonably satisfactory to Con Edison) that Developer will assume and be entirely responsible for discharging and satisfying such Transaction Conditions from and after the Closing and will indemnify Con Edison against all Loss-And -Expense which Con Edison may incur, or which may be asserted against Con Edison, by reason of Developer's failure to do so.

20.5 If Con Edison contests any Transaction Conditions by Legal Proceedings pursuant to this Article, the Outside Date shall be extended day-for-day for each day after the date such Legal Proceeding commences until the date on which a Final Determination issues in such Legal Proceeding but in no event after November 15, 2008.

20.6 In this Article 20, "Transaction Conditions" means the imposition by the PSC, as a condition to the granting of PSC Approval, of any costs, liabilities, other requirements and/or obligations on Con Edison:

(a) which are not set forth in this Agreement as originally signed by Con Edison and Developer; and/or

(b) which are otherwise in addition, or supplemental, to the costs, liabilities, requirements, and/or obligations assumed by Con Edison pursuant to this Agreement.

20.7 Notwithstanding anything to the contrary in Section 20.6, Transaction Conditions shall in no event include any of the following:

(a) standard or "boilerplate" non-financial procedural conditions which are typical for PSC approval of utility property dispositions and are not materially adverse to Con Edison;

(b) any condition which the PSC has advised Con Edison in writing on or before the date of this Agreement - by letter or other official PSC document delivered to Con Edison - that the PSC intends to impose in connection with the PSC Approval;

(c) the requirement that Con Edison create replacement generating capacity at another facility as a condition precedent to the decommissioning of Waterside; or

(d) any requirement relating to the allocation of Net Purchase Proceeds between Con Edison's shareholders and ratepayers; provided, however that any condition or requirement shall be a Transaction Condition which imposes any costs, charges or obligations on Con Edison's shareholders and shall be treated the same as any other Transaction Condition for purposes of Section 20.2.

For purposes of this Agreement:

"Con Edison Transaction Expenses" means all expenses incurred by Con Edison to negotiate, and perform Con Edison's obligations under, and to accomplish the purposes of, this Agreement and the RDE Contract, including the premiums for the Exit Insurance and the

[Third L/C]

[Letterhead of Issuer]
Standby Letter of Credit
No. _____

_____, 200_

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of FSM East River Associates LLC ("Account Party") for up to an aggregate amount of U.S. Fifty Million Dollars (\$50,000,000) (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that:
 - (a) a "Developer Event of Default" has occurred under that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") between Account Party and the Beneficiary (and specifying, by reference to a particular paragraph of the Sale Agreement, the particular Developer Event of Default which has occurred); or
 - (b) this Letter of Credit will expire in less than thirty days and Account Party has not given Beneficiary a replacement Letter of Credit which meets the criteria set forth in Section 5.6 of the Sale Agreement; or
 - (c) Account Party has made an assignment for the benefit of creditors or has filed a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law has been filed against Account Party and such involuntary petition has not been dismissed within 90 days after filing; or a petition has been filed by or

against Account Party under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition has not been dismissed within 90 days after filing; or a receiver, trustee or liquidator has been appointed for Account Party or its property and such receiver, trustee or liquidator has not been discharged within 90 days from the date of his/her appointment.

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail, return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

_____ BANK
By: _____

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____
Date of Letter of Credit: _____
Date of this Draft: _____
Issuing Bank: _____
Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., FIFTY MILLION (\$50,000,000) DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

¹ NOTE: IF A PARTIAL DRAW, INSERT (INSTEAD OF \$50,000,000) SUCH
LESSER AMOUNT AS IS REQUESTED BY BENEFICIARY IN SUCH PARTIAL
DRAW.

Exhibit "C"

Form of Rezoning L/C and Rezoning L/C Agreement

[Rezoning L/C]

[Letterhead of Issuer]
Standby Letter of Credit
No. _____

_____, 200_

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of [Title LLC] ("Account Party") for up to an aggregate amount of U.S. [_____] Dollars (\$_____) (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that: a "Draw Event" has occurred under that certain Rezoning Letter of Credit Agreement dated as of the date hereof between Account Party and the Beneficiary (and specifying, by reference to a particular paragraph of the Rezoning Letter of Credit Agreement, the particular Draw Event which has occurred).

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail, return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

By: _____ BANK

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____

Date of Letter of Credit: _____

Date of this Draft: _____

Issuing Bank: _____

Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC. _____ (\$ _____) DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____

Name:

Title:

¹ NOTE: IF A PARTIAL DRAW, INSERT (INSTEAD OF THE STATED AMOUNT) SUCH LESSER AMOUNT AS IS REQUESTED BY BENEFICIARY IN SUCH PARTIAL DRAW.

REZONING LETTER OF CREDIT AGREEMENT

REZONING LETTER OF CREDIT AGREEMENT (this "Agreement" or this "instrument") dated as of this ____ day of _____, 200_ among FSM EAST RIVER ASSOCIATES LLC, a New York limited liability company with an office c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Developer"), _____, a New York limited liability company with an office of c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Title LLC"), and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation with an office at 4 Irving Place, New York, New York 10003 ("Con Edison").

Introductory Statement

Developer is the owner directly or indirectly of 100% of the membership and/or other equity ownership interests in Title LLC.

Developer and Con Edison are parties to that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") relating to the sale by Con Edison to Developer of certain Properties known as 616 First Avenue, 685 First Avenue, 700 First Avenue and 708 First Avenue, in the City and State of New York, as more particularly described in the Sale Agreement. Words and phrases defined in the Sale Agreement have the same meanings in this Agreement unless otherwise specified.

Under the Sale Agreement, if Con Edison conveys title to any Property at a GMV Closing before the Rezoning occurs with respect to such Property, Developer is required, among other things, to execute and deliver (or cause to be executed and delivered) to Con Edison the Rezoning Collateral specified in the Sale Agreement.

Simultaneously herewith, Con Edison is conveying [insert property address] (the "Property") to Title LLC, as Developer's designee, at a GMV Closing.

The Rezoning has not yet occurred with respect to the Property.

Simultaneously herewith, as required under the Sale Agreement, Developer and/or Title LLC has executed and delivered to Con Edison: (a) a Rezoning Note evidencing the obligation to pay the Rezoned Price with respect to the Property; (b) the Rezoning Mortgage against the Property; (c) a Rezoning L/C issued by _____ Bank in the face amount of _____; and (d) a Rezoning Pledge Agreement. This Agreement and each of the foregoing instruments are referred to together in this instrument as the "Rezoning Security Documents."

Simultaneously herewith, to secure a Land Acquisition Loan (the "First Loan") from _____ ("First Mortgagee"): (a) Title LLC has executed and delivered to First Mortgagee a first mortgage on the Property (the "First Mortgage"); and (b) Developer has executed and delivered to First Mortgagee a pledge of the membership and/or other equity ownership interests in Title LLC (the "First Pledge").

Developer, through the other limited liability companies listed on Schedule "A" hereto (each, an "Other Title LLC"): [(a) has previously executed and delivered a first priority mortgage and a first priority pledge with respect to each Property described as a "Prior Property" on Schedule "A" hereto; and/or (b) is simultaneously executing and delivering a first priority mortgage and a first

priority pledge with respect to each Property described as an "Other Current Property" on Schedule "A" hereto.]¹ Developer, in each case through an Other Title LLC, may in the future execute and deliver a first priority mortgage and a first priority pledge with respect to additional Properties pursuant to the Sale Agreement (each such, a "Future Property"). [The Prior Properties, the Other Current Properties, and] each Future Property are referred to collectively in this instrument as "Other Deeded Properties".

Developer and/or Other Title LLCs [have previously executed and delivered Rezoning Collateral to Con Edison with respect to Other Deeded Properties and]² may in the future execute and deliver documents similar to the Rezoning Collateral with respect to the Future Properties (such documents, collectively, "Other Property Rezoning Security Documents").

This Agreement sets forth the conditions under which Con Edison may draw and apply the Rezoning L/C, and certain other matters relating to the Rezoning L/C.

NOW, THEREFORE, in order to induce Con Edison to convey the Property to Title LLC prior to the completion of the Rezoning, and to comply with the requirements of the Sale Agreement, and for other good and valuable consideration, Title LLC, Developer, and Con Edison hereby agree as follows:

1. Draw Events. Subject to Section 2(b), Con Edison shall be entitled to draw the Rezoning L/C to pay off or acquire the First Mortgage (and for no other purposes) upon the occurrence of any of the following events:

(a) Developer or Title LLC defaults in paying the Rezoned Price with respect to the Property when due and payable under the Rezoning Note and the Sale Agreement;

(b) Title LLC or Developer fails to renew or replace the Rezoning L/C as and when required pursuant to paragraph 3 hereof;

(c) an Event of Default occurs under any of the Rezoning Security Documents;

(d) an Event of Default occurs under any Other Property Rezoning Security Documents;

(e) First Mortgagee accelerates any indebtedness secured by the First Mortgage or commences a foreclosure proceeding or any other Legal Proceeding to enforce its rights under the First Mortgage;

(f) First Mortgagee accelerates any indebtedness secured by the First Pledge or commences a foreclosure proceeding or any other Legal Proceeding to enforce its rights under the First Pledge;

¹ Delete if inapplicable.

² Delete if inapplicable.

- (g) Title LLC Transfers the Property;
- and/or
- (h) Developer Transfers any of its right, title and interest in Title LLC;
- (i) Title LLC or Developer makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law is filed against Title LLC or Developer and such involuntary petition is not dismissed within 90 days after filing; or a petition is filed by or against Title LLC or Developer under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition is not dismissed within 90 days after filing; or a receiver, trustee or liquidator shall be appointed for Title LLC or Developer or the property of either of them and such receiver, trustee or liquidator shall not have been discharged within 90 days from the date of his/her appointment.

Each of the foregoing events shall be deemed an "Event of Default" for purposes of this Agreement.

For the avoidance of doubt, if a Draw Event has occurred, Con Edison shall have the right to draw upon the Rezoning L/C in accordance with this Agreement, notwithstanding the fact that Con Edison may have agreed to forbear, pursuant to the terms of the Rezoning Mortgage, from its exercise of certain other remedies under the Rezoning Security Documents.

2. Draw Procedure.

(a) Subject to (b) below, at any time after the occurrence of any of the events described in paragraph 1, Con Edison may draw upon Rezoning L/C by presenting a completed and signed sight draft to the issuing bank, in the form attached to the Rezoning L/C, and the proceeds of the Rezoning L/C shall then be held by Con Edison and applied to the payment or purchase of the First Loan in accordance with the purchase and sale provisions set forth in the Rezoning Mortgage and the First Mortgage.

(b) At least 3 Business Days before drawing on the Rezoning L/C, Con Edison shall give one copy of a written notice of Con Edison's intention to draw on the Rezoning L/C to the following address only:

FSM East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, NY 10171
Attention: Mr. Richard L. Fisher

Such notice shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. Such notice may be given by a party or by its legal counsel. Such notice address may be changed upon notice to Con Edison as provided in the Sale Agreement; provided, however, that Con Edison shall not be required to deliver such notice to any new address of which

Con Edison has been notified less than 10 days before the date that Con Edison draws on the Rezoning L/C.

3. Renewal or Replacement of Rezoning L/C. Title LLC shall deliver to Con Edison a renewal of the Rezoning L/C each year (unless the Rezoning L/C is an "evergreen" letter of credit) prior to the date which is 30 days before the expiration of the original Rezoning L/C (or the latest renewal, as applicable), in form and substance the same in every material respect as the expiring Rezoning L/C, issued by a Qualified Bank, in an amount equal to the amount then undrawn under the expiring Rezoning L/C and having an expiration date at least one year after the expiration date of the expiring Rezoning L/C. If at any time the issuing bank gives Con Edison or Title LLC notice that the bank does not intend to renew the Rezoning L/C, or if the bank gives Con Edison or Title LLC notice of cancellation of the Rezoning L/C, then Title LLC shall deliver to Con Edison a substitute letter of credit in the same amount as the original Rezoning L/C (or the latest renewal thereof), and which satisfies all of the criteria set forth in the preceding sentence, prior to the date which is 30 days before the expiration of the original Rezoning L/C or the latest renewal thereof (and thereafter such substitute letter of credit shall be deemed the Rezoning L/C).

4. Return of Rezoning L/C. Upon Con Edison's receipt of the entire Rezoned Price for all Properties (in available funds), or upon payment to Con Edison of the Developer Call Price (or delivery of the Call Date L/C) for all Properties, or if the Rezoned Price is not yet due under the terms of the Sale Agreement on [INSERT OUTSIDE DATE] Con Edison shall deliver the Rezoning L/C to Title LLC and authorize the issuing bank to cancel the same; and thereafter this Agreement shall be deemed terminated automatically and of no further force or effect.

5. Miscellaneous. This Agreement shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of laws). Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Agreement may be brought and/or defended in the Supreme Court of the State of New York, New York County. This Agreement shall not be modified, waived or amended except by written agreement executed by all of the parties. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals. If any term, covenant, condition or provision of this Agreement is determined by Final Determination to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby but shall be valid and enforceable to the fullest extent permitted by law. This Agreement (and all terms thereof, whether so expressed or not), shall be binding upon the respective permitted successors, assigns and legal representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives.

6. Developer's Right to Cure. Notwithstanding anything in this instrument to the contrary, upon the occurrence of a First Mortgage Default (as defined below), Con Edison agrees to allow Developer 180 days from the occurrence of such First Mortgage Default to attempt to cure the same before Con Edison draws upon the Rezoning L/C and either pays off or acquires the First Mortgage, provided that:

(a) within 15 days after the occurrence of such First Mortgage Default, Developer shall pay to Con Edison* without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan prior to the date of such First Mortgage Default;

(b) thereafter Developer shall pay to Con Edison* on the first day of each calendar month without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan since the first day of the last calendar month;

(c) there shall not be imminent (i.e., reasonably expected within the next 10 days) the entry by First Mortgagee of a judgment of foreclosure with respect to the First Mortgage; and

(d) there shall not have commenced by or against Developer any proceeding under the United States Bankruptcy Code [11 U.S.C. et seq.].

Subject to (a)-(d) above, if Developer has failed to cure all First Mortgage Defaults within 180 days after the occurrence of the initial First Mortgage Default, Con Edison may draw upon the Rezoning L/C and pay off or acquire the First Mortgage without further delay at any time thereafter unless all First Mortgage Defaults have been cured before the date of such draw on the Rezoning L/C. In this Section "First Mortgage Default" means (i) acceleration of any indebtedness secured by the First Mortgage or the First Pledge or the commencement of a foreclosure proceeding or any other Legal Proceeding to enforce the rights of the First Mortgagee under the First Mortgage or the First Pledge; or (ii) any Event of Default or default under any other instrument or document referred to in this instrument which is substantially the same as the actions or Legal Proceedings described in (i) above. Con Edison shall hold any funds received under (a) or (b) above as if the same were part of the face amount of the Rezoning L/C, and if and when Con Edison draws against the Rezoning L/C shall apply the same as if Con Edison had drawn such funds pursuant to the Rezoning L/C.

* Payment by Developer to a Qualified Bank or a major law firm satisfactory to Con Edison as escrow agent pursuant to an escrow agreement approved by Con Edison (which shall provide for payment of all such sums without offset or counterclaim to Con Edison or First Mortgagee no later than Con Edison's draw under the Rezoning L/C) shall satisfy the requirements of (a) and (b) above provided that Developer makes the required payments within the times specified.

IN WITNESS WHEREOF, TITLE LLC AND CON EDISON HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN:

[TITLE LLC]

By: _____
Name:
Title:

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

FSM East River Associates LLC signs in the space provided below to acknowledge and confirm the provisions of this Agreement:

FSM EAST RIVER ASSOCIATES, LLC

By: _____
Name:
Title:

SCHEDULE "A"

Other Limited Liability Companies
Acquiring Prior Properties or
Other Current Properties

[insert list]

Exhibit "D"
Form of Rezoning Note

[Rezoning Note]

PROMISSORY NOTE

New York, New York
_____, 200__

FOR VALUE RECEIVED, [TITLE LLC] ("Owner") and FSM EAST RIVER ASSOCIATES, LLC ("Developer"), each a New York limited liability company having an address c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 (collectively, "Maker"), promise to pay to the order of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having a principal address at 4 Irving Place, New York, New York 10003 ("Payee"), at Payee's principal address or such other place as Holder (defined below) may designate to Maker as set forth herein, the Principal Indebtedness (defined below), together with interest thereon, in accordance with the provisions set forth herein.

1. Definitions. For purposes of this Note, the following terms shall have the meanings set forth below:

"Acceleration of Maturity" is defined in Section 5.

"Default Rate" is defined in Section 6.

"Event of Default" is defined in Section 5.

"Holder" means Payee or any successor holder of this Note from time to time.

"Maturity Date" is defined in Section 3.

"Principal Indebtedness" is defined in Section 3.

"Prior Payment" is defined in Section 2.

"Property" is defined in Section 2.

"Rezoned Price" is defined in Section 2.

"Rezoning Mortgage" is defined in Section 2.

"Rezoning Security Documents" is defined in Section 2.

"Sale Agreement" is defined in Section 2.

"Term" is the period from and including the date hereof to the Maturity Date.

Words and phrases defined in the Sale Agreement have the same meanings in this Note unless otherwise specified.

2. Introduction. Pursuant to an Agreement dated as of November 15, 2000 between Developer and Payee (the "Sale Agreement"), Payee is conveying to Owner simultaneously herewith certain property known as [insert property address], New York, New York (as more fully defined in the Rezoning Mortgage, the "Property").

Simultaneously herewith, Developer and/or Owner has paid Con Edison _____ dollars (\$_____) as the GMV with respect to the Property (the "Prior Payment") pursuant to the Sale Agreement.

Under the Sale Agreement, if Payee conveys the Property to Developer at a GMV Closing before the Rezoning occurs with respect to the Property, Developer and Owner are required, among other things, to execute and deliver to Payee certain documents and instruments as security for Developer's obligation to pay the "Rezoned Price" for the Property (as more particularly described in the Sale Agreement) less the GMV paid with respect to the Property.

Simultaneously herewith, as required under the Sale Agreement, Owner and/or Developer has executed and delivered to Payee a Mortgage and Security Agreement securing this Note (the "Rezoning Mortgage"), a Rezoning L/C issued by _____ Bank in the face amount of _____, a Rezoning L/C Agreement, and a Rezoning Pledge Agreement. This Note and each of the foregoing instruments are referred to together in this Note as the "Rezoning Security Documents."

3. Payment of the Rezoning Amount. Maker promises to pay the Rezoned Price for the Property, less the Prior Payment (the "Principal Indebtedness") within 30 days after the Rezoning Approval Date (the "Maturity Date").

4. Location and Manner of Payment. The sums payable under this Note or under the Rezoning Mortgage or the other Rezoning Security Documents shall be paid to Payee at its address above, or at such other place as Holder may from time to time designate to Maker in writing prior to the due date of such payment, in legal tender of the United States of America. At Holder's option, the sums payable under this Note shall be paid to Holder by wire transfer, pursuant to wire transfer instructions furnished by Holder, provided that Holder delivers such wire transfer instructions to Maker not later than two days prior to the date payment is due.

5. Acceleration of Maturity. At the option of Holder, which may be exercised at any time after one or more of the following events (each, an "Event of Default") shall have occurred, the whole of the Principal Indebtedness, together with all interest and other charges due under any of the Rezoning Security Documents, shall immediately become due and payable ("Acceleration of Maturity"):

- (a) if the Principal Indebtedness is not paid on the Maturity Date; or
- (b) the occurrence of any Event of Default under any other Rezoning Security Document.

6. Interest After Event of Default. Maker shall pay interest at a rate (the "Default Rate") equal to the lesser of (i) the prime rate announced from time to time by Citibank N.A. or its successor plus 2% or (ii) the maximum rate permitted by law, on (a) all sums which are past due hereunder until such past due sums are paid and (b) all Principal Indebtedness and other sums outstanding hereunder from and after Holder elects to cause the Acceleration of Maturity.

7. Collection and Enforcement Costs. Maker, within five days after Holder's demand, shall pay Holder all Fees-and-Costs paid or incurred by Holder in connection with the collection of any sum due hereunder, or in connection with enforcement of any of Holder's rights or Maker's obligations under this Note or any of the other Rezoning Security Documents following an Event of Default or Minor Default (as defined in the Rezoning Mortgage) (or prior to an Event of Default or Minor Default if it is necessary for Holder to take action to protect its collateral under the Rezoning Security Documents).

8. Continuing Liability. The obligation of Maker to pay the Principal Indebtedness, interest and all other sums due hereunder shall continue in full force and effect and in no way be impaired, until the actual payment thereof to Holder, and in case of any further agreement given to secure the payment of this Note, or in case of any agreement or stipulation extending the time or modifying the terms of payment above recited, Maker shall nevertheless continue to be liable on this Note, as extended or modified by any such agreement or stipulation, unless released and discharged in writing by Holder.

9. Joint and Several Liability. If more than one Person shall execute this Note, then each such Person shall be fully liable for all obligations of Maker hereunder, and such obligations shall be joint and several.

10. No Oral Changes; Waivers. This Note may not be changed, modified or amended orally, but instead may be changed, modified or amended only by an agreement in writing signed by Holder and Maker. The provisions of this Note shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the other Rezoning Security Documents, and any and all references herein to the Rezoning Security Documents shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

Maker and any future endorsers, sureties, and guarantors hereof, jointly and severally, waive presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest, and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default (except notice of default required hereby or in any of the Rezoning Security Documents, if any), or enforcement of the payment of this Note, and they agree that the liability of each of them shall be unconditional without regard to the liability of any other party and shall not be in any manner affected by an indulgence, extension of time, renewal, waiver, or modification granted or consented to by the Holder, and Maker and all future endorsers, sureties and guarantors hereof consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Holder hereof with respect to the payment or other provisions of this Note, and to the release of the collateral, or any part thereof, with or without substitution, and agree that additional makers, endorsers, guarantors, or sureties may become parties hereto without notice to them or affecting their liability hereunder.

Holder shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Holder, and then only to the extent specifically set forth therein; a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event. The acceptance by Holder of payment hereunder that is less than payment in full of all amounts due at the time of such payment shall not without the express written consent of Holder: (i) constitute a waiver of the right to exercise any of Holder's remedies at that time or at any subsequent time, (ii) constitute an accord and satisfaction, or (iii) nullify any prior exercise of any remedy.

No failure to cause an Acceleration of Maturity hereof by reason of an Event of Default hereunder, and no indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Holder thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State of New York; and, to the maximum extent permitted by law, Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

To the maximum extent permitted by law, Maker hereby waives and renounces for itself, its heirs, successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshaling, forbearance, valuation, stay, extension, redemption, appraisal, exemption and homestead now provided, or which may hereafter be provided, by the Constitution and laws of the United States of America and of any state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note.

11. Bind and Inure. This Note shall bind and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

12. Applicable Law. This Note shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law).

--- If any provision of this Note or the application hereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Note nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. Without limitation of the foregoing, if any provision of this Note is declared to be invalid or unenforceable by a court of competent jurisdiction or by a statute, and the effect of such invalidity or unenforceability is to materially and adversely affect Holder's right to enforce the obligations of Maker to pay the Principal Indebtedness or interest on the terms provided herein, then Holder may, at its option, declare the entire indebtedness evidenced hereby due and payable upon sixty (60) days prior written notice to Maker.

13. Usury. Nothing in this Note or any other Rezoning Security Document shall require the payment or permit the collection by Holder of interest in an amount exceeding the maximum amount permitted under applicable law in commercial mortgage loan transactions between parties of the character of the parties hereto (the "Maximum Interest Amount"). Maker shall not be obligated to pay to Holder any interest in excess of the Maximum Interest Amount, and the amount of interest payable by Maker to Holder under the Rezoning Security Documents shall under no circumstance be deemed to exceed the Maximum Interest Amount.

14. Notice. All notices, consents or other communications under this Note must be in writing and addressed to each party at its respective notice address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Note to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on

the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

If to Maker:

[]

c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attention: Mr. Richard L. Fisher

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attention: Mr. Sheldon H. Solow

with copies to:

Paul Hastings Janofsky & Walker, LLP
75 East 55th Street
New York, New York 10019
Attention: Martin L. Edelman, Esq.

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attention: Chris M. Smith, Esq.

If to Holder:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: Mr. Robert P. Stelben,
Vice President and Treasurer

with copies to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: General Counsel

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attention: Alan M. Berman, Esq.

15. Legal Proceedings. Maker and Holder irrevocably submit to the jurisdiction of the courts of (and service of process in) the State of New York and agree that any action or proceeding arising out of or relating to this Note may be brought and/or defended in the Supreme Court of the State of New York, New York County. MAKER AND HOLDER WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING (INCLUDING ANY AND ALL COUNTERCLAIMS THERETO) THAT DIRECTLY OR INDIRECTLY RELATES TO THE SUBJECT MATTER OF THIS NOTE.

16. Limitation of Liability. In no event shall the members or managers of Maker have any personal liability for the failure to pay or perform any obligations of Maker under this Note.

IN WITNESS WHEREOF, Maker has duly executed this Note [as a sealed instrument] as of the day and year first above written.

MAKER:

[TITLE LLC]

By: _____
Name:
Title:

FSM EAST RIVER ASSOCIATES, LLC

By: _____
Name:
Title:

Exhibit "E"
Form of Rezoning Pledge Agreement

PLEDGE AGREEMENT

PLEDGE AGREEMENT (this "Agreement", this "Pledge Agreement", or this "instrument") dated as of _____, 200_, made by FSM EAST RIVER ASSOCIATES LLC, a New York limited liability company, with an office c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Developer"), to and in favor of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having an office at 4 Irving Place, New York, New York 10003 ("Con Edison").

Introductory Statement

Developer is the owner of 100% of the membership and/or other equity ownership interests in [insert name of title-holding llc] a New York limited liability company ("Title LLC"). For purposes of this Agreement, "Developer" means and includes Developer itself and all other Persons who own any direct or indirect ownership interest in Title LLC.

Developer and Con Edison are parties to that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") with respect to the sale by Con Edison to Developer of certain Properties known as 616 First Avenue, 685 First Avenue, 700 First Avenue and 708 First Avenue, in the City and State of New York, as more particularly described in the Sale Agreement. Words and phrases defined in the Sale Agreement have the same meanings in this Agreement unless otherwise specified.

Under the Sale Agreement, if Con Edison conveys title to any Property to Developer at a GMV Closing before the Rezoning occurs with respect to such Property, Developer and Title LLC are required, among other things, to execute and deliver to Con Edison the Rezoning Collateral specified in the Sale Agreement.

Simultaneously herewith, Con Edison is conveying [insert Property address] (the "Property") to Title LLC at a GMV Closing. Also, Developer and Title LLC have included certain provisions in the operating agreement of Title LLC (the "LLC Agreement") to comply with the Single Purpose Entity Requirements of the Sale Agreement (the "Single Purpose Entity Requirements").

The Rezoning has not yet occurred with respect to the Property.

Simultaneously herewith, as required under the Sale Agreement, Title LLC has executed and delivered to Con Edison: (a) a Rezoning Note evidencing the obligation to pay the Rezoned Price with respect to the Property (which is also signed by Developer); (b) a Rezoning Mortgage against the Property; (c) a Rezoning L/C issued by _____ Bank in the face amount of _____; and (d) a Rezoning L/C Agreement. The Pledge Agreement and each of the foregoing instruments are referred to together in this instrument as the "Rezoning Security Documents".

Simultaneously herewith, to secure a Land Acquisition Loan (the "First Loan") in the amount of _____ dollars (\$ _____) from _____ ("First Mortgagee"): (a) Title LLC has executed and delivered to First Mortgagee a first mortgage on the Property (the "First Mortgage"); and (b) Developer has executed and delivered to First Mortgagee a pledge (the "First Pledge") of the Pledged Interests (as defined below). (The documents evidencing and securing the First Loan are referred to collectively as the "First Loan Documents".)

To secure other Land Acquisition Loans, Developer, through the other limited liability companies listed on Schedule "A" hereto (each, an "Other Title LLC"): (a) has previously executed and delivered a first mortgage with respect to each Property described as a "Prior Property" on Schedule "A" hereto and also a pledge of the equity interests in the Other Title LLC owning such Property; and/or (b) is simultaneously executing and delivering a first mortgage with respect to each Property described as an "Other Current Property" on Schedule "A" hereto and a similar pledge of the Other Title LLC equity interests. Also, Developer, in each case through an Other Title LLC, may in the future execute and deliver a first mortgage and a pledge of Other Title LLC equity interests with respect to additional Properties pursuant to the Sale Agreement to secure Land Acquisition Loans (each such a "Future Property"). The Prior Properties, the Other Current Properties, and each Future Property are referred to collectively in this instrument as "Other Deeded Properties". The other first mortgages and pledges of Other Title LLC equity interests are referred to collectively in this instrument as the "Other First Collateral".

Developer and/or Other Title LLCs have previously executed and delivered Rezoning Collateral to Con Edison with respect to Other Deeded Properties, and may execute and deliver documents similar to the Rezoning Collateral in the future with respect to Future Properties (such documents, collectively, "Other Property Rezoning Security Documents").

In order to secure the Obligations (as defined below), and to comply with the requirements of the Sale Agreement, Developer has agreed to pledge the Pledged Collateral (defined below) to and for the benefit of Con Edison upon the terms and conditions set forth below.

NOW, THEREFORE, to induce Con Edison to convey the Property to Title LLC prior to the completion of the Rezoning, and to comply with the requirements of the Sale Agreement, Developer hereby agrees as follows:

ARTICLE 1. Pledge.

1.1. For value received and to secure payment in full and complete performance of the Obligations (defined below) to Con Edison, to the fullest extent permitted by law, Developer hereby pledges, assigns, hypothecates, transfers, and grants to Con Edison a continuing security interest in and lien upon the following described property, now owned or hereafter acquired, and wherever located, any additions, accessions, or substitutions thereof and thereto, and all proceeds and products thereof, including cash or non-cash dividends and distributions (collectively, the "Pledged Collateral"):

(a) all (i.e., 100%) of the membership and/or other equity ownership interests in Title LLC, and Developer's entire right, title, and interest therein (collectively, the "Pledged Interests");

(b) all certificates, agreements, instruments and other documents or writings representing or evidencing the Pledged Interests, and all distributions, returns of capital, dividends, cash, instruments and other property of any kind from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Interests; and

(c) if a right to subscribe is issued or any additional ownership interests are received with respect thereto, then the ownership interests (including certificates therefor and other documents or writings evidencing the same) representing such right to subscribe or receipt it being intended that the Pledged Collateral shall include all rights whatsoever with respect to the equity ownership in and of Title LLC while this Agreement remains in effect.

1.2. In this Agreement, "Obligations" means all of the following, whether now existing or subsequently arising:

(a) payment to Con Edison of the Rezoned Price (or any portion thereof) for the Property as and when due and payable under the Rezoning Note and the Sale Agreement;

(b) payment and performance by Developer and Title LLC of their other respective obligations to be paid, kept, and performed under the Rezoning Security Documents;

(c) payment and performance by Developer and/or each Other Title LLC, respectively, of the Rezoned Prices (or any portion thereof) for Other Deeded Properties and of their other respective obligations to be paid, kept and performed under the Other Property Rezoning Security Documents;

(d) payment of all reasonable Fees-And-Costs and other reasonable amounts paid or incurred by Con Edison to enforce the security interests, liens and rights created by this Agreement (subject to the terms of this Agreement) and the Rezoning Security Documents (subject to the terms thereof) and reasonably incurred to maintain, preserve, and collect, any and all property subject to such security interests and liens.

ARTICLE 2. Delivery of Pledged Collateral.

2.1. Duplicate originals of all certificates, agreements, instruments, or other documents or writings representing or evidencing the Pledged Collateral shall be delivered to and held by or on behalf of Con Edison pursuant to this Agreement and shall be accompanied by duly executed instruments of transfer or assignment in blank, in form and substance reasonably satisfactory to Con Edison.

2.2. Any and all dividends, distributions and/or interest paid in respect of the Pledged Collateral, including all (a) dividends, distributions and interest paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Collateral, (b) dividends and other distributions paid or payable in cash in respect of any Pledged Collateral in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, and (c) cash paid, payable or otherwise distributed in respect of principal of, or in redemption of, or in exchange for, any Pledged Collateral, shall be (and shall be immediately delivered to Con Edison to hold as) Pledged Collateral and

shall, if received by Developer or any other direct or indirect member of Title LLC, be received in trust for the benefit of Con Edison, segregated from the other property or funds of Developer, and delivered immediately to Con Edison as Pledged Collateral in the same form as so received (with any necessary endorsement).

ARTICLE 3. Representations and Warranties.

3.1. Developer represents and warrants as follows:

(a) Pledged Interests. Title LLC is a _____ limited liability company organized and existing under the laws of the State of [specify] and is duly qualified and permitted by law to do business in the State of New York. The Pledged Interests have been validly issued.

(b) Title to Pledged Interests. Developer is the sole legal and beneficial owner of the Pledged Collateral free and clear of any lien, security interest, option, other charge or preferential arrangement, or other Encumbrances except for the security interest created by this Agreement and the First Pledge. No Person other than Developer has any rights whatsoever in the Pledged Collateral other than the First Mortgagee pursuant to the First Pledge.

(c) Perfected Security Interest. The pledge of the Pledged Collateral pursuant to this Agreement creates a valid and, upon the filing of financing statements in the State of New York, perfected security interest in the Pledged Collateral under and pursuant to the Uniform Commercial Code of the State of New York ("UCC"), securing the payment of the Obligations, subordinate only to the First Pledge upon the terms set forth in Article 13 but otherwise first in priority to all Persons other than First Mortgagee.

(d) No Certificates. The Pledged Interests are not evidenced by a certificate or other instrument separate and apart from the LLC Agreement.

(e) Chief Executive Office. The chief executive offices of Developer are located c/o Fisher Brothers, 299 Park Avenue, New York, New York, as the same may be amended from time to time pursuant to the LLC Agreement.

ARTICLE 4. Further Assurances.

4.1. Developer agrees that at any time and from time to time, at Developer's expense, Developer will promptly execute and deliver all further instruments and documents, and take all further action, as necessary or as Con Edison may reasonably request, to perfect, protect, continue, and maintain the security interest granted pursuant to this Agreement, and/or to enable Con Edison to exercise and enforce its rights and remedies under this Agreement with respect to any Pledged Collateral following an Event of Default or Minor Default (or prior to an Event of Default or Minor Default if it is necessary for Con Edison to take action to protect the Pledged Collateral or any of its other collateral under the Rezoning Security Documents).

4.2. Developer hereby authorizes Con Edison, on Developer's behalf (and as its attorney-in-fact for such limited purpose) to file, renew, confirm and take any other actions necessary to confirm or renew

any UCC-1 financing statements or other instruments needed to perfect and maintain the pledge and security interest created hereby.

ARTICLE 5. Events of Default; Minor Defaults.

5.1. In this Agreement, "Event of Default" means any and all of the following:

- (a) Developer or Title LLC fails to pay the Rezoned Price (or any portion thereof) with respect to the Property when due and payable under the Rezoning Note and the Sale Agreement;
- (b) Funds are unavailable under the Rezoning L/C, or Con Edison is otherwise unable to draw under the Rezoning L/C, when Con Edison has presented the documentation required to draw under the Rezoning L/C and has the right to draw under the Rezoning L/C pursuant to the Rezoning L/C Agreement;
- (c) An Event of Default occurs under any of the Rezoning Security Documents other than this instrument;
- (d) an Event of Default occurs under any Other Property Rezoning Security Documents;
- (e) First Mortgagee accelerates any indebtedness secured by the First Mortgage or commences a foreclosure proceeding or any other Legal Proceeding to enforce its rights under the First Mortgage or any similar event occurs under any Other First Collateral (whether held by First Mortgagee or otherwise);
- (f) First Mortgagee accelerates any indebtedness secured by the First Pledge or commences a foreclosure proceeding or any other Legal Proceeding to enforce its rights under the First Pledge or a similar event occurs under any Other First Collateral (whether held by First Mortgagee or otherwise);
- (g) Title LLC Transfers the Property;
- (h) Developer Transfers any of its right, title, and interest in Title LLC (or otherwise fails to comply with Article 6 below), but Transfers of membership interests in FSM East River Associates LLC or its members shall not constitute an Event of Default; and/or
- (i) Title LLC or Developer makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law is filed against Title LLC or Developer and such involuntary petition is not dismissed within 90 days after filing; or a petition is filed by or against Title LLC or Developer under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition is not dismissed within 90 days after filing; or a receiver, trustee or liquidator shall be appointed for Title LLC or Developer or the property of either of them and

such receiver, trustee or liquidator shall not have been discharged within 90 days from the date of his/her appointment.

5.2. In this instrument "Minor Default" means each of the following other than an Event of Default specified in Section 5.1:

(a) any default by Developer in performing any of Developer's obligations under this Agreement which continues beyond the expiration of applicable notice and grace periods (or, if none, within 30 days after notice); and/or

(b) any default under the First Pledge or Other First Collateral which continues beyond the expiration of applicable notice and grace periods; and/or

(c) any default under the Rezoning Security Documents or Other Property Rezoning Security Documents which continues beyond the expiration of applicable notice and grace periods. For the avoidance of doubt, an "Event of Default" does not include a Minor Default.

5.3. So long as no Event of Default has occurred and is continuing, Developer may exercise voting rights pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Sale Agreement, and the Single Purpose Entity Requirements.

5.4. Upon the occurrence and during the continuance of an Event of Default, Developer's right to exercise any rights pursuant to Section 5.3 shall cease; and all such rights shall thereupon be vested in Con Edison, which shall have the sole right to exercise all such rights.

ARTICLE 6. Transfers and Other Encumbrances. Developer agrees that Developer shall not (a) sell or otherwise dispose of any of the Pledged Collateral, or (b) create or permit to exist any lien, security interest, or other Encumbrance upon or with respect to any of the Pledged Collateral except for the security interest under this Agreement and the First Pledge, or (c) grant any option or enter into any sale contract with respect to the Pledged Collateral unless such option or contract by its terms remains executory and no transfer of title may occur until the Rezoned Price is paid to Con Edison.

ARTICLE 7. Con Edison Appointed Attorney-in-Fact. Subject to the First Pledge, effective automatically upon the occurrence of an Event of Default, Developer hereby appoints Con Edison as Developer's attorney-in-fact, with full authority in the place and stead of Developer and in the name of Developer or otherwise, from time to time in Con Edison's discretion, to take any action and to execute any instrument which Con Edison may deem reasonably necessary or advisable to accomplish the purposes of this Agreement (including receipt, endorsement, and collection of all instruments made payable to Developer representing any dividend, interest payment or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same). Also, Developer hereby appoints Con Edison as Developer's attorney-in-fact, with full authority in the place and stead of Developer and in the name of Developer or otherwise (and regardless of whether an Event of Default has occurred) to execute and file and record Uniform Commercial Code financing statements and continuation statements in order to perfect, continue, and/or maintain the security interest granted by this instrument.

ARTICLE 8. Con Edison May Perform. If Developer fails to keep or perform any obligation of Developer under this Agreement, Con Edison may itself perform, or cause performance of, such agreement, and the Fees-And-Costs of Con Edison incurred in connection therewith shall be payable by Developer under Article 10.

ARTICLE 9. Duty of Care.

9.1. Con Edison shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral if the Pledged Collateral is accorded treatment substantially equal to that which Con Edison accords similar property of its own; provided, however, that Con Edison shall not have any responsibility for (a) ascertaining or taking action with respect to any matters relative to any Pledged Collateral, whether or not Con Edison has or is deemed to have knowledge of such matters or (b) taking any necessary steps to preserve rights against any other Persons with respect to any Pledged Collateral.

9.2. Con Edison shall have no custodial or ministerial duties to perform with respect to the Pledged Collateral except as set forth in Section 9.1; and by way of explanation and not limitation, Con Edison shall incur no liability for any of the following: (a) loss or depreciation of the Pledged Collateral; (b) failure to present any paper for payment or protest, to protest or give notice of nonpayment, or any other notice with respect to any paper or the Pledged Collateral, or (c) failure to exercise any rights or take any action whatsoever with respect to the Pledged Collateral.

ARTICLE 10. Remedies Upon Event of Default or Minor Default.

10.1. During any period during which an Event of Default (but not a Minor Default) has occurred and is continuing, Con Edison may (but shall have no duty to) take any or all of the following actions, directly or through an agent, broker, or other intermediary:

(a) proceed to protect and enforce any and all rights vested in Con Edison by this Agreement and/or under the Uniform Commercial Code of any applicable jurisdiction;

(b) cause all revenues pledged as security and all moneys and other property pledged under this Agreement to be paid and/or delivered directly to Con Edison, and demand, sue for, collect and receive any such resources, moneys and/or other property;

(c) cause any action at law or suit in equity or other Legal Proceeding to be instituted and prosecuted to collect or enforce any (i) Obligations; (ii) any rights included in the Pledged Collateral; (iii) any covenant or agreement in this Agreement or in the LLC Agreement; and/or (iv) any other rights available to Con Edison under the UCC; and/or in aid of the exercise of any power therein or herein granted, or for any foreclosure under or in furtherance of this Agreement and/or sale under a judgment or decree in any judicial proceeding, and/or to enforce any other legal or equitable right vested in Con Edison by this Agreement or by law;

(d) foreclose or enforce any other agreement or other instrument by or under or pursuant to which the Obligations are issued or secured;

(e) only following any of the Events of Default described in Sections 5.1(a), (e) or (f), sell, lease or otherwise dispose of any or all of the Pledged Collateral, in one or more transactions, at such prices as Con Edison may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell, lease or otherwise dispose of; provided, however, that Con Edison shall give Developer no less than 10 days notice of the time and place of disposition (or such longer notice as is required by applicable statute and cannot be waived), it being agreed that Con Edison may be a purchaser or lessee on its own behalf or on behalf of any other Person at any such sale and that Con Edison or any other Person who may be the purchaser, lessee or recipient of any or all of the Collateral so disposed of shall thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of Developer or Title LLC, any such demand, notice or right and equity being hereby expressly waived and released. Con Edison may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the same, and such sale may be made at any time or place to which the same may be so adjourned;

(f) incur expenses, including Fees-And-Costs and other costs appropriate to the exercise of any right or power under this Agreement;

(g) perform any obligation of Developer or Title LLC under this Agreement and make payments, purchase, contest or compromise any encumbrance, charge, or lien, and pay taxes and expenses;

(h) make any reasonable compromise or settlement deemed desirable with respect to any of the Pledged Collateral and extend the time of payment, arrange for payment installments, or otherwise modify the terms of, any Pledged Collateral;

(i) vote and/or exercise any and all of Developer's rights or powers under the Title LLC operating agreement, including any rights or powers to manage and/or control; and/or

(j) secure the appointment of a receiver of the Pledged Collateral or any part thereof.

10.2. If, pursuant to applicable law, prior notice of any action described in this Article is required to be given to Developer, Developer hereby acknowledges that the minimum time required by such applicable law (or if no minimum is specified, 10 days) shall be deemed a reasonable notice period.

10.3. Developer recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws (collectively, the "Securities Laws"), Con Edison may be compelled, with respect to any sale of all or any part of the Collateral constituting "securities," however defined in the Securities Laws, to limit purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof, Developer acknowledges that any such private sales may be at prices and on terms less favorable to Con Edison than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that Con Edison shall have no obligation to engage in

public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the issuer thereof to register it for public sale.

10.4. Upon the occurrence and during the continuance of any Event of Default or Minor Default, Con Edison shall have the right to bring one or more Legal Proceedings against Developer or Title LLC for specific performance (or injunction, if applicable) with respect to any covenant, condition, agreement, or other matter relating to, or affected by, the applicable Event of Default or Minor Default.

10.5. All Fees-And-Costs paid or incurred by Con Edison in connection with any actions taken under this Article together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the lesser of the prime rate announced from time to time by Citibank, N.A. or its successor plus two percentage points, or the maximum rate permitted by law (the "Default Rate") from the date on which such Fees-And-Costs are incurred to the date of payment, shall constitute additional indebtedness secured by this Agreement and shall be paid by Developer to Con Edison on demand.

10.6. After the occurrence and during the continuance of an Event of Default described in Sections 5.1(a), (e) or (f), if Con Edison elects to exercise its right to sell any or all of the Pledged Collateral, and if in the opinion of counsel for Con Edison it is necessary to have such Pledged Collateral, or that portion thereof to be sold, registered under the provisions of any Securities Laws, the Company shall execute and deliver, all at Developer's expense, all such instruments and documents which, in the opinion of Con Edison, are necessary to register or qualify such Pledged Collateral, or that portion thereof to be sold, under the provisions of the Securities Laws and shall use best efforts to cause any registration statement relating thereto to become effective and to remain effective for a period of not less than six months from the date of the first public offering of such Pledged Collateral, or that portion thereof to be sold, and to make all amendments thereto and/or to any related prospectus or similar document which, in the reasonable opinion of Con Edison, are necessary, all in conformity with the Securities Laws applicable thereto. Without limiting the generality of the foregoing, after the occurrence and during the continuance of an Event of Default, Developer agrees to comply with the provisions of the securities or "Blue Sky" laws of any jurisdiction(s) which Con Edison shall reasonably designate and to make available to its security holders, as soon as practicable, an earnings statement which will satisfy the provisions of Section 11(a) of the Securities Act of 1933.

10.7. All rights of marshaling of assets of Developer, Title LLC or any Other Title LLC, including any such right with respect to the Pledged Collateral, are hereby waived by Developer and Title LLC.

10.8. After the occurrence of an Event of Default described in Sections 5.1(a), (e) or (f), Con Edison shall incur no liability as a result of the sale of the Pledged Collateral, or any part thereof, at any private sale pursuant to this Article conducted in a commercially reasonable manner. Developer hereby waives any claims against Con Edison arising by reason of the fact that the price at which the Pledged Collateral may have been sold at such a private sale was less than the price that might have obtained at a public sale or was less than the aggregate amount of the Obligations, even if Con Edison accepts the first offer received and does not offer the Pledged Collateral to more than one offeree, provided that such private sale is conducted in a commercially reasonable manner.

10.9. In addition to the foregoing remedies, Con Edison may, but shall not be obligated to, cure any Event of Default and incur Fees-And-Costs and other expenses reasonably incurred in doing so, in which event the Company shall reimburse Con Edison on demand for all such Fees-And-Costs and other expenses reasonably incurred in doing so, with interest thereon at the Default Rate from the date of such notice until the date repaid in full.

10.10. No right, power or remedy herein conferred upon or reserved to Con Edison is intended to be exclusive of any other right, power or remedy, and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Con Edison, may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

10.11. No delay or omission of Con Edison to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default or Minor Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or Minor Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Con Edison.

10.12. Con Edison shall apply all proceeds received from the exercise of its remedies under this Agreement to payment of the Obligations.

10.13 Notwithstanding anything in this instrument to the contrary, upon the occurrence of a First Mortgage Default (as defined below), Con Edison agrees to allow Developer 180 days from the occurrence of such First Mortgage Default to attempt to cure the same before Con Edison draws upon the Rezoning L/C and either pays off or acquires the First Mortgage, provided that:

(a) within 15 days after the occurrence of such First Mortgage Default, Developer shall pay to Con Edison* without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan prior to the date of such First Mortgage Default;

(b) thereafter Developer shall pay to Con Edison* on the first day of each calendar month without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan since the first day of the last calendar month;

(c) there shall not be imminent (i.e., reasonably expected within the next 10 days) the entry by First Mortgagee of a judgment of foreclosure with respect to the First Mortgage; and

* Payment by Developer to a Qualified Bank or a major law firm satisfactory to Con Edison as escrow agent pursuant to an escrow agreement approved by Con Edison (which shall provide for payment of all such sums without offset or counterclaim to Con Edison or First Mortgagee no later than Con Edison's draw under the Rezoning L/C) shall satisfy the requirements of (a) and (b) above provided that Developer makes the required payments within the times specified.

(d) there shall not have commenced by or against Developer any proceeding under the United States Bankruptcy Code [11 U.S.C. et seq.].

Subject to (a)-(d) above, if Developer has failed to cure all First Mortgage Defaults within 180 days after the occurrence of the initial First Mortgage Default, Con Edison may draw upon the Rezoning L/C and pay off or acquire the First Mortgage without further delay at any time thereafter unless all First Mortgage Defaults have been cured before the date of such draw on the Rezoning L/C. In this Section "First Mortgage Default" means (i) acceleration of any indebtedness secured by the First Mortgage or the First Pledge or the commencement of a foreclosure proceeding or any other Legal Proceeding to enforce the rights of the First Mortgagee under the First Mortgage or the First Pledge; or (ii) any Event of Default or default under any other instrument or document referred to in this instrument which is substantially the same as the actions or Legal Proceedings described in (i) above. Con Edison shall hold any funds received under (a) or (b) above as if the same were part of the face amount of the Rezoning L/C, and if and when Con Edison draws against the Rezoning L/C shall apply the same as if Con Edison had drawn such funds pursuant to the Rezoning L/C.

ARTICLE 11. Expenses.

11.1. Developer shall pay all taxes, charges, and fees for the filing, recording, continuation, and enforcement of this Pledge Agreement and the lien and security interest created under this Pledge Agreement. Developer shall also pay all Fees-And-Costs paid or incurred by Con Edison for the enforcement of this Agreement and the exercise of any rights under this Agreement following an Event of Default or Minor Default (or prior to an Event of Default or Minor Default if it is necessary for Con Edison to take action to protect the Pledged Collateral or any of its other collateral under the Rezoning Security Documents). Without limiting the foregoing, Developer agrees to pay promptly all taxes and assessments upon or for the creation and continuation of the pledge and security interest created by this Agreement. At its option (but subject to the rights of First Mortgagee), Con Edison may discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Pledged Collateral if Developer fails to do so within ten (10) days after demand, whereupon Developer shall reimburse Con Edison, on demand, for any such payment made by Con Edison. Any amounts so paid shall be added to the Obligations. Developer shall pay any amounts due to Con Edison under this Section within ten (10) days after demand, with interest thereon at the Default Rate from the date of such notice until the date paid in full.

ARTICLE 12. Security Interest Absolute. All rights of Con Edison and security interests hereunder, and all obligations of Developer hereunder, shall be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of the Sale Agreement, any of the Rezoning Collateral, or any other agreement or instrument relating thereto;
- (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any of the Rezoning Collateral, or the Sale Agreement;

(iii) any exchange, release or non-perfection of any other Pledged Collateral, or any release or amendment or waiver of or consent to departure from the First Pledge, or any other pledge or guaranty, for all or any of the Obligations; or

(iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Developer in respect of the Obligations of Developer in respect of this Agreement.

ARTICLE 13. Subordination; Right to Acquire First Pledge.

13.1. Subject to Section 13.2, Con Edison agrees that this Agreement, and the pledge of the Pledged Collateral evidenced hereby, is subject and subordinate in all respects to the First Pledge, but not to (a) any modifications or renewals of the First Pledge or any other instrument which increases the principal amount secured by the First Pledge (subject to Section 1.5(b) of the Rezoning Mortgage), or (b) any mortgage, deed of trust or security instrument, pledge, or Encumbrance other than the First Pledge. For purposes of illustration, and not by way of limitation, the obligation of Developer to deliver dividends to Con Edison shall be subject to any similar obligations to the First Mortgagee under the First Pledge. This Section shall be automatic; and no further instrument of subordination shall be required. Developer shall deliver to Con Edison copies of any documents and instruments permitted pursuant to subsection (a) above promptly after execution together with a document signed by Developer confirming that this Agreement remains unmodified and in full force and effect.

13.2. It shall be a condition to Con Edison's agreement to subordinate this Agreement and the pledge of the Pledged Collateral evidenced hereby as provided in Section 13.1, that Con Edison have the right to obtain, at Con Edison's option, a termination or assignment of the First Pledge upon the purchase or payment by Con Edison of the First Loan upon the terms and conditions specified in Section 5.2 of the Rezoning Mortgage.

ARTICLE 14. Miscellaneous.

14.1. Assignment. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal and/or personal representatives, successors and assigns. Unless and until Developer or Title LLC has paid the Rezoned Price with respect to the Property when due and payable under the Rezoning Note and the Sale Agreement, Developer shall not assign its rights and interest hereunder without the prior written consent of Con Edison (which may be granted or withheld in Con Edison's sole discretion), and any attempt by Developer to assign without Con Edison's prior written consent is null and void. Any assignment shall not release Developer from the obligations hereunder, and shall not release Developer from its obligations under the Other Rezoning Security Documents or the Sale Agreement. Unless and until an Event of Default described in Section 5.1(a) has occurred, Con Edison shall not assign this Agreement or any other Rezoning Security Document or Other Property Rezoning Security Document, except to an affiliate of Con Edison or in connection with a merger, consolidation or sale of all (or substantially all) assets of Con Edison.

14.2. Applicable Law; Conflict Between Documents. This Agreement shall be governed by and construed under the laws of the State of New York without regard to principles of conflict of laws. Unless otherwise defined herein, terms defined in the UCC are used herein as therein defined.

14.3. Jurisdiction. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Agreement may be brought and/or defended in the Supreme Court of the State of New York, New York County.

14.4. WAIVER OF JURY TRIAL. CON EDISON AND DEVELOPER WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING (INCLUDING ANY AND ALL COUNTERCLAIMS THERETO) THAT DIRECTLY OR INDIRECTLY RELATES TO THE SUBJECT MATTER OF THIS AGREEMENT.

14.5. Severability. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

14.6. Notices. All notices, consents or other communications under this Agreement must be in writing and addressed to each party at its respective notice address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand, by fax with confirmed answerback received, or by Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

Notices to Developer shall be sent to:

FSM East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attention: Mr. Richard L. Fisher
Fax: (212) 940-6207

and

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attention: Mr. Sheldon H. Solow
Fax: (212) 308-7209

with copies to:

Paul Hastings Janofsky & Walker, LLP
75 East 55th Street

New York, New York 10019
Attention: Martin L. Edelman, Esq.
Fax: (212) 318-6936

and

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attention: Chris M. Smith, Esq.
Fax: (212) 848-7179

Notices to Con Edison shall be sent to:

Mr. Robert P. Stelben
Vice President and Treasurer
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Fax: (212) 260-5713

with copies to:

John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, NY 10019-5389
Fax: (212) 424-8500
Attention: Alan M. Berman, Esq.

14.7. Captions. The captions contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

14.8. Binding Contract; Waiver of Notice. Developer, by execution of, and Con Edison, by acceptance of this Agreement, agree that each party is bound to all terms and provisions of this Agreement. Developer waives presentment, demand, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate, and notice of acceleration of maturity. Developer waives all exemptions and homestead rights with regard to the Pledged Collateral. Developer waives any and all rights to notice or to hearing prior to Con Edison's taking immediate possession or control of any Pledged Collateral, and to any bond or security which might be required by applicable law prior to the exercise

of any of Con Edison's remedies against any Pledged Collateral.

14.9. Amendments, Waivers and Remedies. No waivers, amendments or modifications of this Agreement shall be valid unless in writing and signed by an officer of Con Edison. No waiver by Con Edison of any Event of Default or Minor Default shall operate as a waiver of any other Event of Default or Minor Default or the same Event of Default or Minor Default on a future occasion. Neither the failure nor any delay on the part of Con Edison in exercising any right, power, or privilege granted pursuant to this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Con Edison with respect to this Agreement, the Sale Agreement, the other Rezoning Security Documents, and the Other Property Rezoning Security Documents, and all remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively.

ARTICLE 15. Continuing Security Interest. This Agreement shall create a continuing security interest in the Pledged Collateral and shall remain in full force and effect until payment in full of the Obligations. Upon the payment in full of the Obligations, or upon payment of the Developer Call Price (or delivery of the Call Date L/C) for all Properties, or if the Rezoned Price is not yet due under the terms of the Sale Agreement on the Outside Date as defined in the Sale Agreement, Developer shall be entitled to the return, upon its request and at its expense, such of the Pledged Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof.

IN WITNESS WHEREOF, Developer and Title LLC have caused this Agreement to be duly executed and delivered as of the date first above written:

FSM EAST RIVER ASSOCIATES LLC

By: _____
Name:
Title:

By _____
Name:
Title:

[TITLE LLC]

By _____

Name:

Title:

Schedules and Exhibits

- Schedule "1" - The Properties (Property Descriptions):
 - Schedule "1-A"-616 First Avenue
 - Schedule "1-B"-685 First Avenue
 - Schedule "1-C"-708 First Avenue
 - Schedule "1-D"-700 First Avenue (Waterside)Permitted Encumbrances:
 - Schedule "1-AA"-616 First Avenue
 - Schedule "1-BB"-685 First Avenue
 - Schedule "1-CC"-708 First Avenue
 - Schedule "1-DD"-700 First Avenue (Waterside)
 - Schedule "2" - [omitted]
 - Schedule "3" - [omitted]
 - Schedule "4" - Proposed Rezoning and ULURP Schedule
 - Schedule "5" - Single Purpose Entity Requirements
 - Schedule "6" - Exceptions (if any) to Representations of the Parties
 - Schedule "7" - Miscellaneous Closing Deliveries
 - Schedule "8" - Authorized Representatives; Notice Addresses
 - Schedule "9" - Organizational Representations of Developer and Con Edison
 - Schedule "10" - List of Financial Statements of Developer and Developer Principals
 - Exhibit A Form of Second L/C
 - Exhibit B Form of Third L/C
 - Exhibit C Form of Rezoning L/C and Rezoning L/C Agreement
 - Exhibit D Form of Rezoning Note
 - Exhibit E Form of Rezoning Pledge Agreement
 - Exhibit F Form of Rezoning Mortgage; Form of Agreement of First Mortgagee
 - Exhibit G Form of Memorandum of Sale Contract Provision
 - Exhibit H Form of Deed
 - Exhibit I Form of Future Rezoning Covenant
 - Exhibit J Form of As-Built Guaranty
 - Exhibit K Form of Assignment of Ground Lease
 - Exhibit L Form of 685 Zoning Lot Agreement
 - Exhibit M Form of Assumption by Title LLC
 - Exhibit N [omitted]
 - Exhibit O Form of Developer Call L/C
 - Exhibit P Forms of Opinions of Counsel
 - Exhibit P-1 Form of Opinion of Counsel to Developer (PHJW Opinion)
 - Exhibit P-2 Form of Opinion of Counsel to Developer (S&S Opinion)
 - Exhibit P-3 Form of Opinion of Counsel to Con Edison
 - Exhibit Q Form of Estoppel Certificate
 - Exhibit R Form of Call Date L/C
 - Exhibit S Form of L/C for Additional Interest on Developer Call Price
- Note: Words and phrases defined in the foregoing Agreement have the same meanings in these Schedules and Exhibits unless otherwise specified.

Schedule "1-A"

616 First Avenue

Property Description

Schedule 1-A

616 First Avenue

Property Description

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 line of East 35th Street with the easterly line of First Avenue;

RUNNING THENCE northerly, along the easterly line of First Avenue, 197'-6" to the corner formed by the intersection of the southerly line of East 36th Street with the easterly line of First Avenue;

THENCE easterly, along the southerly line of East 36th Street, 344'-1" to the corner formed by the intersection of the southerly line of East 36th Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive, 197'-8" to the corner formed by the intersection of the northerly line of East 35th Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE westerly, along the northerly line of East 35th Street, 352'-3 7/8" to the point or place of BEGINNING.

Schedule "1-B"

685 First Avenue

Property Description

Schedule 1-B

Portion of 685 First Avenue

Property Description

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

BEGINNING at the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue;

RUNNING THENCE westerly, along the northerly line of East 39th Street, 163'-10 1/2";

THENCE northerly, parallel with the westerly line of First Avenue, 197'-6" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 163'-10 1/2" to the corner formed by the intersection of the southerly line of East 40th Street with the westerly line of First Avenue;

THENCE southerly, along the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

Easement To Be Granted By Con Edison

Con Edison intends to grant to Developer: (1) a permanent exclusive easement, above an elevation of 83 and 13/100ths feet (relative to the Datum of the Topographical Bureau, Borough of Manhattan) for development purposes; and (2) a permanent non-exclusive access easement and temporary construction easement below such elevation; each over the 45 foot strip of land to be retained by Con Edison, which 45 foot strip is located immediately east of the substation, being more particularly described as follows:

All that portion of the below described parcel lying above a horizontal plan drawn 10.00 feet above the highest point of the Con Edison electric substation to the immediate west of the below described parcel:

BEGINNING at a point in the northerly line of East 39th Street distant 163'-10 1/2" westerly from the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue:

RUNNING thence westerly, along the northerly line of East 39th Street, 48'-10";

THENCE northerly, parallel with the westerly line of First Avenue, 55'-6 1/2";

THENCE easterly, parallel with the northerly line of East 39th Street, 4'-3";

THENCE northerly parallel with the westerly line of First Avenue, 86'-5";

THENCE westerly, parallel with the southerly line of East 40th Street, 4'-3";

THENCE northerly, parallel with the westerly line of First Avenue, 55'-6½" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 48'-10";

THENCE southerly, parallel with the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

The above description of the easement is for informational purposes only. The terms of this easement are more fully described in the Zoning Lot Development Agreement relating to 685 First Avenue.

Schedule "1-C"

708 First Avenue

Property Description

Schedule 1-C

708 First Avenue

Property Description

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 southerly line of East 41st Street with the easterly line of First Avenue;

RUNNING THENCE easterly, along the southerly line of East 41st Street 422'-10" to the corner formed by the intersection of the southerly line of East 41st Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive, 161'-9 5/8" to a point of curvature therein;

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive on the arc of a circle curving to the right having a radius of 2431'-8" and a central angle of 0°-50'-55", 36'-0 1/4";

THENCE westerly, parallel with the southerly line of East 41st Street, 411'-7 3/8" to a point in the easterly line of First Avenue;

THENCE northerly, along the easterly line of First Avenue, 197'-6" to the point or place of BEGINNING.

Schedule "1-D"

700 First Avenue (Waterside)

Property Description

Schedule 1-D

700 First Avenue (Waterside)

Property Description

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 line of East 38th Street with the easterly line of First Avenue;

RUNNING THENCE northerly, along the easterly line of First Avenue, 515'-0";

THENCE easterly, parallel with the northerly line of East 38th Street, 411'-7 3/8" to a point in the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive, on the arc of a circle curving to the right having a radius of 2431'-8" and a central angle of 6°-13'-33", 264'-2 5/8" to a point of tangency;

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive, 56'-4 1/4" to an angle point therein;

THENCE easterly, still along the westerly line of Franklin D. Roosevelt Drive and parallel with the northerly line of East 38th Street, 1'-2 3/8" to an angle point therein;

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive, 200'-3 1/8" to the corner formed by the intersection of the northerly line of East 38th Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE westerly, along the northerly line of East 38th Street, 336'-10 3/8" to the point or place of BEGINNING.

Schedule "1-AA"

616 First Avenue

Permitted Encumbrances

Schedule 1-AA

616 First Avenue

Permitted Encumbrances

1. Any state of facts shown on a survey made by Earl B. Lovell - S.P. Belcher, Inc., dated November 3, 1998, last revised on August 17, 2000.
2. Any state of facts not shown on the above-referenced survey and which an accurate, current survey would disclose, provided that such facts do not render title unmarketable.
3. Terms, covenants and conditions of the Indenture recorded in Liber 553, page 46.
4. Terms, covenants and conditions of the Indenture recorded in Liber 498, page 575.
5. Terms, covenants and conditions of the Promise and Agreement, made by and between New York Steam Corporation and The City of New York, dated December 5, 1952 and recorded December 6, 1952, in Liber 4902, page 168.
6. Sewer Easement recorded in Liber 5335, page 259.
7. All present and future zoning, land use, building, environmental and other laws, ordinances, codes, restrictions and regulations (and all present and future zoning variances and special exceptions) in effect or applicable at any time to the Property.
8. All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges and rents not due and payable as of the Closing Date, subject to adjustment pursuant to Article 13 of the Agreement.
9. Consents by any former owner of the Property for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.
10. All violations of building, use, land use, fire, health, sanitary, housing and similar laws, ordinances, rules, regulations, and orders or requirements of governmental authorities having jurisdiction over the Property at the date hereof and at the Closing Date, whether or not noted or issued, subject to Section 7.3(c) of the Agreement.
11. Existing rights of utility companies (other than Con Edison or its affiliates) to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.

12. Any covenant, restriction, or easement which is legally unenforceable whether or not remaining of record (provided that the Title Insurer will delete same from the exceptions to coverage or insure Developer and Developer Lender against the enforcement of the same).

13. Any matter relating to the Property which is a Permitted Encumbrance pursuant to Section 7.7 of the Agreement.

Schedule "1-BB"

685 First Avenue

Permitted Encumbrances

Schedule 1-BB

685 First Avenue

Permitted Encumbrances

1. Any state of facts shown on a survey made by Earl B. Lovell-S.P. Belcher, Inc. dated July 22, 2000.
2. Any state of facts not shown on the above-referenced survey and which an accurate, current survey would disclose, provided that such facts do not render title unmarketable.
3. Zoning Lot Description and Ownership Statement, dated October 16, 1991 and recorded October 16, 1991 in Reel 1818, page 2231.
4. All present and future zoning, land use, building, environmental and other laws, ordinances, codes, restrictions and regulations (and all present and future zoning variances and special exceptions) in effect or applicable at any time to the Property.
5. All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges and rents not due and payable as of the Closing Date, subject to adjustment under Article 13 of the Agreement.
6. Consents by any former owner of the Property for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.
7. All violations of building, use, land use, fire, health, sanitary, housing and similar laws, ordinances, rules, regulations, and orders or requirements of governmental authorities having jurisdiction over the Property at the date hereof and at the Closing Date, whether or not noted or issued, subject to Section 7.3(c) of the Agreement.
8. Existing rights of utility companies (other than Con Edison or its affiliates) to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.
9. Any covenant, restriction, or easement which is legally unenforceable whether or not remaining of record (provided that the Title Insurer will delete same from the exceptions to coverage or insure Developer and Developer Lender against enforcement of the same).
10. Any matter relating to the Property which is a Permitted Encumbrance pursuant to Section 7.7 of the Agreement.

amounts under the RDE Contract paid by Con Edison, Con Edison's attorneys' fees and amounts paid by Con Edison to the SEQRA Consultant.

"Net Purchase Proceeds" means the Purchase Price less the Con Edison Transaction Expenses.

ARTICLE 21.

FMV Appraisals

21.1. This Article 21 provides the mechanism for determining Fair Market Value increases pursuant to Section 3.5. For purposes of this Agreement:

"Fair Market Value" or "FMV" means the fair market value of a Property before Rezoning (for purposes of determining the FMV of the GMV) or the fair market value of Floor Area (for purposes of determining the FMV of FAR), as applicable, as of the applicable Closing Date, taking into account those facts and circumstances which are then reasonably and customarily taken into account by professional appraisers.

"Independent FMV Appraiser" means an individual, jointly selected by Developer and Con Edison (or the appraisers appointed by them), who has no less than fifteen years of commercial appraisal experience in midtown Manhattan and who has not been engaged (and whose firm has not been engaged) by Developer, any Developer Principal, Solow, any of the Fishers, Morgan Stanley or Con Edison within the past ten years.

21.2. When Fair Market Value must be determined in connection with adjustments to the Purchase Price pursuant to Section 3.5, if the parties have not agreed on FMV as of the particular Closing Date or other date when the respective payment of the Purchase Price is due, an appraiser for each party shall submit an appraisal in MAI form to the other party for the value of (i) the Floor Area (in the case of an FMV increase to the Rezoned Price) or (ii) the Properties prior to Rezoning (in the case of an FMV adjustment to the GMV), as applicable, within 30 days after either party notifies the other party that an FMV determination is required. If either party fails to submit an appraisal in FDIC form by such 30th day, then the appraisal submitted by the other party shall be binding on the parties. If the appraisers cannot agree upon the applicable Fair Market Value within 10 days after the appraisals are exchanged, and if the parties have not previously designated such individual, the appraisers shall jointly designate an Independent FMV Appraiser within five days after the end of such 10-day period. If the two appraisers cannot agree upon an Independent FMV Appraiser within such five day period, then the Independent FMV Appraiser shall be appointed by the AAA upon request of either party. The AAA shall appoint the Independent FMV Appraiser within 10 days after the date of such request. Within 30 days after such appointment, the Independent FMV Appraiser shall determine the applicable Fair Market Value by selecting the FMV specified in the appraisal previously submitted (as set forth above) by one or the other of the parties. Any such determination of the Independent FMV Appraiser shall be conclusive and binding on the parties as the decision of an arbitrator under the CPLR. Each party shall pay fifty percent (50%) of the fees and charges of the Independent FMV Appraiser. For purposes of this Article, an appraisal in MAI form means an appraisal conforming to generally accepted

appraisal standards of the Appraisal Standards Board which uses three market value approaches — cost, income, and comparable sales — and reconciles the results of each to estimated market value.

21.3 If necessary, the respective Closing or other due date for the particular Rezoned Price or GMV shall be postponed to allow the time periods specified in Section 21.2; provided, however, that if the parties have not agreed on the respective FMV, and/or the Independent FMV Appraiser has not determined the applicable FMV within 70 days after the originally-scheduled Closing Date or other date when the respective payment of the Purchase Price was due, within 15 days thereafter, time being of the essence, Developer shall pay to Con Edison the amount of the applicable Purchase Price including the amount of FMV in dispute; and, if applicable, the Closing shall occur. If, based on a subsequent determination of the Independent FMV Arbitrator, Developer has made an overpayment on account of the respective FMV, Con Edison shall refund such overpayment to Developer within 15 days thereafter, with interest at the Developer Interest Rate.

ARTICLE 22.

Events of Default; Remedies

22.1. In this Agreement, "Developer Event of Default" means any of the following occurring on or before the Closing Date as to any Property:

(a) Developer defaults (i) in delivering the Second L/C, the Third L/C, the Rezoning Collateral, or the Developer Call L/C, when due under this Agreement; (ii) in paying the GMV, the Developer Call Price, the Rezoned Price, and/or the As-Built Amount when due and payable for any one or more Properties under this Agreement; and/or (iii) in Closing title to any one or more of the Properties;

(b) any representation or warranty of Developer is not true, complete, and correct in all material respects as of the date when made or required to be made under this Agreement; and/or

(c) Developer defaults materially in performing any of Developer's other obligations to be performed under this Agreement at or before any Closing; and, as to each of (b) and (c) Developer fails to cure or correct the applicable matter within 30 Business Days after notice from Con Edison.

22.2. (a) Subject to Section 22.2(b) below, upon the occurrence of a Developer Event of Default, Con Edison may terminate this Agreement by notice to Developer, in which event Con Edison shall be entitled as its sole and exclusive remedy (subject to its remedies under Sections 22.2(b) and 22.6) to draw and retain the full amounts of the First L/C, the Second L/C (if previously delivered), the Third L/C (if previously delivered), and to retain (or cause the RDE Contractor and/or the Exit Insurer to retain) the RDE Deposit, all the foregoing as liquidated damages. Developer and Con Edison agree that the remedy set forth in this Section is reasonable and appropriate because of the unique nature and the magnitude of the Properties, as well as their environmental history and condition and also the complexity of the Rezoning

contemplated under this Agreement. Both parties agree that Con Edison's actual damages for Developer's breach would be exceptionally difficult (if not impossible) to compute and that Con Edison's remedy of liquidated damages is entirely reasonable and appropriate in the circumstances. For this reason, also, Developer agrees that Con Edison would have no adequate remedy at law and waives any claim relating to the reasonableness of such liquidated damages. A termination of the Agreement pursuant to this Section shall not apply to any Property as to which a Closing has previously occurred; except, however, at Con Edison's election, such termination shall constitute an event of default under the Rezoning Collateral, or an event which gives Con Edison the right to draw under the Developer Call L/C (if any), then held by Con Edison with respect to such a Property.

(b) If, after the Call Date L/C has been delivered, Developer fails to pay the Developer Call Price (and all interest due thereon, if any) for any Property when due and payable under Section 3.4, Con Edison shall have the right to compel specific performance of Developer's obligation to close on such Property by drawing on the Call Date L/C in the full amount of the Developer Call Price for such Property together with accrued interest from the Developer Call Date at the Money Market Rate and delivering the deed and the other Closing Instruments with respect to such Property to Developer; and payment of the full Developer Call Price (and all accrued interest thereon) to Con Edison pursuant to this Section 22.2(b) shall be Con Edison's sole remedy for a default by Developer in paying the Developer Call Price with respect to the particular Property.

22.3. In this Agreement, "Con Edison Event of Default" means any of the following occurring on or before the Closing Date: (a) Con Edison defaults in conveying title to any of the Properties as and when required under this Agreement; (b) any representation or warranty of Con Edison is not true, correct, and complete in all material respects as of the date when made or required to be made under this Agreement; and/or (c) Con Edison defaults materially in performing any of Con Edison's other obligations to be performed under this Agreement at or before the Closing; and, as to each of (b) or (c), Con Edison fails to cure or correct the applicable matter within 30 Business Days after notice from Developer.

22.4. Upon the occurrence of a Con Edison Event of Default, Developer may elect either of the following as Developer's exclusive remedy:

(a) Developer may terminate this Agreement as to any one or more Properties by notice to Con Edison, in which event Developer shall receive from Con Edison, within 30 days after the date of delivery of such termination notice, return of the First L/C, the Second L/C, the Third L/C, repayment of the RDE Deposit (to the extent not applied to the Purchase Price for a previous Closing, with interest at the Developer Interest Rate from the date hereof), or as to such L/Cs a reduction in the amount thereof in accordance with Section 4.5, and as to the RDE Deposit an allocable reduction thereof, in the event the termination relates to less than all of the Properties; or, alternatively,

(b) Developer shall have the right to compel specific performance of Con Edison's obligation to sell all the Properties to Developer (but without abatement, credit, or reduction in the Purchase Price) in accordance with this Agreement. Con Edison agrees that the

remedy of specific performance is reasonable and appropriate under this Section because Developer would have no adequate remedy at law for Con Edison's failure to convey.

Any termination of this Agreement pursuant to (a) above shall not apply to any Property as to which a Closing has previously occurred. Developer shall not be entitled to monetary damages against Con Edison under either (a) or (b) above for any reason.

22.5. For the avoidance of doubt, the remedies of the parties set forth in this Article shall not apply to any Property as to which a Closing has occurred, and title has been conveyed, before the applicable Event of Default (although such Event of Default may result in other remedies under the Rezoning Collateral for such Property).

22.6. The remedies of each party under this Article 22 shall include, also, any Fees-And-Costs to which such party may be entitled under Section 27.14.

22.7. As to all remedies of the parties under this Article, each party agrees that there has been a course of negotiation and conduct between the parties giving specific consideration to the foregoing remedies and that such party has been represented by counsel and is experienced in complex real estate transactions.

22.8 Although the failure to obtain PSC Approval shall not be a Con Edison Event of Default, if: (a) the PSC issues a Final Determination not to issue the PSC Approval on or before the Outside Date with respect to two or more Properties; or (b) the PSC fails to issue the PSC Approval with respect to two or more Properties by the Outside Date; or (c) if Con Edison's representation in Section 16.1(d) is incorrect and Con Edison fails to cure such incorrect representation within the period set forth in Section 22.3; or (d) Con Edison is unable or unwilling to Remove judgments (following all applicable notice and cure periods) and either (i) Con Edison is required to Remove such judgments pursuant to Section 7.3(b) but fails to do so or (ii) Con Edison is not required to Remove such judgments pursuant to Section 7.3(b), fails to do so and Developer has agreed to terminate the Agreement with respect to the applicable Property or Properties; then Developer shall be entitled to reimbursement from Con Edison of Developer's Fees-and-Costs incurred to negotiate, and perform Developer's obligations under, and to accomplish the purposes of, this Agreement and the RDE Contract (including attorneys' fees, amounts paid to SEQRA Consultant, costs incurred in the master planning design competition, and architectural fees), but in no event shall the amount payable by Con Edison under this Section exceed in the aggregate ten million dollars (\$10,000,000). Subject to the foregoing, in the event that the PSC issues a Final Determination not to issue the PSC Approval on or before the Outside Date as to any Property, this Agreement shall be terminated as to the respective Property effective upon the date of such Final Determination (and such termination shall have the same effect as a termination of this Agreement on the occurrence of the Outside Date).

22.9 For the avoidance of doubt, the terms "Con Edison Event of Default" and "Developer Event of Default" shall not be deemed to include the applicable party's failure to satisfy a Closing condition which is not also a covenant or agreement.

22.10 If Con Edison is unable or unwilling to Remove judgments that Con Edison is not required to Remove pursuant to Section 7.3(b) and Developer has not consented to

a termination of the Agreement with respect to the applicable Property pursuant to Section 7.2, at any time after Developer refuses to consent to termination but prior to November 15, 2006, Developer can elect to terminate the Agreement as to such Property upon 60 days prior notice to Con Edison, and unless Con Edison Removes such judgments and notifies Developer of same within such 60 day period, this Agreement shall terminate with respect to such Property at the end of such 60 day period (and any L/C that Con Edison then holds with respect to such Property shall be reduced in accordance with Section 4.5 or returned to Developer in accordance with Section 4.7, as applicable). If Con Edison removes such judgments and notifies Developer of same within such 60 day period, then this Agreement shall not terminate as to such Property and Con Edison shall convey, and Developer shall be required to purchase, such Property subject to the terms of this Agreement.

ARTICLE 23.

Post-Closing Remedies

23.1. The provisions of this Agreement shall survive, with respect to each Property, the delivery of the deed to such Property, except for Sections 7.2, 7.3, 7.4, 7.6, 7.8, and 7.9 (which shall be deemed to terminate with respect to each Property upon conveyance of the deed) and as otherwise specifically provided in this Agreement.

23.2. After the Closing of a particular Property, Con Edison shall have a claim for damages if any representation or warranty of Developer in this Agreement or any Closing Instrument (other than a matter of which Developer gave notice under Section 12.4) is materially untrue, incorrect, or incomplete when made or required to be made under this Agreement and if Con Edison gives notice of such matter to Developer within 365 days after the Closing for the particular Property, except for matters covered by Sections 17.1(a), 24.1 and Part One of Schedule "9", for which any claim shall be subject to the applicable statute of limitations.

23.3. After the Closing of a particular Property, Developer shall have a claim for damages if any representation or warranty of Con Edison in this Agreement or any Closing Instrument (other than a matter of which Con Edison gave notice under Section 12.5) is materially untrue, incorrect, or incomplete when made or as of the date when required to be made under this Agreement and if Developer gives notice of such matter to Con Edison within 365 days after the Closing for the particular Property, except as to matters covered by Sections 16.1(a), 24.1 and Part Two of Schedule "9", for which any claim shall be subject to the applicable statute of limitations.

ARTICLE 24.

Real Estate Brokers

24.1. Con Edison represents and warrants to Developer, and Developer represents and warrants to Con Edison, that each knows of no real estate broker or finder, other than the Designated Consultants, who has claimed or has the right to claim any fee, commission or other compensation in connection with the transactions contemplated by this Agreement, and that each has taken no actions which would form the basis for such a claim.

24.2. Con Edison shall pay any commission due the Designated Consultants pursuant to a separate agreement between Con Edison and the Designated Consultants.

24.3. Con Edison shall indemnify, hold harmless and defend Developer, the Developer Principals, and their respective members, managers, and employees, against all liability, loss, cost, claim or expense (including Fees-And-Costs) arising out of any breach of Con Edison's representation in Section 24.1. Developer shall indemnify, hold harmless, and defend Con Edison, any entity Controlled by, Controlling or under common Control with Con Edison, and their respective directors, officers, and employees against all liability, loss, cost, claim or expense (including Fees-And-Costs) arising out of any breach of Developer's representation in Section 24.1.

24.4. This Article shall survive the Closing (or, if the Closing does not occur, the termination of this Agreement).

ARTICLE 25.

Notices

25.1. All notices, consents or other communications under this Agreement must be in writing and addressed to each party at its respective Notice Address set forth on Schedule "8" hereto (or at any other address which either party may designate by notice to the other party from time to time), except as set forth in Section 5.7. Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

ARTICLE 26.

Limitations on Assignment

26.1. Subject to the terms of this Article 26 and Section 6.14, Developer shall not Transfer this Agreement, or any part of Developer's direct or indirect right, title, and/or interest in this Agreement, without Con Edison's prior written consent; provided, however, that Transfers of Ownership Interests in Developer, Developer Principals and Title LLCs shall be permitted, subject to the terms of this Article.

26.2. Developer has represented to Con Edison that Developer desires to acquire the Properties for development—and not for resale at any time before the Article 26 Date. Accordingly, Developer hereby agrees, as part of the consideration to Con Edison under this Agreement, that Developer shall pay (or cause to be paid) to Con Edison fifty percent (50%) of all Net Sale Proceeds (defined below) received by Developer, any Developer Principal, or any Title LLC (or by any Person Transferring an Ownership Interest in Developer, any Developer

Principal, or any Title LLC) from every Covered Sale (defined below) occurring at any time before the Article 26 Date. For the avoidance of doubt, this Article 26 shall not prohibit Covered Sales, subject to compliance with the requirements of this Article.

26.3. In this Agreement:

(a) "Article 26 Date" means with respect to each Property, four years after the earlier of (i) the Closing of title to such Property other than a GMV Closing; or (ii) the Developer Call Date if Developer delivers the Call Date L/C for all Properties but does not close title to the applicable Property before that date; but in either case this date in (i) or (ii) shall be not later than the date when construction of all Developments on such Property is more than 50% complete. With respect to each Title LLC and Transfers of any Ownership Interests therein, the Article 26 Date shall be the Article 26 Date for the Property owned by such Title LLC.

(b) "Covered Sale" means:

(i) any Transfer of any Property or any interest therein other than sales in the ordinary course of condominium units or lots in a Development; or leases to tenants for occupancy of space in such Development; or Financing Transfers; or easements, covenants, or other land-use restrictions granted in connection with a Development (without receipt of third-party payments for the same); and

(ii) any Transfer of an Ownership Interest (defined below) in Developer, any Developer Principal, or any Title LLC other than an Estate Transfer or Financing Transfer.

(c) "Estate Transfer" means any Transfer of any Ownership Interest in Developer, a Developer Principal, a New Investor and/or any Title LLC to or among: (i) the spouse, children, siblings, or parents of any of the Fishers or Solow or such New Investor; (ii) a trust for the exclusive benefit of any of the Fishers or Solow or such New Investor and/or his or her spouse, children, siblings and/or parents; or (iii) any entity owned 100% by any of the Fishers or Solow or such New Investor and/or the spouse, children, siblings, or parents of any of the Fishers or Solow or such New Investor and/or any trust for the exclusive benefit of any of them; (iv) another Developer Principal; or (v) a testamentary disposition to an organization exempt under Section 501(c)(3) of the Code; provided that, as a result of any such Estate Transfer, any one or more of the Fishers or Solow, as applicable, retains Control of (as applicable) Developer and/or the Title LLC.

(d) "Financing Purpose" means financing of the acquisition of a Property pursuant to this Agreement, financing of Developer's or a Title LLC's costs to perform its obligations under this Agreement, and/or financing of costs of developing a Development on the Properties.

(e) "Financing Transfer" means (i) as to any Property, a Transfer to a Developer Lender for a Financing Purpose and (ii) as to any Ownership Interest in Developer, a Developer Principal and/or any Title LLC (1) a Transfer to a Developer Lender as security for a Financing Purpose, or (2) a Transfer to a Person (a "New Investor") who contributes (or agrees to contribute) funds to any of those entities to be used for a Financing Purpose; provided that:

(A) all funds advanced by such Developer Lender or New Investor (other than Fees and Costs of the contribution or financing transaction) are paid into or for the benefit of Developer, the Developer Principal, and/or the Title LLC, as applicable, to be applied for a Financing Purpose and no such funds are paid or distributed to any member of Developer, such Developer Principal, and/or such Title LLC (or the holder of any Ownership Interest in any of them) other than as a Replacement Funding (as defined below); and

(B) any of the Fishers and/or Solow retains Control of Developer and each Title LLC and no New Investor or Developer Lender (except in the enforcement of customary remedies for default) has the power, directly or indirectly to direct the management and policies of Developer or any Title LLC, whether through voting control, contractual rights, or otherwise.

A "Financing Transfer" includes, also, any Transfer among the Fishers, Solow, Morgan Stanley and/or the then-existing holders of any Ownership Interests in Developer, a Developer Principal, or any Title LLC, provided that all the conditions of (A) and (B) above are satisfied.

(f) "Fishers" means any one or more of Richard L. Fisher, M. Anthony Fisher, Arnold Fisher, Steven Fisher, and Kenneth Fisher.

(g) "Replacement Funding" means the repayment of an amount lent or invested (which may include interest or a return thereon) by a member or manager of Developer, a Developer Principal, or any Title LLC, provided that an amount equal to or greater than such amount (and the interest or return thereon) is simultaneously reinvested in Developer, the Developer Principal or the Title LLC, as applicable.

(h) "Solow" means Sheldon H. Solow.

(i) "Net Sale Proceeds" means all consideration of every kind received by the applicable transferor from or by reason of a Covered Sale (whether cash, notes, shares in a real estate investment trust, or other real or personal property of any kind), as and when received by the applicable transferor (as, for example, cash at a closing; periodic payments of principal and interest under an installment agreement; etc.) minus:

(i) in the case of a Property: (A) the Purchase Price paid by Developer to Con Edison for the particular Property; (B) arm's length negotiated real estate brokerage commissions paid to licensed real estate brokers which are not entities Controlled by, Controlling or under common Control with Developer, transfer taxes,⁸ and reasonable attorneys' fees incurred by Developer in connection with the applicable Covered Sale; and (C) a return of the applicable transferor's investment in the particular Property (including repayment of borrowings and investment costs); and (D) a return on such investment computed at the CE Interest Rate;

(ii) in the case of an Ownership Interest: (A) the amount of the applicable transferor's investment in Developer, the Developer Principal, or a Title LLC, as applicable, and (B) arm's length negotiated real estate brokerage commissions paid to licensed

⁸ For the avoidance of doubt, Con Edison shall not be responsible for any transfer taxes payable by the transferor of the particular property or ownership interest but shall remain responsible for transfer taxes due under Section 18.3.

real estate brokers which are not entities Controlled by, Controlling or under common Control with Developer, transfer taxes; and reasonable attorneys' fees incurred by the transferor for the respective transaction; and (C) a return of the applicable transferor's investment in the Ownership Interest (including repayment of borrowings and investment costs); and (D) a return on such investment computed at the CE Interest Rate;

(j) "Ownership Interest" means a direct or indirect interest in the equity or other ownership interests of a corporation, partnership, limited liability company, trust, or other legal entity;

(k) "Morgan Stanley" means Morgan Stanley Dean Witter & Co. and any Person controlled by the same; and

(l) "Getty" means Gordon P. Getty and/or trusts for the benefit of him and/or his natural or adopted children and/or entities controlled by him or such trusts.

26.4 In the event of a Financing Transfer prior to the Closing of the respective Property, each New Investor in the respective Title LLC (other than Morgan Stanley or Getty) shall be subject to Con Edison's prior written consent, not to be unreasonably withheld.

26.5 Developer shall give notice to Con Edison before the closing or other completion of any Covered Sale and shall direct the payor of the Net Sale Proceeds to make payment (or to execute and deliver any notes or other non-cash consideration) of Con Edison's share thereof directly to Con Edison at the applicable Closing or other completion of the Covered Sale transaction. If Net Sale Proceeds from a Covered Sale of any Property consist partly of cash and partly of non-cash consideration, Con Edison shall have an undivided share of the cash and non-cash consideration, such share being proportional to the amount due Con Edison under this Article. Developer shall promptly notify Con Edison of the occurrence of all Estate Transfers and Financing Transfers.

26.6 To confirm Developer's obligations under this Article, Developer shall execute and deliver to Con Edison, at the Closing of each Property: (a) a Memorandum of Sale Contract Provision, in the form attached hereto as Exhibit "G", which Con Edison may record against the respective Property after such Closing; and (b) Uniform Commercial Code financing statements against Developer, the Developer Principals, and each Title LLC. Upon the expiration of Developer's obligations under this Article as to a particular Property, Con Edison shall execute and deliver an instrument in form for recording terminating the foregoing as to such Property.

26.7 If a Person has an Ownership Interest, directly or indirectly, in more than one Title LLC and the Article 26 Date has occurred only as to one of such Title LLCs, the Net Sales Proceeds from a Transfer of such Ownership Interest shall be allocated to each such Title LLC as follows:

(a) before the Rezoning of all Properties, in the proportion that the Lot Area of the Property as to which the Article 26 Date has occurred bears to the total Lot Areas of all Properties owned by all such Title LLCs; and

(b) after the Rezoning of all Properties, in the proportion that the Floor Area of the Property as to which the Article 26 Date has occurred bears to the total Floor Area of all Properties owned by all such Title LLCs.

ARTICLE 27.

Miscellaneous

27.1. Each of the parties shall take such additional actions and sign and deliver such other instruments and documents as may be reasonable, necessary or appropriate to effectuate the transactions contemplated under this Agreement; provided, however, that the taking of such acts or the execution of such documents will not result in material cost or liability to the respective party which is not otherwise required under this Agreement.

27.2. This Agreement shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law).

27.3. This Agreement shall not be modified, waived, or amended except by written agreement executed by all the parties.

27.4. This Agreement, together with the Schedules and Exhibits hereto, the First Amendment, and any other document, agreement or instrument which is specifically stated by both parties in writing to form a part of this Agreement or to relate thereto, constitute(s) the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties relating thereto.

27.5. Except as expressly provided in this Agreement, no delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or as a waiver of any other right, power or privilege hereunder; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereunder. Except as otherwise provided in this Agreement, the rights and remedies of each party under this Agreement are cumulative and are not exclusive of any rights or remedies which the party may otherwise have at law or in equity.

27.6. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

27.7. This Agreement (and all terms thereof, whether so expressed or not), shall be binding upon the respective permitted successors, assigns and legal representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives.

27.8. The Exhibits and Schedules attached hereto or subsequently incorporated herein are (and shall be deemed) parts of this Agreement. The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

27.9. The signature of any one of a party's Authorized Representatives, acting alone, shall constitute the duly authorized, valid and binding act of the party for whom the respective person is the Authorized Representative. A party may change (or add) Authorized Representative(s) at any time by notice to the other party; provided that each party shall be entitled to rely upon the written certificate or consent of any person designated by the other party as an Authorized Representative unless and until such relying party receives a notice to the contrary from another Authorized Representative of the party for whom such person is an Authorized Representative.

27.10. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Agreement may be brought and/or defended in the Supreme Court of the State of New York, New York County.

27.11. If any term, covenant, condition or provision of this Agreement is determined by Final Determination to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby but shall be valid and enforceable to the fullest extent permitted by law.

27.12. Nothing in this Agreement, express or implied, is intended: (a) to confer on any Person—(other than the parties hereto)—any rights, obligations, liabilities, or remedies; (b) to constitute Con Edison as a partner or co-venturer of Developer, or vice versa; or (c) to waive any claim or right of any party against any Person who is not a party to this Agreement.

27.13. This Agreement shall be construed without regard to any presumption requiring construction against the party drafting this Agreement.

27.14. In event of any Legal Proceeding between or among Developer and Con Edison concerning this Agreement, the prevailing party shall be entitled to reimbursement from the losing party for the Fees-And-Costs of such proceeding incurred by the prevailing party. For this purpose, "prevailing party" means the party who obtains a Final Determination adverse to the other party in or by reason of such Legal Proceeding.

27.15. The parties agree that they shall not record this Agreement or any memorandum of this Agreement.

27.16. Unless this Agreement specifies, in a particular context, that a party's consent or approval shall not be unreasonably withheld, such party may withhold its consent or approval in its sole discretion (i.e., for any reason or no reason).

27.17. (a) In connection with the negotiation and execution of this Agreement and after the signing of this Agreement, Developer has received, and/or will receive, from Con Edison or others various documents and other written and graphic materials pertaining to this Agreement and the transactions contemplated under this Agreement ("Transaction Materials"). Developer agrees to keep strictly confidential all Transaction Materials (other than information which is a matter of public record or is found in other sources readily available to the public, other than as a result of disclosure by Developer or any Related Party) and also this Agreement (and terms and conditions thereof); provided, however, that Transaction Materials and this

Agreement (and the terms and conditions thereof) may be disclosed to Developer Principals, Developer Lenders, potential New Investors, and Developer's and their respective directors, officers, limited liability company managers, employees, counsel, accountants and Consultants, who, in Developer's judgment, need to have access to the Transaction Materials in connection with completion of the transactions contemplated in this Agreement ("Related Parties"). These Related Parties shall be advised of this Section of the Agreement and shall be informed by Developer of the confidential nature of this Agreement and the Transaction Materials and that they are subject to Developer's obligations under this Section; and they shall be directed by Developer to keep all such information in the strictest confidence and use such information only for purposes related to the completion of the transactions under this Agreement. Developer agrees not to make this Agreement or any of the Transaction Materials available, or disclose any of the contents of this Agreement or the Transaction Materials, or disclose or discuss any of the terms, covenants, conditions, or other facts with respect to this Agreement or the Transaction Materials to any Person, other than as permitted by the preceding sentence unless: (a) such Person has been identified in writing to Con Edison; (b) Con Edison has approved in writing the disclosure of this Agreement and the Transaction Materials to such Person; and (c) such Person has entered into a written confidentiality agreement with Con Edison substantially upon the same terms as set forth in this Section. If for any reason whatsoever this Agreement terminates before the Closing of all Properties, Developer agrees (and agrees to cause each Related Party) promptly to return all Transaction Materials to Con Edison or to destroy the same. Developer shall be responsible for a breach by any Related Party of the requirements of this Section. This Section supplements the prior letter agreement concerning confidentiality between Cushman & Wakefield, Inc., as agent for Con Edison, and Developer, which shall remain in effect (notwithstanding Section 27.4) for the period before the signing of this Agreement. (Also, this Section is not intended to limit or contravene Section 8.1).⁹

(b) Con Edison shall limit the access to the financial statements and Statements of Financial Condition furnished to Con Edison pursuant to Section 17.1(c) and any other financial information submitted to Con Edison pursuant to Article 26 or otherwise by Developer in connection with this Agreement to Con Edison's officers and its financial personnel.

(c) The obligations of Developer, the Related Parties, and Con Edison under this Article are subject to, and shall be excused to the extent strictly necessary, to comply with court orders, orders of other Government Entities, and other binding legal process.

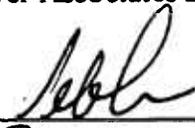
⁹ Parties to discuss confidentiality provisions applicable to lenders, New Investors etc., as well as protocols for press releases, public meetings, etc.

IN WITNESS WHEREOF, DEVELOPER AND CON EDISON HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN:

FSM EAST RIVER ASSOCIATES LLC

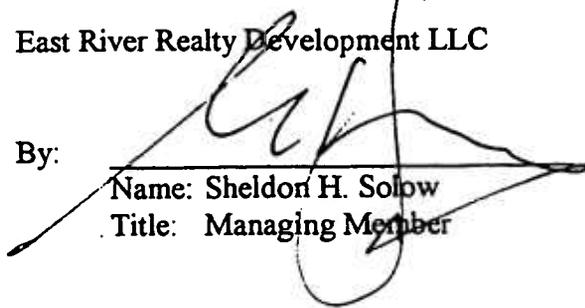
By: Fisher East River Associates LLC

By:


Name: RICHARD L. FISHER
Title: MANAGING MEMBER

By: East River Realty Development LLC

By:


Name: Sheldon H. Solow
Title: Managing Member

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By:


Name: ROBERT P. STELBEN
Title: TREASURER

SCHEDULES AND EXHIBITS

for

AGREEMENT

Between

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

and

FSM EAST RIVER
ASSOCIATES LLC

Dated: As of November 15, 2000

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____
Date of Letter of Credit: _____
Date of this Draft: _____
Issuing Bank: _____
Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., THIRTY MILLION (\$30,000,000) DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

¹ NOTE: IF A PARTIAL DRAW, INSERT (INSTEAD OF \$30,000,000) SUCH
LESSER AMOUNT AS IS REQUESTED BY BENEFICIARY IN SUCH PARTIAL
DRAW.

Exhibit "B"

Form of Third L/C

Schedule "1-CC"

708 First Avenue

Permitted Encumbrances

Schedule 1-CC

708 First Avenue

Permitted Encumbrances

1. Any state of facts shown on a survey made by Earl B. Lovell - S.P. Belcher, Inc., dated January 10, 1999 and last revised on August 17, 2000.
2. Any state of facts not shown on the above-referenced survey and which an accurate, current survey would disclose, provided that such facts do not render title unmarketable.
3. Permanent and Perpetual Subsurface Easement for construction and operation of the Queens-Midtown Tunnel, recorded in Liber 3957, page 189.
4. Easement in favor of The City of New York, to renovate and construct a passageway for street purposes, at the southeast corner of East 41st Street and 1st Avenue, recorded in Liber 4809, page 218.
5. All present and future zoning, land use, building, environmental and other laws, ordinances, codes, restrictions and regulations (and all present and future zoning variances and special exceptions) in effect or applicable at any time to the Property.
6. All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges and rents not due and payable as of the Closing Date, subject to adjustment under Article 13 of the Agreement.
7. Consents by any former owner of the Property for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.
8. All violations of building, use, land use, fire, health, sanitary, housing and similar laws, ordinances, rules, regulations, and orders or requirements of governmental authorities having jurisdiction over the Property at the date hereof and at the Closing Date, whether or not noted or issued, subject to Section 7.3(c) of the Agreement.
9. Existing rights of utility companies (other than Con Edison or its affiliates) to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.
10. Any covenant, restriction, or easement which is legally unenforceable whether or not remaining of record (provided that the Title Insurer will delete same from the exceptions to coverage or insure Developer and Developer Lender against enforcement of the same).
11. Any matter relating to the Property which is a Permitted Encumbrance pursuant to Section 7.7 of the Agreement.

Schedule "1-DD"

700 First Avenue (Waterside)

Permitted Encumbrances

Schedule 1-DD

700 First Avenue (Waterside)

Permitted Encumbrances

1. Any state of facts shown on a survey made by Earl B. Lovell-S.P. Belcher, Inc., dated January 10, 1999 and last revised on August 18, 2000 (the "Waterside Survey").
2. Any state of facts not shown on the above-referenced survey and which an accurate, current survey would disclose, provided that such facts do not render title unmarketable.
3. Reservation of Permanent Subsurface Easement for construction and operation of Queens- Midtown Tunnel and an Easement to construct and renovate a 12-inch water main, recorded in Liber 4811, page 109.
4. Terms, Covenants and Conditions of the Agreement made by and between Consolidated Edison Company of New York Inc. ("Con Edison") and The City of New York dated 12/10/47 and recorded 5/12/48 in Liber 4569, page 297, by which the City agrees to convey to Con Edison land in the bed of East 39th Street and East 40th Street and Con Edison agrees to grant an Easement to the City on the southeast corner of 41st Street and 1st Avenue.
5. Terms, Covenants and Conditions of the Agreement made by and between Con Edison and The City of New York dated January 27, 1948 and recorded August 16, 1949 in Liber 4634, page 620, by which the City agrees to convey a portion of Marginal Street.
6. Terms, Covenants and Conditions of the Agreement made by and between The City of New York and New York Edison Company recorded December 22, 1906 in Liber 125, page 487 of Section 3.
7. All present and future zoning, land use, building, environmental and other laws, ordinances, codes, restrictions and regulations (and all present and future zoning variances and special exceptions) in effect or applicable at any time to the Property.
8. All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges and rents not due and payable as of the Closing Date, subject to adjustment under Article 13 of the Agreement.
9. Consents by any former owner of the Property for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.
10. All violations of building, use, land use, fire, health, sanitary, housing and similar laws, ordinances, rules, regulations, and orders or requirements of governmental authorities having jurisdiction over the Property at the date hereof and at the Closing Date, whether or not noted or issued, subject to Section 7.3(c) of the Agreement.
11. Existing rights of utility companies (other than Con Edison or its affiliates) to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.

12. Any covenant, restriction, or easement which is legally unenforceable whether or not remaining of record (provided that the Title Insurer will delete same from the exceptions to coverage or insure Developer and Developer Lender against enforcement of the same).

13. Any matter relating to the Property which is a Permitted Encumbrance pursuant to Section 7.7 of the Agreement.

Proposed 700 Easements
to be deleted pursuant to Article 3 of
the First Amendment of this Agreement

- (a) Non-exclusive subsurface easement in former 39th Street roadbed from First Avenue to the FDR Drive (as more particularly described in the Waterside Survey) for electrical feeders and access to same for purposes of repair, maintenance, installation, and replacement. [Con Edison to specify other utilities in easement area and confirm whether the easement is also for purposes of access to the water main].
- (b) Non-exclusive subsurface easement in the former 40th Street roadbed from First Avenue to the FDR Drive (as more particularly described in the Waterside Survey) for electrical feeders and access to same for purposes of repair, maintenance, installation, and replacement. [Con Edison to specify other utilities in easement area].
- (c) [Non-exclusive] subsurface easement in triangular area adjacent to the easterly property line between the northerly boundary of 38th Street and the southerly boundary of the former 40th Street roadbed (as more particularly described in the Waterside Survey) for electrical feeder lines and equipment and access to same for the purposes of repair, maintenance, installation and replacement. [Con Edison to verify the type of equipment, e.g., a transformer.]

Schedule "2"

[omitted]

Schedule "3"

[omitted]

Schedule "4"

Proposed Rezoning and ULURP Schedule

1. Proposed Rezoning

The Proposed Rezoning is a Rezoning of the Properties intended to achieve the following with respect to each Property:

- (a) 616 First Avenue - A change in the zoning district and any other permits and approvals required to allow development of 12 FAR (approximately 825,240 square feet) on the Property for residential, commercial and community facility uses. If 12 FAR is achieved, based upon the Lot Areas existing as of the date hereof, the Rezoned Price for this Property would be \$103,155,000.
- (b) 685 First Avenue - A possible change in the zoning district, special permits and other approvals under the Zoning Resolution (any one or more of which may be based on the existence of a large scale development which includes 685 First Avenue, certain development rights appurtenant to the adjacent substation, 708 First and Waterside), and a modification of the existing BSA Special Permit, all of which would allow development of 12 FAR (approximately 912,336 square feet) on or with respect to the Property for residential, commercial and community facility uses. If 12 FAR is achieved, based upon the Lot Areas existing as of the date hereof, the Rezoned Price for this Property would be \$114,042,000.
- (c) 708 First Avenue - A change in the zoning district, special permits and other approvals under the Zoning Resolution (any one or more of which may be based on the existence of a large scale development which includes 685 First Avenue, certain development rights appurtenant to the adjacent substation, 708 First and Waterside), which would allow development of 12 FAR (approximately 989,088 square feet) on or with respect to the Property for residential, commercial, and community facility uses. If 12 FAR is achieved, based upon the Lot Areas existing as of the date hereof, the Rezoned Price for this Property would be \$123,636,000.
- (d) Waterside - A change in the zoning district, special permits and other approvals under the Zoning Resolution (any one or more of which may be based on the existence of a large scale development which includes 685 First Avenue, certain development rights appurtenant to the adjacent substation, 708 First and Waterside), which would allow development of 12 FAR (approximately 2,336,652 square feet) on or with respect to the Property for residential, commercial and community facility uses. If 12 FAR is achieved, based upon the Lot Areas existing as of the date hereof, the Rezoned Price for this Property would be \$292,081,500.

For purposes of clarification, nothing contained in this Schedule "4" is intended to modify the definition of Rezoning set forth in Section 1.1 of the Agreement.

2. Schedule for PSC Approvals, Proposed Rezoning and Other Actions Proposed in Respect of the Properties

Action	Day (1)
Execute Agreement	1
File Section 70 Petition, EAF and EIS scope (with PSC/DCP)	30
Enter into agreement with master planner for urban planning and design services in respect of the project -Milestone- (5)	200*
Complete public scoping and file with the PSC a preliminary Draft Generic Environmental Impact Statement ("EIS") for Section 70 Proceeding (2)	270
PSC issues Notice of Completion of Draft Generic EIS (2)	330
PSC Public Hearing in Section 70 Proceeding	360
PSC issues Notice of Completion of Final Generic EIS (including agency review) (2)	390
PSC issues SEQRA findings and Section 70 Approval	410
Announcement of master plan	420*
File applications for action pursuant to ULURP and for other zoning and public actions involving City Planning Commission ("CPC") decisions -Milestone- (5)	480*
File application to modify BSA Special Permit (3)	480/570*
Complete public scoping and preparation of scope for Supplemental EIS	510
File with the DCP supplemental environmental documentation - presumably a preliminary draft Supplemental EIS (2) -Milestone- (5)	480
CPC certifies ULURP applications as complete	570
DCP issues Notice of Completion of Draft Supplemental EIS (2)	570
Community Board No. 6 review of the Applications (4)	610
Borough President review of the Applications	650
CPC and BSA public hearings, including hearing on Draft Supplemental EIS	680
DCP issues Notice of Completion of Final Supplemental EIS (including agency review) (2)	700

CPC issues SEQRA/CEQR findings statement and ULURP approval; BSA decision on application	720
Complete City Council review	775

- (1) All dates are measured from the date of execution of the Agreement. Dates highlighted with an asterisk are the outside date for the occurrence of the action described. Other dates are projections as to the approximate date on which the described action is anticipated to occur.
- (2) Date is contingent on ability of SEQRA Consultant to perform the task noted in a timely fashion.
- (3) It may be appropriate to defer filing the BSA application until certification of the ULURP applications so that the Community Board, which is required to consider the BSA application within 60 days of the date on which it is filed, can hear both the BSA, the ULURP and the other applications at the same time.
- (4) "Applications" means, collectively, the ULURP applications and the application to amend the BSA Special Permit.
- (5) Milestone date for purposes of Section 6.4 of the Agreement.

Schedule "5"

Single Purpose Entity Requirements

Words and phrases defined in the Agreement have the same meaning in this Schedule unless otherwise specified.

For purposes of the Agreement, at any GMV Closing of a Property, Developer shall acquire title through a separate limited liability company organized specifically to own such Property (each a "Title LLC"). Until payment of the Developer Call Price or Rezoned Price (if the Developer Call Price is not paid) or the Outside Date (if the Rezoning Approval Date has not occurred on or prior to the Outside Date) with respect to the applicable Property, Developer itself shall own all (i.e. 100%) of the membership interests and all other equity ownership interests in and of such Title LLC except that such Title LLC must have at least one outside member (the "Outside Corporate Member") which shall be a special purpose corporation (as described below) wholly-owned by Developer. Until payment of the Developer Call Price or Rezoned Price (if the Developer Call Price is not paid) or the Outside Date (if the Rezoning Approval Date has not occurred on or prior to the Outside Date) with respect to the applicable Property, the articles of organization and the operating agreement of the Title LLC and the certificate of incorporation and by-laws of its Outside Member will include provisions as indicated below. Notwithstanding the foregoing, in the event that a Developer Lender requires single purpose entity requirements that are similar to or conflict with the following requirements, the organizational documents of the Title LLC and its Outside Corporate Member may reflect the requirements of the Developer Lender and shall otherwise comply with the requirements set forth below.

1. Title LLC Articles of Organization and Operating Agreement

Both the articles of organization and the operating agreement of Title LLC shall include the following provisions:

(a) Purpose

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: The business to be conducted and promoted by the Company is to engage solely in the following activities and no others:

- (i) To acquire from Con Edison, the real property located at _____, and commonly known as _____ First Avenue, New York, New York (the "Property");
- (ii) To own and hold the Property, and to grant a first mortgage (the "First Mortgage") against the Property to _____ ("First Mortgagee") and a second mortgage (the "Rezoning Mortgage") to Con Edison.
- (iii) To exercise all powers enumerated in the Limited Liability Company Act of the State of [INSERT STATE OF FORMATION] necessary or convenient to the conduct, promotion or attainment of the business or

purposes otherwise set forth herein."

(b) Certain Prohibited Activities:

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: The Company shall only incur indebtedness in an amount necessary to acquire title to the Property. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, the Company shall not incur, assume, or guaranty any other indebtedness (except for the First Mortgage and trade payables in the ordinary course of business) or consolidate or merge with or into any other entity or convey or transfer the Property to any other person or entity. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, the Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Company. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, no amendment to this instrument may be made without first obtaining the written approval of Con Edison."

(c) Dissolution:

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: The vote of a majority-in-interest of the remaining members shall be sufficient to continue the life of the Company. If such vote is not obtained, for so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, the Company shall not liquidate the Property without first obtaining approval of Con Edison."

2. Title LLC Operating Agreement

The operating agreement of Title LLC shall include the following provisions:

(a) Indemnification

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: Any indemnification of the members or managers of the Company shall be fully subordinated to any obligations of the Company secured by the First Mortgage or the Rezoning Mortgage and shall not constitute a claim against the Company in the event that cash flow is insufficient to pay such obligations."

(b) Separateness Covenants:

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: For so long as the Rezoning Mortgage exists on any portion of the Property or Con Edison holds the First Mortgage, the Company shall conduct its affairs in such a manner as to maintain a separate and distinct identity.

3. Outside Corporate Member

The following provisions shall be included in the certificate of incorporation and by-laws of the Outside Corporate Member:

(a) Purpose:

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by this Corporation is to engage solely in the activity of acting as the outside corporate member of _____, a [INSERT STATE OF FORMATION] limited liability company (the "Title LLC") whose purpose is to acquire from Con Edison certain real property, in the City of New York located at _____ and commonly known as _____ First Avenue (the "Property") and own and hold the Property and to grant a first mortgage (the "First Mortgage") to _____ (the "First Mortgagee") and a second mortgage (the "Rezoning Mortgage") to Con Edison. The corporation shall exercise all powers enumerated in the Corporation Law of the State of [INSERT STATE OF INCORPORATION] necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

(b) Certain Prohibited Activities

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: The Corporation shall only incur or cause the Title LLC to incur indebtedness secured by the First Mortgage and the Rezoning Mortgage to acquire the Property. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, the Corporation shall not (and shall not cause or permit the Title LLC to) incur, assume, or guaranty any other indebtedness (except for trade payables in the ordinary course of business). The Corporation shall not (and shall not cause or permit the Title LLC to) consolidate or merge with or into any other entity or convey or transfer the Property to any other person or entity. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, the Corporation shall not voluntarily commence a case with respect to itself (or cause or permit the Title LLC to) voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as the Rezoning Mortgage exists on the Property or Con Edison holds the First Mortgage, without first obtaining approval of Con Edison (i) no material amendment to this instrument nor to the articles of organization or operating agreement of Title LLC may be made without first obtaining approval of Con Edison; and (ii) in the event the life of Title LLC is not continued, the Corporation shall not cause or permit the Title LLC to liquidate the Property."

4. Outside Corporate Member - By-Laws

The following provisions shall be included in the by-laws of the Outside Corporate Member:

(a) Indemnification

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: Any indemnification of the officers, directors, shareholders, or employees of this Corporation shall be fully subordinated to any obligations respecting the Title LLC secured by the First Mortgage or the Rezoning Mortgage and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

(b) Separateness Covenants:

"Notwithstanding any provision of this instrument to the contrary, the following shall govern: For so long as the Rezoning Mortgage exists on the Property or Con Edison is the holder of the First Mortgage, the Corporation shall conduct its affairs in such a manner as to maintain a separate and distinct identity.

Schedule "6"

Exceptions (if any) to Representations of the Parties

1. Exceptions (If Any) to Developer's Representations:

(a) None.

2. Exceptions (If Any) to Con Edison's Representations:

(a) With respect to Con Edison's representation in Section 16.1(b), the consent orders described as the "Existing Consent Orders" in the RDE Contract have been issued and are outstanding with respect to the Properties.

Schedule "7"

Miscellaneous Closing Deliveries

From Developer to Con Edison:

- A. As provided in Section 15.2 of the Agreement, the following items:
1. Payment of the Purchase Price then due and payable with respect to the particular Property;
 2. At any GMV Closing, the Rezoning Collateral;
 3. The Future Rezoning Covenant, which shall be recorded in the Office of the Register of the City of New York simultaneously with the Deed;
 4. At any Developer Call Closing, the Developer Call L/C;
 5. If RDE Completion has occurred, Con Edison may draw any portion of the RDE L/C allocated to such Property but not previously drawn;
- B. The following additional items:
6. Certified copy of certificate of organization and operating agreement of Developer and each Developer Principal;
 7. Certified copy of certificate of organization and operating agreement of each Title LLC acquiring a Property (and certificate of incorporation and by-laws of the Outside Corporate Member of each Title LLC);
 8. Certificate(s) of good standing dated as of a date within 15 days of the Closing Date, evidencing that Developer and each Title LLC acquiring a Property is in good standing in the state of its formation (and with respect to each entity not formed in New York authorized to conduct business in the State of New York);
 9. Consent of Developer, all managers and members of Developer, each Title LLC acquiring a Property, and consent of the shareholders and directors of the Outside Corporate Member of each Title LLC acquiring a Property, authorizing this Agreement and the transactions contemplated hereby;
 10. Certificate of incumbency of Persons executing Closing Instruments on behalf of Developer and each Title LLC acquiring a Property;
 11. An Assumption from each Title LLC acquiring a Property in the form attached as Exhibit "M" to this Agreement;
 12. Opinions of counsel for Developer and each Title LLC in the forms attached as Exhibit "P-1" and "P-2" to this Agreement;
 13. New York State and City Real Property Transfer Tax Forms;

14. An agreement of First Mortgagee in the form attached as Exhibit "F" to the Agreement;
15. At the closing of Waterside, an assignment and assumption agreement relating to the 1000-year lease of a portion of Waterside, from Con Edison to the applicable Title LLC, in the form attached hereto as Exhibit "K" (the "Assignment of Ground Lease");
16. Unless the As-Built Amount is paid at Closing, the As-Built Amount Guaranty in the form attached hereto as Exhibit "J";
17. A Memorandum of Sale Contract Provision in the form attached hereto as Exhibit "G";
18. Uniform Commercial Code financing statements from all parties listed in Section 26.6(b) to secure Con Edison's interest in the proceeds of Covered Sales;
19. At a GMV Closing, Uniform Commercial Code financing statements from Developer to secure its pledge of all ownership interests in the applicable Title LLC;
20. At a GMV Closing, a Title Insurance Policy insuring Con Edison's interest as mortgagee under the Rezoning Mortgage subject only to the Permitted Encumbrances and the First Mortgage;
21. At a Developer Call Closing, for each other Property with respect to which all Closing conditions have not been satisfied, the Call Date L/C in the form attached hereto as Exhibit "R";
22. A FIRPTA certificate;
23. A certificate updating Developer's representations and warranties in Section 17.1;
24. Updates of each Financial Statement and Statement of Condition listed on Schedule "10";
25. At the Closing of 685 First Avenue, the Zoning Lot Agreement in the applicable form attached hereto as Exhibit "L"; and
26. At the Closing of 708 First Avenue or Waterside, whichever occurs first, the Zoning Lot Agreement in the applicable form attached hereto as Exhibit "L" (unless the Properties are subdivided for purposes of the Zoning Resolution pursuant to the First Amendment).

From Con Edison to Developer:

- A. As provided in Section 15.1 of the Agreement, the following documents:
 1. The Deed to the respective Property;
 2. At the Closing of 685 First Avenue, the Zoning Lot Agreement in the applicable form attached hereto as Exhibit "L";

3. At the Closing of 708 First Avenue or Waterside, whichever occurs first, the Zoning Lot Agreement in the applicable form attached hereto as Exhibit "L" (unless the Properties are subdivided for purposes of the Zoning Resolution pursuant to the First Amendment);

B. The following additional items:

4. Certificate of good standing dated as of a date within 15 days of the Closing Date evidencing that Con Edison is in good standing in the State of New York;
5. Certificate of resolutions of the Board of Trustees of Con Edison authorizing this Agreement and the transactions contemplated thereby;
6. Certificate of incumbency of Persons executing Closing Instruments on behalf of Con Edison;
7. New York State and City Real Property Transfer Tax Forms;
8. Opinion of counsel for Con Edison in the form attached as Exhibit "P-3" to the Agreement;
9. At the Closing of Waterside, the Assignment of Ground Lease;
10. At the Closing of Waterside, an estoppel certificate in the form attached hereto as Exhibit "Q" from Con Edison to the applicable Title LLC with respect to the 1000-year lease of a portion of Waterside;
11. The Future Rezoning Covenant;
12. A certificate updating Con Edison's representations and warranties in Section 16.1;
13. At the Closing of the last Property, all L/Cs then held by Con Edison, except: (a) at a Developer Call Closing, Con Edison shall not be required to return the Developer Call L/C (and such L/C shall be returned as required by the Agreement); and (b) at a Closing prior to the Rezoning Approval Date where the Rezoning L/C has not been replaced with the Developer Call L/C, Con Edison shall not be required to return the Rezoning L/C (and such L/C shall be returned as required by the Rezoning L/C Agreement).

From other parties to Developer

1. Except at a Developer Call Closing, Phase I Approval (as defined in the RDE Contract) with respect to the Property (or Properties) which are the subject of the Closing.

Schedule "8"

Authorized Representatives; Notice Addresses

For Con Edison:

Authorized Representative:

Mr. Robert P. Stelben
Vice President and Treasurer

Notice Address:

Mr. Robert P. Stelben
Vice President and Treasurer
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Fax: (212) 260-5713

copies to:

John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, NY 10019-5389
Fax: (212) 424-8500
Attention: Alan M. Berman, Esq.

For Developer:

Authorized Representatives:

Mr. Richard L. Fisher
Managing Member of Fisher East River Associates LLC

Mr. Sheldon H. Solow
Managing Member of East River Realty Development LLC

Notice Address:

Mr. Richard L. Fisher
FSM East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Fax: (212) 940-6808

copies to:

Mr. Sheldon H. Solow
East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Fax: (212) 319-4195

Martin L. Edelman, Esq.
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street
New York, New York 10022
Fax: (212) 318-6936

Chris M. Smith, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Fax: (212) 848-7179

Schedule "9"

Organizational Representations
of Developer and Con Edison

Part One - Developer:

1. Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New York.
2. Annex A to this Schedule includes a true, correct and complete list of:
 - (a) all Developer Principals;
 - (b) as to each Developer Principal which is a legal entity: the partners, if a partnership; the managers and members, if a limited liability company; and the executive officers, directors and shareholders if a corporation;
 - (c) each Title LLC and all of its respective managers and members; and
 - (d) the individuals who are ultimately the indirect beneficial owners of each member of Developer (other than shareholders or members of the Morgan Stanley entity).
3. Developer and each Developer Principal has all necessary power and lawful authority to own and operate its assets and properties and to carry on its business (including all transactions contemplated under this Agreement and the Closing Instruments).
4. Developer has delivered to Con Edison a true, correct, and complete copy of the articles of organization by which Developer was formed, together with all amendments thereof.
5. The execution and delivery by Developer of this Agreement and the Closing Instruments, and the consummation by Developer of the transactions contemplated thereby, have been duly authorized and approved by all members and managers of Developer, subject to the terms of this Agreement.
6. The execution and delivery of this Agreement and the Closing Instruments by Developer, and the consummation of the transactions contemplated hereby, will not: (i) violate any provision of Developer's articles of organization or the limited liability operating agreement of Developer; or (ii) to the actual knowledge of Developer result in the acceleration of any material indebtedness of Developer.
7. At the Closing of each Property Developer will deliver to Con Edison a certificate setting forth, for each Title LLC acquiring a Property and each Developer Principal executing and delivering any Closing Instrument, the same information as set forth in paragraphs 1-6 above, which certificate shall be deemed a representation of Developer and the respective Title LLC and Developer Principal.

Part Two - Con Edison:

1. Con Edison is a corporation duly organized, validly existing and in good standing under the laws of the State of New York.
2. Con Edison has all necessary power and lawful authority to own and operate its assets and properties and to carry on its business (including all transactions contemplated under this Agreement and the Closing Instruments).
3. Con Edison has delivered to Developer a true, correct and complete copy of the articles of incorporation by which Con Edison was formed, together with all amendments thereof.
4. The execution and delivery of this Agreement and the Closing Instruments by Con Edison, and the consummation by Con Edison of the transactions contemplated thereby, have been duly authorized and approved by the Board of Trustees of Con Edison, subject to the terms of this Agreement.
5. The execution and delivery of this Agreement and the Closing Instruments by Con Edison, and the consummation of the transactions contemplated thereby, will not (i) violate any provision of Con Edison's certificate of incorporation or by-laws; or (ii) to the actual knowledge of Con Edison result in the acceleration of any material indebtedness of Con Edison.

Annex "A" to Schedule "9"

1. Members of Developer:

Fisher East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

East River Realty Development LLC
c/o Solow Realty and Development Company
9 West 57th Street
New York, New York 10019

[Getty and/or] an affiliate of Morgan Stanley*

2. Managers of Developer:

Fisher East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

East River Realty Development LLC
c/o Solow Realty and Development Company
9 West 57th Street
New York, New York 10019

3. As to each Developer Principal:

(a) East River Realty Development LLC
Sheldon H. Solow is the sole member and manager.

(b) Fisher East River Associates LLC
Members: Arnold Fisher, Richard L. Fisher, M. Anthony Fisher, Kenneth Fisher, Steven Fisher, Emily Landau and Martin L. Edelman
Managing Members: Richard L. Fisher and M. Anthony Fisher

4. As to each Title LLC**:

[names and addresses; list all managers and members of each Title LLC]

* Getty and/or an affiliate of Morgan Stanley, will be granted equity interests in Developer after the Agreement is signed, in accordance with Article 26. Promptly following each transaction, Developer shall update this Annex "A" to evidence such transaction.

** The Title LLCs have not yet been formed. Prior to each Closing, Developer shall update this Annex "A" to include the required information relating to the Title LLC for the applicable Property.

5. Ultimate Indirect Owners of Each Member of Developer:

<u>Member</u>	<u>Owners</u>
1. Fisher East River Associates LLC	Arnold Fisher, Richard L. Fisher, M. Anthony Fisher, Kenneth Fisher, Steven Fisher, Emily Landau and Martin L. Edelman
2. East River Realty Development LLC	Sheldon H. Solow

Schedule "10"

List of Financial Statements
of Developer and Developer Principals

The following is a list of Financial Statements and Statements of Condition delivered by the following Persons to Con Edison:

A. Financial Statement

	<u>Person for whom issued</u>	<u>Date prepared</u>	<u>Prepared by</u>
1.	FSM East River Associates LLC		

B. Statements of Condition

	<u>Person for whom issued</u>	<u>Date prepared</u>	<u>Prepared by</u>
1.	Fisher East River Associates LLC		
2.	East River Realty Development LLC		
3.	Richard L. Fisher		
4.	Sheldon H. Solow		
5.	Arnold Fisher		
6.	M. Anthony Fisher		
7.	Kenneth Fisher		
8.	Steven Fisher		
9.	Emily Landau		
10.	Martin L. Edelman		

Exhibit "A"
Form of Second L/C

[Letterhead of Issuer]
Standby Letter of Credit
No. _____

_____, 200_

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of FSM East River Associates LLC ("Account Party") for up to an aggregate amount of U.S. Thirty Million Dollars (\$30,000,000) (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that:
 - (a) Account Party has failed to deliver the "Third L/C" pursuant to that certain Agreement dated as of November 15, 2000 between Account Party and the Beneficiary (the "Sale Agreement") on or before the "Third L/C Due Date" (as defined in the Sale Agreement); or
 - (b) a "Developer Event of Default" (other than as described in (a) above) has occurred under the Sale Agreement (and specifying, by reference to a particular paragraph of the Sale Agreement, the particular Developer Event of Default which has occurred); or
 - (c) this Letter of Credit will expire in less than thirty days and Account Party has not given Beneficiary a replacement Letter of Credit which meets the criteria set forth in Section 5.6 of the Sale Agreement; or

- (d) Account Party has made an assignment for the benefit of creditors or has filed a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law has been filed against Account Party and such involuntary petition has not been dismissed within 90 days after filing; or a petition has been filed by or against Account Party under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition has not been dismissed within 90 days after filing; or a receiver, trustee or liquidator has been appointed for Account Party or its property and such receiver, trustee or liquidator has not been discharged within 90 days from the date of his/her appointment.

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on) _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail, return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

_____ BANK
By: _____

Schedule "A"

Other Limited Liability Companies
Acquiring Prior Properties or
Other Current Properties
and the Other Deeded properties

[insert list]

Exhibit "F"

Form of Rezoning Mortgage;
Form of Agreement of First Mortgagee

[Rezoning Mortgage]

[TITLE LLC],

Mortgagor,

and

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Mortgagee,

MORTGAGE AND SECURITY AGREEMENT

Dated as of _____, 200_

This instrument affects real and personal property known as Lot ____, Block ____ on the Tax Map of the City of New York, County and State of New York.

RECORD AND RETURN TO:

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attention: Alan M. Berman, Esq.

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MORTGAGE AND SECURITY AGREEMENT (this "Mortgage" or this "instrument") made as of the ____ day of _____, 200_, from [Title LLC], a New York limited liability company, having an address c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Mortgagor"), to CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, having an address at 4 Irving Place, New York, New York 10003 ("Mortgagee"),

Introductory Statement

FSM East River Associates LLC ("Developer") is the owner of 100% of the membership and/or other equity ownership interests in Mortgagor.

Developer and Mortgagee are parties to that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") with respect to the sale by Mortgagee to Developer of certain properties known as 616 First Avenue, 685 First Avenue, 700 First Avenue and 708 First Avenue, in the City and State of New York, as more particularly described in the Sale Agreement.

Under the Sale Agreement, if Mortgagee conveys title to any property to Developer or its designee at a GMV Closing (as defined below) before the Rezoning (as defined below) occurs with respect to such property, Developer and its designee are required, among other things, to execute and deliver to Mortgagee certain documents and instruments as security for Developer's obligation to pay a portion of the purchase price for the Property due upon Rezoning (such portion, as more fully described in the Sale Agreement, the "Rezoned Price").

Simultaneously herewith, Mortgagee is conveying [insert Property address] (as more fully defined below, the "Property") to Mortgagor, as Developer's designee.

The Rezoning has not yet occurred with respect to the Property.

Simultaneously herewith, as required under the Sale Agreement, Mortgagor has executed and delivered to Mortgagee: (a) a Rezoning Note evidencing the obligation to pay the Rezoned Price (which is also signed by Developer); (b) a Rezoning L/C issued by _____ Bank in the face amount of _____; and (c) a Rezoning L/C Agreement, and Developer has executed and delivered to Mortgagee that certain Rezoning Pledge Agreement. This Agreement and each of the foregoing instruments are referred to together in this instrument as the "Rezoning Security Documents".

Simultaneously herewith, to secure purchase money financing in the amount of _____ Dollars (\$_____) (the "First Loan") from _____ ("First Mortgagee"): (a) Mortgagor has executed and delivered to First Mortgagee a first mortgage on the Property (the "First Mortgage"); and (b) Developer has executed and delivered to First Mortgagee a pledge of the membership and/or other equity ownership interests in Mortgagor (the "First Pledge").

[Developer, through the other limited liability companies listed on Schedule B hereto (each, an "Other Title LLC") is simultaneously executing and delivering a first priority mortgage and a first priority pledge with respect to each property described as an "Other Current Property" on Schedule B

hereto.]1 Developer, in each case through an Other Title LLC, may in the future execute and deliver a first priority mortgage and first priority pledge with respect to additional properties pursuant to the Sale Agreement (each such, a "Future Property"). The [Other Current Properties, and the] Future Properties are referred to collectively in this instrument as "Other Deeded Properties."

Developer and/or Other Title LLCs [are executing and delivering documents similar to the Rezoning Security Documents with respect to the Other Current Properties, and]2 may execute and deliver documents similar to the Rezoning Security Documents in the future with respect to the Future Properties (such documents, collectively, the "Other Property Rezoning Security Documents").

In order to secure the payment and performance of all obligations of Mortgagor and Developer under the Rezoning Note up to the maximum principal sum of Twenty Five Million and 00/100 United States Dollars (\$25,000,000.00), Mortgagor has duly authorized the execution and delivery of this Mortgage.

NOW, THEREFORE, in consideration of the Property and of the mutual covenants herein contained,

TO SECURE (a) the full, faithful and punctual payment by Developer and Mortgagor of the amount payable under the Rezoning Note and the Other Property Rezoning Security Documents up to the maximum principal sum of Twenty Five Million and 00/100 United States Dollars (\$25,000,000.00) with interest as provided by the Rezoning Note, and such other sums as may be advanced by Mortgagee pursuant to this Mortgage for the payment of Impositions (as defined below) and insurance premiums and for the preservation of the lien of this Mortgage (together with reasonable attorneys' fees and disbursements) and the performance of and compliance with each and every term, condition, agreement, undertaking, covenant and provision to be performed or complied with by Mortgagor pursuant to this Mortgage, and (b) the performance by Mortgagor and/or Developer, as applicable, under this Mortgage, the other Rezoning Security Documents and the Other Property Rezoning Security Documents, Mortgagor hereby creates in favor of Mortgagee a security interest in, and mortgages, grants, assigns, transfers and sets over to Mortgagee, its successors and assigns all of Mortgagor's estate, right, title, interest, claim and demand (whether at law or in equity, in possession or expectancy) in, to and under the following described property (collectively, the "Mortgaged Property"), whether now owned or held or hereafter acquired by Mortgagor:

(i) the real property described in Schedule A, including all easements, rights, privileges and appurtenances that in any way belong or appertain to such property, and all estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, whether in law or in equity, in possession or expectancy, now or hereafter acquired, together with any and all options held by Mortgagor to purchase, lease, or sublease or otherwise acquire such property or any portion thereof or interest therein, and any greater estate in such property now owned or hereafter acquired by Mortgagor (collectively, the "Property");

(ii) all structures, buildings or other improvements now or hereafter located upon the Property or on any part thereof, including all plant, equipment, apparatus, machinery and fixtures forming part of said structures, buildings and other improvements (collectively, the "Improvements");

(iii) all fixtures, fittings, furniture, furnishings, appliances, apparatus, equipment,

1 Delete if inapplicable.

2 Delete if inapplicable.

machinery and other articles of personal property (including all building service equipment and building materials and supplies), other than those owned by lessees, now or at any time hereafter attached to, placed upon, or used or to be used in any way in connection with the use, enjoyment, occupancy or operation of the Property or the Improvements (collectively, the "Chattels");

(iv) all leases, subleases, tenancies, subtenancies and rental and occupancy agreements for the use and occupancy of all or any portion of the Mortgaged Property which are now in existence or which may exist at any time during the period that this Mortgage is in effect, together with any modifications, amendments, renewals or extensions of any of the foregoing, whether or not written and, if written, whether or not recorded (all of which present and future leases, subleases, tenancies, subtenancies and rental and occupancy agreements, as modified, amended, renewed or extended, are hereinafter referred to, each as a "Lease" and, collectively, as the "Leases"), and all estate, right, title, interest, claim and demand of Mortgagor under the Leases, including any cash or securities deposited by lessees or others to secure their performance, the rents and all other sums payable thereunder and the right to receive and collect the rents, revenues, receipts, income, earnings, issues, accounts receivable and profits derived from the Mortgaged Property (collectively, the "Rents"), and all guarantees of the performance of lessees and other obligors under such leases and other agreements and instruments;

(v) all Authorizations (as defined below), agreements, franchises, applications, and other authorizations relating to the use, occupation, development, subdivision or operation of the Mortgaged Property or any business or activity conducted by or on behalf of Mortgagor on the Mortgaged Property;

(vi) all rights of Mortgagor under that certain Exit Strategy Contract between TRC Engineers, Inc. and TRC Environmental Corporation (collectively, "TRC") and Mortgagee relating to remediation and demolition of the Property and other properties and that certain Guaranty issued by TRC Companies, Inc. with respect to the Exit Strategy Contract (collectively, the "TRC Contract") (other than Mortgagor's right to indemnification under the TRC Contract with respect to matters arising or accruing prior to the effective date of foreclosure of this Mortgage), all present and future insurance policies now or hereafter in effect insuring the Mortgaged Property or any portion thereof (other than the environmental insurance policies issued by American International Specialty Lines Insurance Company insuring Mortgagee, Developer, Mortgagor and other parties with respect to the Property and other properties (the "Environmental Insurance") and any unearned premiums therefor accrued or to be accrued and all proceeds payable thereunder, together with all moneys now or hereafter on deposit for the payment of premiums in respect of such policies and Impositions (as defined below), any Rents derived from the Mortgaged Property, and all refunds of real estate taxes and assessments;

(vii) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including proceeds of insurance and condemnation awards, judgments, awards of damages and settlements made as a result or in lieu of any condemnation, together with all claims, demands, causes of action and recoveries for any loss or diminution in value of any of the foregoing;

(viii) all warranties, guarantees, plans and specifications, shop and working drawings, and all other documents and materials (of any and every kind and nature) now or hereafter existing in respect of the Mortgaged Property;

(ix) all betterments, renewals, extensions and replacements of, all substitutions for, and all additions, accessions and appurtenances to, the Mortgaged Property, hereafter acquired by or

released to Mortgagor or constructed, assembled or placed by or for Mortgagor at, on or beneath the Property or attached to the Property or the Mortgaged Property, as more particularly provided in Section 1.6 of this Mortgage; and

(x) all claims (of any and every kind and nature) relating to the foregoing components of the Mortgaged Property.

TO HAVE AND TO HOLD unto Mortgagee, its successors and assigns forever.
Mortgagor further agrees as follows:

Definitions

Unless the context otherwise specifies or requires, each term specified below shall have the meaning ascribed to it below.

"Article 2 Sale" is defined in Section 2.3(a).

"Authorization" means each permit, certificate, approval, consent, license and authorization required to be obtained from a Government Entity in order that the Mortgaged Property shall be owned, used, operated and maintained, and that Mortgagor's business at the Mortgaged Property shall be conducted, in accordance with applicable laws.

"Call Date L/C" is a letter of credit that Developer may deliver to Mortgagee under the terms of the Sale Agreement, as more fully described in the Sale Agreement.

"Chattels" is defined in the Introductory Statement.

"Con Edison Indemnitees" means Mortgagee and all Persons controlled by Mortgagee, and the officers, directors and employees of each of them.

"Control" or "controlled by" means (i) the ownership of 50% or more of the common shares, membership interests, partnership interests, or other equity of a Person; and/or (ii) the possession directly or indirectly of the power to direct the management and policies of a Person, whether through voting control, contractual rights, or otherwise.

"Default Rate" means an annual rate of interest equal to the lesser of (i) the prime rate announced from time to time by Citibank, N.A. plus 2% and (ii) the maximum rate permitted by law.

"Developer" is defined in the Introductory Statement.

"Developer Call Price" means additional purchase price for the Property which Mortgagor may elect to pay under certain circumstances, as more fully described in the Sale Agreement.

"Documents of Further Assurance" means documents necessary to confirm the lien of the Mortgage, the mortgaging to Mortgagee of the Mortgaged Property, or the security interests granted to Mortgagee, including deeds, mortgages, security agreements, assignments, title insurance updates, affidavits, certificates, estoppel letters, insurance certificates and consent letters.

"Encumbrance" means a mortgage, deed of trust, security agreement, security interest, lien, levy, lease, pledge, hypothecation, charge, claim, license, judgment, covenant, easement, survey problem, and/or any other encumbrance or restriction of any and every kind whatsoever.

"Enforcement Notice" is defined in Section 5.2(b).

"Environmental Insurance" is defined in the Introductory Statement.

"Event of Default" is defined in Section 2.1.

"Fees-and-Costs" means reasonable fees of attorneys, architects, engineers, expert witnesses, consultants, and other Persons, and costs, expenses, and disbursements charged by, or reimbursable to, the foregoing.

"Final Determination" means a determination of a court, the City of New York or any other Government Entity which is final beyond appeal.

"First Loan" is defined in the Introductory Statement.

"First Loan Documents" means all documents which evidence and/or secure the First Loan, including the First Pledge.

"First Mortgage" is defined in the Introductory Statement.

"First Mortgagee" is defined in the Introductory Statement.

"First Pledge" is defined in the Introductory Statement.

"Floor Area" means Floor Area as defined in Section 12-10 of the Zoning Resolution.

"Future Property" is defined in the Introductory Statement.

"Government Entity" means the United States; the State of New York; the City of New York; any other political subdivision of any of the foregoing; and any agency, authority, department, court, local development corporation, business improvement district, commission or other legal entity of any of the foregoing, in each instance now existing or hereafter created, having or claiming jurisdiction over Mortgagor, the Mortgaged Property or the use, occupancy, operation or condition of the Mortgaged Property or any portion thereof.

"GMV Closing" means the closing of title to the Property prior to Rezoning for the Guaranteed Minimum Value, as more fully described in the Sale Agreement.

"Imposition" is defined in Section 1.7(a).

"Improvements" is defined in the Introductory Statement.

"Leases" is defined in the Introductory Statement.

"Legal Proceeding" means an action, litigation, administrative or other governmental proceeding or other legal or equitable proceeding of any kind.

"Liabilities" is defined in Section 1.8.

"Maximum First Loan Amount" is defined in Section 1.5(c).

"Maximum Interest Amount" is defined in Section 4.5.

"Minor Default" is defined in Section 2.1.

"Mortgage" is defined in the Preamble.

"Mortgaged Property" is defined in the Introductory Statement.

"Mortgagee" is defined in the Preamble.

"Mortgagor" is defined in the Preamble.

"Other Current Property" is defined in the Introductory Statement.

"Other Deeded Properties" is defined in the Introductory Statement.

"Other Title LLCs" is defined in the Introductory Statement.

"Person" means an individual person, a corporation, partnership, trust, joint venture, limited liability company, proprietorship, estate, association, land trust, other trust, Government Entity or other incorporated or unincorporated enterprise, entity or organization of any kind.

"Prior Encumbrances" is defined in Section 3.1.

"Property" is defined in the Introductory Statement.

"Proposed Rezoning" means the proposed Rezoning of the Property, as described more fully in Schedule 4 of the Sale Agreement.

"Rents" is defined in the Introductory Statement.

"Restrictions" is defined in Section 1.18.

"Rezoning" means a decision and/or determination pursuant to the procedures set forth in the New York City Charter and/or such other laws, rules and regulations as are applicable thereto in respect of applications for any change in the zoning map affecting the Property, and/or any special permits, authorizations, and/or certifications under and pursuant to the Zoning Resolution with respect to the Property, creating, revising, or permitting Floor Area and/or other rights to construct on, above or under the Property permitted by the Zoning Resolution, as are necessary and/or appropriate for the development on the Property of residential, commercial, community facility or other uses permitted by the Zoning Resolution.

"Rezoning L/C" is defined in the Introductory Statement.

"Rezoning L/C Agreement" is defined in the Introductory Statement.

"Rezoning Note" is defined in the Introductory Statement.

"Rezoning Pledge Agreement" is defined in the Introductory Statement.

"Rezoning Security Documents" is defined in the Introductory Statement.

"Sale Agreement" is defined in the Introductory Statement.

"Transfer" or "to Transfer" means to sell, transfer, assign, pledge, donate, exchange, swap, hypothecate, grant a security interest in, mortgage, option or otherwise encumber or dispose of, voluntarily or involuntarily, with or without consideration.

"TRC" is defined in the Introductory Statement.

"TRC Contract" is defined in the Introductory Statement.

"ULURP" means the Uniform Land Use Review Procedure (New York City Charter Section 197).

"Zoning Resolution" means the Zoning Resolution of the City of New York (or any successor law), as amended from time to time.

Wherever used in this Mortgage:

(a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";

(b) the word "day" means a calendar day unless otherwise specified;

(c) the phrase "at Mortgagor's expense" or "at Mortgagee's expense", means, as applicable, at the sole cost and expense of the particular party;

(d) the word "party" means Mortgagor or Mortgagee;

(e) the word "law" (or "laws") means any law, rule, regulation, order, statute, ordinance, resolution, regulation, code, decree, judgment, injunction, mandate or other legally binding requirement of a Government Entity applicable in the particular context;

(f) the word "notice" shall mean notice in writing (whether or not specifically so stated);

(g) "month" means a calendar month unless otherwise specified;

(h) the word "amended" means "amended, modified, extended, renewed, changed, or otherwise revised"; and the word "amendment" means "amendment, modification, extension, change, renewal, or other revision";

(i) the phrase "subject to the terms of this Mortgage" means "upon and subject to all terms, covenants, conditions and provisions of this Mortgage";

(j) the words "utility" (or "utilities") means gas, water, chilled water, sewer, electricity, steam, power, and other utilities of any kind;

(k) the words "approval", "approve", and "consent" shall mean approval, approve, or consent in writing (whether or not so specified); and

(l) references to "dollars" or "\$" mean United States dollars.

ARTICLE 1

Mortgagor's Covenants

Mortgagor covenants and agrees for the benefit of Mortgagee as follows:

1.1. Title. This Mortgage is and shall remain a valid and enforceable second lien on the Mortgaged Property, subject solely to the exceptions referred to in Section 3.1. At Mortgagor's sole cost and expense, Mortgagor shall defend and fully protect and preserve such title and the validity and priority of the lien of this Mortgage against the claims of all other persons and entities. Mortgagor is the record owner of the Mortgaged Property.

1.2. Security Agreement. This Mortgage shall constitute a security agreement with respect to such components of the Mortgaged Property as to which a security interest may attach under the Uniform Commercial Code and, with respect to such Chattels as at any time may be fixtures, a fixture filing under the Uniform Commercial Code. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth on page 1 of this Mortgage. This Mortgage is to be filed for record with the recorder of deeds of the county or counties in which the Property is situated. Mortgagor agrees to execute any Uniform Commercial Code financing statements and continuation statements relating to the Mortgaged Property as requested by Mortgagee, which Mortgagee may file and/or record in order to perfect the security interests granted hereby.

1.3. Recordation; Certain Costs and Expenses.

(a) Recording and Filing. Upon the execution and delivery of this Mortgage, and thereafter from time to time, whether or not Mortgagee so demands, Mortgagor, at Mortgagor's sole cost and expense, shall cause this Mortgage and any other instrument creating or evidencing Mortgagee's lien upon, or security interest in, the Mortgaged Property and each Document of Further Assurance to be filed, registered or recorded, as the case may be, in such manner and in such places as may be required by laws in order to publish notice of, and fully to protect and preserve, the liens and security interests created by and granted pursuant to this Mortgage with respect to the Mortgaged Property.

(b) Fees and Costs of Mortgage, Related Documents. Mortgagor shall punctually pay in strict compliance with applicable laws (i) all filing, registration or recording fees with respect to, and all other governmental expenses incident to, the acknowledgment and filing, registration or recording of this Mortgage, any amendment, extension, renewal or modification hereof, any mortgage supplemental hereto, any other security instrument with respect to the Mortgaged Property, any Document of Further Assurance, and any other Rezoning Security Document executed by Mortgagor, and (ii) all stamp taxes and other taxes, duties, imposts, assessments and charges imposed by any Government Entities arising out of or in connection with the execution, delivery, filing, registration, or recording of any of the foregoing.

1.4. Obligation to Pay. Mortgagor shall punctually pay in strict compliance with the Rezoning Note, all indebtedness owing to Mortgagee pursuant to the Rezoning Note. All of the foregoing

up to the maximum principal amount of Twenty Five Million Dollars (\$25,000,000.00) (plus interest and other charges as provided hereunder) shall be deemed to be indebtedness secured by this Mortgage and shall be paid without any abatement, credit, reduction, deduction, claim, counterclaim, set-off or offset whatsoever, and free and clear of all defenses.

1.5. Compliance with Laws and Other Requirements.

(a) Legal Requirements. Mortgagor shall fully, faithfully and punctually comply (and shall cause all lessees and other persons and entities that occupy or enter upon the Mortgaged Property at all times so to comply) with all applicable laws, including, without limitation, laws that, if violated, would cause the Mortgaged Property or a part thereof to be subject to forfeiture, subject to any rights that Mortgagor may have under the First Mortgage to contest such laws. Mortgagor, if a corporation, partnership, trust or other legal entity, shall do all things necessary to preserve and keep in full force and effect in all jurisdictions where the same presently are in force and effect Mortgagor's existence, franchises, rights and privileges.

(b) First Mortgage. Mortgagor shall not increase the principal indebtedness secured by the First Mortgage as of the date hereof nor shall Mortgagor request or accept any future advances under the First Mortgage or any such other instrument unless Mortgagor delivers to Mortgagee, prior to delivering to First Mortgagee or recording any document or instrument evidencing or securing any such increase or advance a replacement Rezoning L/C in an amount equal to the total increased principal indebtedness secured by the First Mortgage plus six months' interest on such amount and six months' Impositions but in no event shall Mortgagor increase the principal indebtedness secured by the First Mortgage to an amount which exceeds \$ _____ [insert amount equal to 120% of GMV of the Property] (the "Maximum First Loan Amount").

1.6. Scope of Security. All right, title and interest of Mortgagor in and to all betterments, renewals, extensions and replacements of, all substitutions for, and all additions, accessions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by or for Mortgagor at, on or beneath the Property or attached to the Improvements, and all conversions of any of the foregoing, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, without any further mortgage, conveyance, assignment or other act of Mortgagor, shall become subject to the liens and security interests created by or pursuant to this Mortgage as fully and completely, and with the same effect, as if now owned by Mortgagor and specifically described herein. Mortgagor shall, however, execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

1.7. Payment of Impositions for Mortgaged Property.

(a) Taxes, Charges, Etc. Mortgagor shall, before interest or penalties would accrue thereon, pay and discharge all taxes and other governmental charges of every kind and nature imposed upon or assessed against Mortgagor or the Mortgaged Property or any portion thereof or upon the Rents derived therefrom or arising in respect of the occupancy, use, possession or transfer thereof, including, without limitation, real estate, school, personal property, income, gross receipts and franchise taxes; water, water meter and sewer rents, rates and charges; service charges with respect to police protection,

fire protection, street and highway construction, maintenance and lighting, sanitation and water supply; assessments and levies; permit, inspection and license fees; and all other public and private charges, general and special, ordinary and extraordinary, foreseen and unforeseen, together with all interest, fines and penalties applicable thereto (each of the foregoing, an "Imposition" and, collectively, "Impositions"). Mortgagor shall, upon Mortgagee's request, promptly deliver to Mortgagee documentation reasonably satisfactory to Mortgagee evidencing such payments.

(b) Liens and Claims. Mortgagor shall promptly pay or bond all claims and demands of mechanics, materialmen, laborers and others as required by the First Loan Documents. Mortgagor shall, upon Mortgagee's request, promptly deliver to Mortgagee evidence reasonably satisfactory to Mortgagee of any such payment or bonding. Mortgagor shall promptly cause any lien or other Encumbrance filed or recorded against the Mortgaged Property (other than liens and Encumbrances filed or recorded against the Property by, through or under the TRC Contract) to be discharged, bonded or otherwise secured to Mortgagee's satisfaction.

(c) Mortgagor's Right to Contest. Mortgagor, in good faith and at Mortgagor's sole cost and expense and after Mortgagee shall have received written notice thereof from Mortgagor, may contest the amount or the validity of any Imposition by appropriate legal proceedings, provided that (i) Mortgagor shall prosecute such proceedings diligently; (ii) no Event of Default shall exist during the pendency of any such proceedings; (iii) such proceedings shall operate to suspend the collection of any such Imposition or other realization thereon and neither the Mortgaged Property nor any part thereof nor interest therein would, by reason of such suspension, be forfeited or lost, or subjected to any lien, other encumbrance or charge and neither Mortgagor nor Mortgagee would, by reason thereof, be subject to civil or criminal liability; (iv) prior to such contest Mortgagor shall provide Mortgagee evidence that Mortgagor has furnished all security required by First Mortgagee in connection with such contest; and (v) if at any time nonpayment of any Imposition would result in the delivery of a tax deed or similar instrument to the Mortgaged Property or any portion thereof or any forfeiture with respect to the Mortgaged Property, then Mortgagor shall pay such Imposition (together with all applicable fines, penalties and other governmental charges and any interest or costs with respect thereto) in time to prevent the delivery of such deed or instrument or the effectuation of such forfeiture.

1.8. Indemnity by Mortgagor. Mortgagor shall defend and indemnify the Con Edison Indemnitees against, and save the Con Edison Indemnitees harmless from, and shall reimburse the Con Edison Indemnitees with respect to, any and all claims, demands, actions, causes of action, injuries, orders, losses, liabilities (statutory or otherwise), obligations, damages (except consequential damages), fines, penalties, taxes, costs and expenses including, without limitation, reasonable attorneys' fees and expenses (collectively, "Liabilities") incurred by, imposed upon or asserted against the Con Edison Indemnitees or any one or more of them by reason of, or in connection with (a) Mortgagee's interest in the Mortgaged Property, (b) any misrepresentation or other incorrect statement or certification by Mortgagor contained in this Mortgage, (c) any failure by Mortgagor to comply with any of the terms, conditions or other provisions set forth in this Mortgage or in any recorded instrument that affects the Mortgaged Property, or (d) any accident, injury (including death at any time resulting therefrom) or damage to any person or property occurring in, on or about the Mortgaged Property or any portion thereof, whether resulting from any act or omission of Mortgagor or any agent, employee, contractor, lessee, sublessee, licensee or invitee of Mortgagor or otherwise (except to the extent that such accident, injury or damage is caused by the negligence or willful misconduct of the Con Edison Indemnitees). The foregoing indemnity shall not include any Liabilities covered by the TRC Contract or the Environmental Insurance. Mortgagor shall pay, and save Mortgagee harmless from, any mortgage recording taxes, filing fees or other ad valorem taxes or charges imposed by reason of the issuance of this Mortgage. All amounts payable to

Mortgagee under this Section shall be payable within 10 days after demand by Mortgagee, together with interest at the Default Rate from the date of such demand until the date of receipt by Mortgagee of full payment, and shall be secured by this Mortgage. Mortgagor's obligations under this Section shall survive payment in full of the Rezoning Note and any discharge, release or satisfaction of this Mortgage, any complete or partial foreclosure of this Mortgage and/or the delivery of one or more deeds in lieu of any such foreclosure.

1.9. Insurance and Casualty.

(a) Liability Insurance. Mortgagor shall maintain commercial general liability insurance, written on the "occurrence" basis, with a combined single limit of not less than Ten Million Dollars (\$10,000,000).

(b) Policy Requirements. All insurance required or permitted to be maintained pursuant to this Section 1.9 shall (i) be maintained at the sole cost and expense of Mortgagor; (ii) be written in such forms and by such companies as are reasonably satisfactory to Mortgagee; (iii) contain the standard New York State Mortgagee Clause or an equivalent reasonably satisfactory to Mortgagee or, with respect to any insurance as to which the foregoing shall not be applicable, provide for Mortgagee to be named as an additional insured; (iv) include waivers by all insurers of all rights of subrogation against any named or additional insured, the indebtedness secured hereby and the Mortgaged Property; (v) provide for deductibles acceptable to First Mortgagee; (vi) provide that no cancellation (including for nonpayment of premiums), reduction in amount or material change in coverage shall be effective until at least thirty days after receipt by Mortgagee of written notice thereof; and (vii) contain such other provisions as Mortgagee may reasonably require. Mortgagor shall deliver a certificate or certificates of insurance for the policies and, upon Mortgagee's request, copies of the original policies of insurance (or originals if requested by Mortgagee) to Mortgagee, but Mortgagee shall under no circumstance be deemed to have knowledge of the contents of such policies by reason of its custody thereof. Mortgagor shall deliver to Mortgagee replacements or renewals of the foregoing certificates, copies of or original policies to replace expiring policies at least thirty days before their respective expiration dates. Each such replacement or renewal shall bear a notation by the insurer or its authorized agent evidencing payment of the required premium. If any policy shall be cancelled by the insurer, become void by reason of any act(s) or omission(s) of Mortgagor or any other person or entity or by reason of the material impairment of the capital of the insurer thereunder, or if for any reason in Mortgagee's reasonable discretion said policy shall become unsatisfactory to Mortgagee, Mortgagor shall immediately procure new or additional insurance reasonably satisfactory to Mortgagee. Mortgagee's approval of any insurance procured by Mortgagor shall not be construed, or relied upon by Mortgagor, as a representation of the solvency of any insurer or the sufficiency of any amount of insurance. If Mortgagor shall fail in a timely manner either to keep in force any insurance required under this Mortgage or to deliver to Mortgagee any certificate, copy or original policy required hereunder, Mortgagee shall have the right, but shall not be obligated, to remedy any such failure by the expenditure of moneys or otherwise, in which event the provisions of Section 1.10 below shall be applicable.

(c) Casualty; Application of Insurance Proceeds. If the Mortgaged Property is damaged or destroyed, insurance proceeds may be applied to such restoration provided that no Event of Default or Minor Default exists. If an Event of Default or Minor Default exists on the date of the casualty and/or upon the date that insurance proceeds become available, Mortgagor shall deliver such proceeds to Mortgagee and Mortgagee shall apply such proceeds to the amounts due to Mortgagee as determined under Article 2 hereof, and any remaining proceeds shall be payable to whoever may be legally entitled to the same. This section shall not be construed to require Mortgagor to maintain casualty insurance.

1.10. Advances, Etc., by Mortgagee. If Mortgagor fails to perform or comply with any obligation set forth in or to be performed or complied with pursuant to this Mortgage beyond any applicable notice and cure period, then Mortgagee shall have the right, but shall not be obligated, upon five days' prior notice to Mortgagee, to perform or comply with the same and make such advances therefor as, in Mortgagee's opinion, may be necessary or appropriate, all for the account and at the expense of Mortgagor. To the extent of all sums so advanced (including, without limitation, reasonable attorneys' fees and disbursements), Mortgagee shall have a lien upon the Mortgaged Property which shall be secured by this Mortgage. Mortgagor shall repay on demand all sums so advanced on Mortgagor's behalf with interest computed at the Default Rate on each such sum from the date advanced by Mortgagee until the date Mortgagee has received repayment thereof. Mortgagee's exercise of its rights under this Section shall not be deemed to cure any circumstance that would otherwise constitute an Event of Default or Minor Default or to impair any of Mortgagee's other rights or remedies with respect thereto, and the obligations of Mortgagor under this Section shall pertain irrespective of whether the failure of Mortgagor referred to in the initial sentence of this Section results in the existence of an Event of Default or Minor Default. Subject to the terms of the TRC Contract, Mortgagor shall permit Mortgagee and its agents and representatives to enter the Mortgaged Property at all reasonable times for the purposes of (a) inspecting the same, (b) determining whether Mortgagor is in compliance with all of Mortgagor's obligations under this Mortgage, (c) performing or complying with, in Mortgagee's sole election, any one or more of Mortgagor's obligations under the other Rezoning Security Documents or this Mortgage, and (d) undertaking such other acts as are consistent with the provisions of this Mortgage. No such entry shall make Mortgagee a "mortgagee in possession," nor shall Mortgagee be liable for inconvenience, annoyance, disturbance, loss of business or other damage arising out of, or in connection with, actions taken by Mortgagee in good faith under this Section.

1.11. Estoppel Certificate. Each of Mortgagor and Mortgagee, within ten days after written request by the other party (but not more than twice in any 12-month period), shall sign, acknowledge and furnish to the other party a certificate, stating that, to such party's knowledge, there is no Event of Default or Minor Default under the Mortgage, nor any event that after notice or lapse of time or both would constitute an Event of Default or Minor Default, that has occurred and is continuing, or, if any such default or Event of Default or Minor Default has occurred and is continuing, specifying the nature and period of existence thereof, and, except as otherwise specified, stating that to such party's knowledge, such party has fulfilled all of its obligations under this Mortgage that are required to be fulfilled on or before the date of such certificate.

1.12. Condemnation. Mortgagor, upon obtaining knowledge of the institution of any proceeding for the condemnation of the Mortgaged Property or any portion thereof shall notify Mortgagee of the pendency of such proceeding. Mortgagee may participate in any such proceeding in its own name and, upon Mortgagee's request, Mortgagor shall deliver to Mortgagee instruments which shall facilitate such participation (with Mortgagee being represented by attorneys selected by Mortgagee, whose reasonable fees and expenses Mortgagor shall pay upon demand). Mortgagor hereby irrevocably and unconditionally (x) assigns to Mortgagee all of Mortgagor's right, title and interest in and to any award or other compensation payable pursuant to or in connection with any such proceeding and agrees to pay (and directs all Government Entities to pay) to Mortgagee any such award or other compensation, and (y) if an Event of Default has occurred and is continuing at the time such proceeding is instituted, appoints Mortgagee as Mortgagor's true and lawful attorney-in-fact, coupled with an interest, in Mortgagor's name and stead, with full power of substitution to commence, appear in and prosecute any such proceeding, to settle or compromise any claim in connection therewith, to collect and receive such award or other compensation and to take such other actions as Mortgagee may determine are necessary or desirable. Mortgagee shall be under no obligation to question the amount of any such award or other compensation

and may accept the same in the amount in which the same shall be paid. The proceeds of any award or other compensation so received (including any award for change of grade or widening of streets affecting or abutting the Property) shall be applied (i) first to reimbursing Mortgagee for all costs incurred by it in any such proceeding, and (ii) second to the payment of such obligations and/or liabilities of Mortgagor under this Mortgage or any other Rezoning Security Documents, as Mortgagee shall determine. The balance, if any, of such proceeds shall be payable to whoever may be legally entitled to the same.

1.13. Leasing of Mortgaged Property. Mortgagor covenants that it shall not enter into any Lease: (a) unless the Lease, by its express terms, is subject and subordinate to the lien of this Mortgage; and/or (b) pursuant to which the lessee or any other person or entity shall have an option, right of first refusal or other right with respect to the acquisition by it of the Mortgaged Property or any part thereof; and/or (c) for a term exceeding ten years; and/or (d) which is a ground or net lease; and in each case such lease shall remain executory (and not permit the tenant to take possession) until the Rezoned Price is paid to Mortgagee.

1.14. No Transfers or Encumbrances. Except for the First Mortgage, Mortgagor shall not: (a) Transfer the Mortgaged Property (or any portion thereof) unless and until Mortgagor or Developer has paid the Rezoned Price with respect to the Property when due and payable under the Rezoning Note and the Sale Agreement or (b) subject to Section 1.18 hereof, create or permit to be created any mortgage, lien, or other Encumbrance on the Mortgaged Property or any part thereof, or (c) grant any option or enter into any sale contract with respect to the Mortgaged Property unless such option or contract by its terms remains executory and no transfer of title may occur until the Rezoned Price is paid to Mortgagee.

1.15. Costs of Litigation and Certain Proceedings. If any action or proceeding of any kind (including any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced, or if there occurs any other event or is created any circumstance that Mortgagee reasonably determines might affect (in more than a de minimis manner) Mortgagee's interest in the Mortgaged Property, or the validity, enforceability or priority of the lien of this Mortgage, or Mortgagee's rights or remedies under this Mortgage or any of the other Rezoning Security Documents, then Mortgagee may, upon notice to Mortgagor and at Mortgagee's option, make such appearances, disburse such sums and take any such other actions (including, without limitation, the commencement and prosecution of any action against Mortgagor to enforce the terms of the Rezoning Security Documents) as Mortgagee reasonably deems necessary or desirable. If Mortgagee takes any action referred to in the preceding sentence, then Mortgagor shall, upon demand by Mortgagee, pay all Fees-and-Costs incurred by Mortgagee in connection therewith. Mortgagee's right to receive any payment provided for hereinabove shall be deemed to have accrued upon the commencement of the applicable action or proceeding and shall be enforceable by Mortgagee whether or not same is prosecuted to judgment. At Mortgagee's direction, any payment(s) that Mortgagor is obligated to make pursuant to this Section shall be made to third parties rather than to Mortgagee. Notwithstanding the foregoing, if an action or proceeding is commenced in connection with the Proposed Rezoning, Mortgagee's rights in connection with such action or proceeding (and right to reimbursement of Fees-and-Costs in connection therewith) shall be as set forth in the Sale Agreement.

1.16. Trust Fund. This Mortgage is made subject to the trust fund provisions of Section 13 of the New York Lien Law, and Mortgagor covenants that it shall receive all moneys and advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying costs of improvement before using any part of the same for any other purpose.

1.17. Charges for Tax Searches, Etc. Mortgagor shall pay the Fees-and-Costs incurred by Mortgagee in obtaining tax searches and tax bills and of processing, or otherwise dealing with insurance payments and payments of Impositions.

1.18. Restrictions Affecting Mortgaged Property. Mortgagor shall not: (a) except as provided in the Sale Agreement with respect to the Proposed Rezoning, initiate, join in, execute or consent to any change in any covenant, condition, restriction, declaration, zoning ordinance, or other public or private restriction limiting, defining or otherwise controlling construction on, or use(s) of, all or any part of the Mortgaged Property (collectively, "Restrictions"), or (b) except for the Proposed Rezoning or otherwise in accordance with the Sale Agreement, take, or permit or cause to be taken, any actions that would materially impair the integrity of the Mortgaged Property as a zoning lot separate and apart from all other property, or (c) take, or permit or cause to be taken, any actions that are inconsistent with obtaining the Proposed Rezoning, or are otherwise inconsistent with Developer's obligations under Article 6 of the Sale Agreement. Mortgagor shall comply materially with all Restrictions.

1.19. Further Assurances. Mortgagor shall, at Mortgagor's sole cost and expense, promptly deliver to Mortgagee all Documents of Further Assurance and undertake such further acts as Mortgagee shall from time to time reasonably request in order to (a) confirm the lien of this Mortgage and the mortgaging to Mortgagee of the Mortgaged Property (including, without limitation, all betterments, renewals, extensions and replacements of, all substitutions for, and all additions, accessions and appurtenances to any portion of the Mortgaged Property), and (b) confirm the security interests herein granted to Mortgagee in portions of the Mortgaged Property. All documentation to be delivered by Mortgagor pursuant to this Section shall be in form and substance reasonably satisfactory to Mortgagee.

1.20. Notice to Mortgagee. Mortgagor shall give notice to Mortgagee promptly upon the occurrence of any litigation, proceeding or investigation commenced by, or that involves, any Government Entity that might result in the impairment of Mortgagee's security for the Rezoned Price or any other fact, event or circumstance that might result in the impairment of such security (except to the extent relating to the Proposed Rezoning, for which Mortgagor's notice obligations are set forth in the Sale Agreement).

1.21. Obligations Secured. Subject to Section 4.12, whenever in this Mortgage or any other Rezoning Security Document it is stated that Mortgagor shall be obligated to pay or repay any moneys to Mortgagee or to any third party or to reimburse Mortgagee in respect of costs and expenses incurred by Mortgagee or anyone employed by, or acting on behalf of, Mortgagee, then any such payment, repayment or reimbursement obligation shall be deemed to be part of the indebtedness that is secured by this Mortgage.

1.22. Due Formation; Authority; Execution. Mortgagor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of [New York] [_____] and is duly authorized to conduct business in New York]. The execution and delivery of this Mortgage and all other Rezoning Security Documents by Mortgagor, and the consummation of the transactions contemplated thereby by Mortgagor, have been duly authorized by all necessary action of the Mortgagor and duly approved by all members of Mortgagor. The execution and delivery of this Mortgage and the other Rezoning Security Documents by Mortgagor, and the consummation of the transactions contemplated thereby by Mortgagor, will not (a) violate any provision of Mortgagor's operating agreement; (b) require the consent of any other Person; (c) violate any judgment, order, injunction, award or decree of any Government Entity against or binding upon Mortgagor or upon the property or business of Mortgagor; or (d) result in the acceleration of any indebtedness of Mortgagor.

ARTICLE 2

Events of Default, Minor Defaults and Remedies

2.1. Definitions of Event of Default and Minor Default.

(a) Each of the following shall be deemed an "Event of Default":

(i) Mortgagor or Developer defaults in paying the Rezoned Price with respect to the Property when due and payable under the Rezoning Note and the Sale Agreement;

(ii) Funds are unavailable under the Rezoning L/C or Mortgagee is otherwise unable to draw under the Rezoning L/C when Mortgagee has presented the documentation required to draw under the Rezoning L/C and has the right to draw thereunder pursuant to the Rezoning L/C Agreement;

(iii) Mortgagor fails to renew or replace the Rezoning L/C as and when required under the Rezoning L/C Agreement;

(iv) an Event of Default occurs under any other Rezoning Security Document;

(v) an Event of Default occurs under any Other Property Rezoning Security Document;

(vi) First Mortgagee accelerates any indebtedness secured by the First Mortgage or the First Pledge or commences a foreclosure proceeding or any other Legal Proceeding to enforce its rights under the First Mortgage or the First Pledge;

(vii) Mortgagor fails to comply with the Single Purpose Entity Requirements set forth in the Sale Agreement for 15 days after notice from Mortgagee;

(viii) Mortgagor Transfers the Mortgaged Property (or any portion thereof) or Developer Transfers any of its right, title and interest in Mortgagor;

(ix) Mortgagor or Developer makes an assignment for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law is filed against Mortgagor or Developer and such involuntary petition is not dismissed within 90 days after filing; or a petition is filed by or against Mortgagor or Developer under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition is not dismissed within 90 days after filing; or a receiver, trustee or liquidator shall be appointed for Mortgagor or Developer of the property of either of them and such receiver, trustee or liquidator shall not have been discharged within 90 days from the date of his/her appointment.

(b) Each of the following shall be deemed a "Minor Default":

(i) any default by Mortgagor under the First Mortgage, except as provided in (a) above, which continues following expiration of applicable notice and grace periods;

(ii) any default by Mortgagor under this Mortgage, except as provided in (a) above, which continues following expiration of applicable notice and grace periods (or if none are stated with respect to any obligation, within thirty days after notice from Mortgagee);

(iii) any default under any Rezoning Security Document or Other Property Rezoning Security Document, except as provided in (a) above, which continues following expiration of applicable notice and grace periods (or, if none are stated with respect to any obligation, within thirty days after notice from Mortgagee).

(c) For the avoidance of doubt, an "Event of Default" does not include a "Minor Default".

2.2. Effect of Defaults. Upon and after the occurrence and during the continuance of an Event of Default, Mortgagee shall be entitled to all of the rights and remedies set forth in subsections (a) and (b) below and upon and after and during the continuance the occurrence of a Minor Default, Mortgagee shall be entitled to all of the rights and remedies set forth in subsection (b) below. In those instances in which Mortgagee is entitled to take action with respect to the subject matter of this Article 2, such action may be taken by Mortgagee personally or on Mortgagee's behalf by its agents or attorneys and, in any such instance, with or without entry upon the Mortgaged Property. All expenses incurred and advances made by Mortgagee or by any such agents or attorneys in taking any such action shall be deemed to be for the account of Mortgagor and shall be repaid to Mortgagee together with interest thereon computed at the Default Rate from the date each such expense is incurred or advance is made until the date Mortgagee has received repayment in its entirety thereof.

(a) Rights and Remedies upon Event of Default.

The following rights and remedies may be exercised only upon and after the occurrence and during the continuance of an Event of Default:

(i) Entry upon Mortgaged Property. Without notice to Mortgagor or anyone else, Mortgagee may (A) enter into and upon the Mortgaged Property and take possession thereof by force, summary proceeding, ejectment or otherwise and exclude therefrom Mortgagor, Mortgagor's employees and agents and all other persons, (B) hold, use, operate, manage, maintain and control the Mortgaged Property and conduct the business thereof on such terms as Mortgagee shall deem proper, (C) collect and receive all Rents including, without limitation, those past due (instituting, at Mortgagee's election, proceedings in furtherance of such collection), (D) apply the Rents as Mortgagee shall determine, (E) amend, modify and terminate then existing Leases of the Mortgaged Property or any portion thereof and, in the name of Mortgagor, enter into Leases of all or any portion of the Mortgaged Property, and (F) generally do everything as fully and effectually as if Mortgagee were the absolute owner of the Mortgaged Property. Mortgagor hereby consents to the exercise by Mortgagee of the rights, remedies and powers conferred upon Mortgagee in this paragraph, provided, however, that (x) Mortgagee shall under no circumstances have any obligation to undertake any act or do anything pursuant to this paragraph and (y) no entry in or upon the Mortgaged Property or taking possession thereof or any other action or omission of Mortgagee hereunder shall make Mortgagee a "mortgagee in possession" (unless Mortgagee expressly elects such status in writing) or create any liability on the part of Mortgagee to Mortgagor or to any lessee or other party holding under or claiming through Mortgagor (whether for trespass, eviction, inconvenience, annoyance, disturbance, loss of business or otherwise) except if attributable to the willful misconduct or bad faith of Mortgagee. In furtherance of all of the foregoing, Mortgagor hereby irrevocably and unconditionally appoints Mortgagee as Mort-

gagor's true and lawful attorney-in-fact, coupled with an interest, in Mortgagor's name and stead, with full power of substitution to act pursuant to the provisions of this paragraph.

(ii) Sale of Mortgaged Property. Mortgagee may sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as a single parcel or in multiple parcels, in such manner, at such time and place, for such price and upon such other terms and after such notice thereof as Mortgagee may in its sole discretion determine, or as may be required by law. Mortgagee may from time to time adjourn any such sale by announcement at the time and place appointed for such sale, as same may previously have been adjourned.

(iii) Foreclosure. Mortgagee may institute proceedings for the complete or partial foreclosure of this Mortgage.

(iv) Rights as Secured Party. Mortgagee may exercise such rights and remedies, whether at law, in equity or by statute (including the Uniform Commercial Code), as are available to Mortgagee as a secured party under this Mortgage with respect to the Chattels, including, without limitation, the right to take possession of the Chattels, to maintain and preserve the same and to cause any of the Chattels to be sold at any one or more public or private sales as permitted by applicable law.

(b) Other Rights and Remedies. Upon and after the occurrence and during the continuance of any Event of Default or Minor Default, Mortgagee shall have the right to perform any obligation of Mortgagor pursuant to Section 1.10 hereof, bring one or more actions against Mortgagor for damages resulting from such Minor Default or Event of Default, and/or bring one or more actions for specific performance of (or injunction if applicable) with respect to any covenant, condition, or agreement set forth in this Mortgage, the applicable Rezoning Security Document or Other Property Rezoning Security Document.

2.3. Foreclosure Sale Implementation.

(a) Deeds, Etc. To effectuate any sale(s) made under or by virtue of this Article 2, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale (any such sale, an "Article 2 Sale"), Mortgagor, Mortgagee, or an officer of any court empowered to do so shall execute and deliver (i) to the accepted purchaser or purchasers documents assigning and transferring all estate, right, title, interest, claim and demand in and to the property and rights sold and (ii) to the appropriate Government Entity any affidavit(s) or other instrument(s) required pursuant to laws. In furtherance of such purpose, Mortgagor hereby irrevocably and unconditionally appoints Mortgagee as Mortgagor's true and lawful attorney-in-fact, coupled with an interest, in Mortgagor's name and stead, with full power of substitution, to execute and deliver such instrument(s). Mortgagor hereby ratifies and confirms all that Mortgagee, in its capacity as said attorney-in-fact, or such substitute(s) shall lawfully do pursuant to this Section 2.3(a). Notwithstanding the foregoing, Mortgagor, if so requested by Mortgagee or any purchaser, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser all such instruments as may be designated by the requesting party. Any such sale or sales shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the property and rights so sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor and against any and all persons claiming or who may claim by, from, through or under Mortgagor.

(b) Acceleration upon Sale. In the event of any Article 2 Sale, then, notwithstanding anything to the contrary set forth in any other Rezoning Security Document, all indebtedness secured by this Mortgage shall immediately become due and payable.

(c) Application of Proceeds. The proceeds of any Article 2 Sale, together with any other sums that Mortgagee may then hold under any provision of this Mortgage, shall be applied in the following order of priority, subject to Section 5.6 of the Sale Agreement:

(i) Sale Costs, Etc. To the payment of the costs and expenses incurred in connection with such sale, including, without limitation, the costs and expenses (A) incurred by Mortgagee prior thereto in taking possession of, and maintaining and preserving, the Mortgaged Property or any portion thereof and paying Impositions with respect thereto (other than Impositions subject to which the Mortgaged Property might have been sold), (B) of any judicial proceedings wherein or pursuant to which such sale might have been made, (C) of any receiver(s) appointed with respect to the Mortgaged Property or any portion thereof, (D) incurred in order to comply with laws applicable to such sale and (E) of paying reasonable compensation to Mortgagee, its employees, agents and attorneys.

(ii) Payment of the Rezoned Price. To the payment of the Rezoned Price, subject to the provisions of Section 4.12.

(iii) Other Sums Due. To the payment of any other sums required to be paid by Mortgagor pursuant to any Rezoning Security Document.

(iv) Application of Surplus. To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

(d) Bids by Mortgagee. At any Article 2 Sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the net sales price after deducting therefrom the costs and expenses of the sale and all other costs or expenses attributable to Mortgagor's default under this Mortgage and Mortgagee's exercise of its rights, powers and remedies under this Mortgage.

2.4. Collection of Debt.

(a) Payments Due upon Acceleration. In the event that the indebtedness secured by this Mortgage shall become due and payable in accordance with the provisions of this Mortgage and Mortgagor shall fail forthwith to pay such amounts to Mortgagee, Mortgagee shall be entitled and empowered to institute actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such actions or proceedings to judgment or final decree, and may enforce any such judgment or final decree against Mortgagor and collect out of the Mortgaged Property, in any manner provided by law, moneys adjudged or decreed to be payable.

(b) Effect of Foreclosure, Etc. Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property and of the application of the proceeds of sale, as in this Mortgage provided, to the

payment of the debt hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Rezoning Note and to enforce payment of all other charges, payments and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the maximum rate permitted by law.

(c) Effect of Judgment. No recovery of any judgment by Mortgagee and no levy of any execution under any judgment upon the Mortgaged Property or any part thereof or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(d) Application of Sums Collected. Any moneys thus collected by Mortgagee under this Section 2.4 shall be applied by Mortgagee in accordance with the provisions of paragraph (c) of Section 2.3.

(e) Legal Proceedings. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Mortgage may be brought and/or defended in the Supreme Court of the State of New York, New York County. MORTGAGOR AND MORTGAGEE WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING (INCLUDING ANY AND ALL COUNTERCLAIMS THERETO) THAT DIRECTLY OR INDIRECTLY RELATES TO THE SUBJECT MATTER OF THIS MORTGAGE.

2.5. Appointment of Receiver. After the occurrence of any Event of Default and during its continuance, whether incidental to any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or to any other judicial proceeding to enforce any right of Mortgagee, or otherwise, Mortgagee shall be entitled, as a matter of right, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Mortgage indebtedness, either before or after declaring the unpaid principal of the Rezoning Note to be due and payable, to the appointment of a receiver or receivers of the Mortgaged Property and of all the Rents thereof. Mortgagor hereby irrevocably and unconditionally consents to the appointment of such receiver or receivers (and to the exercise by such receiver or receivers of such powers as may be requested by Mortgagee or the court that is empowered to make such appointment), waives any and all defenses to such appointment and agrees not to oppose Mortgagor's application therefor.

2.6. Possession by Mortgagee. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of Mortgagor's property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

2.7. Remedies Cumulative. Except for the limitation of remedies with respect to Minor Defaults as provided in Section 2.2, no right or remedy of Mortgagee is intended to be exclusive of any other right or remedy specified herein, in the Sale Agreement or any other Rezoning Security Document or available to Mortgagee at law or in equity. Except as provided in Section 2.2, all such rights and remedies shall be cumulative and concurrent and, at Mortgagee's option, may be pursued singularly, successively or together and may be exercised as often as occasion therefor shall arise. No delay or failure of Mortgagee to exercise any right, power or remedy hereunder or under the Sale Agreement or any other Rezoning Security Document shall impair any such right, power or remedy or shall be construed to be a waiver thereof or of any Event of Default or Minor Default, and Mortgagor shall not thereby be

relieved of its obligations. Mortgagee shall be deemed to have waived any such right, power or remedy only if such waiver is expressly set forth in a written instrument duly executed by an authorized representative of Mortgagee. No waiver of any breach shall constitute a waiver of any other then existing or subsequent breach.

2.8. Right to Withdraw Proceeding, Etc. Any action, suit or proceeding brought by Mortgagee pursuant to any of the terms of this Mortgage or otherwise and any claim made by Mortgagee hereunder may be compromised, settled, withdrawn, abandoned or otherwise dealt with by Mortgagee without any notice to, agreement or approval of, or consent by, Mortgagor and without any liability of Mortgagee to Mortgagor.

2.9. Waiver. To the fullest extent permitted by law and with full awareness of the consequences thereof, Mortgagor hereby unconditionally and irrevocably (a) waives and relinquishes the benefit of, and releases all rights of Mortgagor under, all laws now or hereafter in force providing for any appraisal or valuation before sale of the Mortgaged Property or any portion thereof, any stay of execution or extension of the time for the enforcement of the collection of the indebtedness secured by this Mortgage, any extension of a period of redemption from any sale in furtherance of the collection of said indebtedness, and any marshalling of the assets of Mortgagor (including, without limitation, the Mortgaged Property), and (b) agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any of the foregoing.

2.10. Use and Occupancy of Mortgaged Property. During the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay to Mortgagee the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any part thereof that is in Mortgagor's possession for such period and, upon default of any such payment, shall vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof Mortgagor may be evicted by summary action or proceeding for the recovery of possession of Property for nonpayment of rent.

2.11. Mortgagee's Attorneys' Fees. Mortgagor shall upon demand pay any and all costs, expenses, and reasonable attorneys' fees and disbursements incurred by Mortgagee in connection with (a) enforcing, or attempting to enforce, Mortgagee's rights under this Mortgage or any other Rezoning Security Document (i) prior to or following an Event of Default or Minor Default under Section 1.15, (ii) prior to an Event of Default or Minor Default if it is necessary for Mortgagee to take action to protect its collateral under the Rezoning Security Documents or (iii) following an Event of Default or Minor Default; and (b) representation of Mortgagee's interest in any action or proceeding that relates to Mortgagor or the Mortgaged Property.

2.12. Mortgagee's Failure to Allow Cure Period Notwithstanding anything to the contrary in any Rezoning Security Document, wherever it is stated in this Mortgage that an Event of Default shall be deemed to have occurred only after Mortgagee has given notice (a "Cure Notice") of specified circumstances (an "Unmatured Default") and a specified period of time (the "Cure Period") has passed, if Mortgagee fails to give the required Cure Notice and commences foreclosure proceedings under this Mortgage, then, (a) if, within the Cure Period, as measured from the commencement of the foreclosure proceedings, Mortgagor cures the applicable Unmatured Default, then Mortgagee shall discontinue such foreclosure proceedings and reinstate the Rezoning Note on the same terms and conditions as if the Unmatured Default had never occurred; (b) such discontinuance of foreclosure proceedings shall constitute Mortgagor's sole remedy for Mortgagee's failure to have given the required

Cure Notice, and Mortgagee shall have no liability to Mortgagor with respect thereto; and (c) Mortgagee's failure to give the Cure Notice shall not invalidate, nullify, or constitute a defense in any foreclosure proceedings that are otherwise properly commenced.

2.13. Mortgagor's Right to Cure.

Notwithstanding anything in this instrument to the contrary, upon the occurrence of a First Mortgage Default (as defined below), Mortgagee agrees to allow Mortgagor 180 days from the occurrence of such First Mortgage Default to attempt to cure the same before Mortgagee draws upon the Rezoning L/C and either pays off or acquires the First Mortgage, provided that:

(a) within 15 days after the occurrence of such First Mortgage Default, Mortgagor shall pay to Mortgagee* without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan prior to the date of such First Mortgage Default;

(b) thereafter Mortgagor shall pay to Mortgagee* on the first day of each calendar month without notice or demand an amount equal to all interest and real property taxes accrued but unpaid under or with respect to the First Loan since the first day of the last calendar month;

(c) there shall not be imminent (i.e., reasonably expected within the next 10 days) the entry by First Mortgagee of a judgment of foreclosure with respect to the First Mortgage; and

(d) there shall not have been commenced by or against Mortgagor any proceeding under the United States Bankruptcy Code [11 U.S.C. et seq.].

Subject to (a)-(d) above, if Mortgagor has failed to cure all First Mortgage Defaults within 180 days after the occurrence of the initial First Mortgage Default, Mortgagee may draw upon the Rezoning L/C and pay off or acquire the First Mortgage without further delay at any time thereafter unless all First Mortgage Defaults have been cured before the date of such draw on the Rezoning L/C. In this Section "First Mortgage Default" means (i) acceleration of any indebtedness secured by the First Mortgage or the First Pledge or the commencement of a foreclosure proceeding or any other Legal Proceeding to enforce the rights of the First Mortgagee under the First Mortgage or the First Pledge; or (ii) any Event of Default or default under any other instrument or document referred to in this instrument which is substantially the same as the actions or Legal Proceedings described in (i) above. Mortgagee shall hold any funds received under (a) or (b) above as if the same were part of the face amount of the Rezoning L/C, and if and when Mortgagee draws against the Rezoning L/C shall apply the same as if Mortgagee had drawn such funds pursuant to the Rezoning L/C.

* Payment by Mortgagor to a Qualified Bank or a major law firm satisfactory to Mortgagee as escrow agent pursuant to an escrow agreement approved by Mortgagee (which shall provide for payment of all such sums without offset or counterclaim to Mortgagee or First Mortgagee no later than Mortgagee's draw under the Rezoning L/C) shall satisfy the requirements of (a) and (b) above provided that Mortgagor makes the required payments within the times specified.

ARTICLE 3

Representations and Warranties

Mortgagor represents and warrants to Mortgagee that, as of the date of the delivery of this Mortgage:

3.1. Title, Etc. Mortgagor warrants the title to the Mortgaged Property, subject to no lien, charge or encumbrance except (a) matters listed as exceptions to title in Schedule B of Mortgagor's title policy issued by Commonwealth Title Insurance Company pursuant to title order number _____, insuring the lien of this Mortgage; and (b) the First Mortgage (collectively, the "Prior Encumbrances").

3.2. Type of Property. Mortgagor represents and warrants to Mortgagee that this Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities.

ARTICLE 4

Miscellaneous

4.1. Partial Invalidity. If any provision(s) of this Mortgage or any other Rezoning Security Document are held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of such instrument(s) and such instrument(s) shall instead be construed as if it or they had never contained such invalid, illegal or unenforceable provision.

4.2. Notices. All notices, consents or other communications under this Mortgage must be in writing and addressed to each party at its respective notice address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Mortgage to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

If to Mortgagor:

[_____]
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attention: Mr. Richard L. Fisher

with copies to:

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attention: Mr. Sheldon H. Solow

Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street
New York, New York 10019
Attention: Martin L. Edelman, Esq.

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attention: Chris M. Smith, Esq.

If to Mortgagee: Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: Mr. Robert P. Stelben
Vice President and Treasurer

with copies to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: General Counsel

LeBoeuf, Lamb, Greene & MacRae L.L.P.
125 West 55th Street
New York, New York 10019
Attention: Alan M. Berman, Esq.

4.3. Waiver of Notice. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

4.4. Successors and Assigns. All the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the land, shall apply to and bind the successors and assigns of Mortgagor (and Mortgagor's heirs, if Mortgagor is an individual) and all subsequent owners, encumbrancers and tenants of the Mortgaged Property and shall inure to the benefit of the successors and assigns of Mortgagee and all subsequent holders of this Mortgage. Unless and until an Event of Default described in Section 2.1(a)(i) has occurred, Con Edison shall not assign this Mortgage or any other Rezoning Security Document or Other Property Rezoning Security Document, except to an affiliate of Con Edison or in connection with a merger, consolidation or sale of all (or substantially all) assets of Con Edison. Nothing in this Section 4.4 limits the prohibitions of Section 1.14.

4.5. Usury Savings. Nothing in any Rezoning Security Document shall require the payment or permit the collection by Mortgagee of interest in an amount exceeding the maximum amount permitted under applicable law in commercial mortgage loan transactions between parties of the character

of the parties hereto (the "Maximum Interest Amount"). Mortgagor shall not be obligated to pay to Mortgagee any interest in excess of the Maximum Interest Amount, and the amount of interest payable by Mortgagor to Mortgagee under the Rezoning Security Documents shall under no circumstance be deemed to exceed the Maximum Interest Amount.

4.6. Counterparts. This Mortgage may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Mortgage showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

4.7. Governing Law. This Mortgage shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflict of law).

4.8. Written Amendment. This Mortgage shall not be modified, amended, discharged or terminated except by a written agreement executed by Mortgagee and Mortgagor.

4.9. Actions, Approvals and Determinations. Wherever in this Mortgage it is provided that (a) as a condition precedent to Mortgagor's undertaking certain action, Mortgagor shall be required to obtain Mortgagee's consent or approval or (b) Mortgagee shall have the right to make a determination (including, without limitation, a determination as to whether a matter is satisfactory to Mortgagee), or if Mortgagor shall request that Mortgagee take any action, then, unless expressly provided to the contrary in the applicable provision of this Mortgage, the decision whether to grant such consent or approval or to take the requested action, or the determination in question, shall be in the sole discretion of Mortgagee. Wherever in this Mortgage it is stated that any consent or approval shall not be unreasonably withheld or that a determination to be made by Mortgagee shall be subject to a specified standard, then, if a court of competent jurisdiction determines, without right to further appeal, that the consent or approval has been unreasonably withheld or that such specified standard has been met, the consent or approval shall be deemed granted or the standard shall be deemed met, as the case may be, and Mortgagee, at the request of Mortgagor, shall deliver to Mortgagor written confirmation thereof. The obtaining of such consent or approval or determination that such standard has been met shall be Mortgagor's sole and exclusive remedy with respect to the subject matter of this Section, and under no circumstance shall Mortgagee, Mortgagee's counsel or anyone else acting or purporting to act on Mortgagee's behalf having any liability (whether in damages or otherwise) with respect thereto. In any instance in which Mortgagor requests, or this Mortgage or any other Rezoning Security Document provides, that Mortgagee shall consider granting its consent or approval or making a determination or taking some other action, Mortgagor shall, within thirty days after demand, pay all Fees-and-Costs incurred by Mortgagee in connection therewith.

4.10. Receipt of Copy. Mortgagee has delivered to Mortgagor, without charge, a true and correct copy of this Mortgage. Mortgagor acknowledges receipt of same.

4.11. Construction. The Schedules attached hereto are (and shall be deemed) parts of this Mortgage. The headings of this Mortgage are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. References to a section are references to a section within this Mortgage unless otherwise expressly stated or necessarily implied by the context. The Rezoning Security Documents shall be construed without regard to any presumption requiring construction against the party which caused the Rezoning Security Documents to be drafted and without regard to New York Real Property Law Section 254.

4.12. Maximum Principal Indebtedness Secured. Notwithstanding anything set forth in this Mortgage to the contrary, the maximum amount of principal indebtedness under the Rezoning Note and any other Rezoning Security Documents and Other Property Rezoning Security Documents secured hereby at execution or which under any contingency may become secured hereby at any time hereafter, is \$25,000,000, with interest as provided by the Rezoning Note and such other sums as may (a) be advanced by Mortgagee pursuant to this Mortgage for the payment of Impositions and insurance premiums and for the preservation of the lien of this Mortgage (together with reasonable attorneys' fees and disbursements) and (b) be secured hereby without resulting in the imposition of mortgage recording tax in addition to the amount of tax due with respect to the maximum principal indebtedness of \$25,000,000.

4.13. No Third Party Rights. Nothing in this Mortgage, express or implied, is intended: (a) to confer on any Person—(other than the parties hereto)—any rights, obligations, liabilities, or remedies; (b) to constitute Mortgagee as a partner or co-venturer of Mortgagor, or vice versa; or (c) to waive any claim or right of any party against any Person who is not a party to this Mortgage.

4.14. Satisfaction or Assignment upon Payment in Full. Upon payment in full of the Rezoned Price for all Properties to Mortgagee, or upon payment of the Developer Call Price (or delivery of the Call Date L/C) for all Properties to Con Edison, or if the Rezoned Price is not yet due under the terms of the Sale Agreement on [INSERT OUTSIDE DATE], Mortgagee shall execute a satisfaction of this Mortgage, or at Mortgagor's election, an assignment of this Mortgage to Mortgagor's designee, in either case prepared by Mortgagor and in form reasonably acceptable to Mortgagee, and shall terminate and/or return to Mortgagor (as applicable) the other Rezoning Security Documents. Mortgagor shall pay all fees, taxes and other charges payable in connection with the preparation, filing and recording of such satisfaction, termination and/or assignment documents.

4.15. Limitation of Liability. In no event shall the members or managers of Mortgagor have any personal liability for the failure to pay or perform any obligations of Mortgagor under this Mortgage.

ARTICLE 5

Subordination

5.1. Subordination to First Mortgage.

(a) Subject to Section 5.2, this Mortgage and the other Rezoning Security Documents, including rights to insurance proceeds and condemnation awards to which Mortgagee may be entitled hereunder, are and shall be subject and subordinate to the First Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby as of the date hereof (and any additional principal sums that may become secured thereby after the date hereof, subject, however to Section 1.5(b) hereof), all interest accrued and from time to time unpaid thereon and any other amounts required to be paid by the terms thereof.

(b) If an Event of Default occurs, Mortgagee agrees to notify First Mortgagee (in accordance with the notice provisions in the First Mortgage) prior to seeking a judgment of foreclosure of this Mortgage and/or seeking to enforce its security interest under the Rezoning Pledge Agreement. If First Mortgagee notifies Mortgagee within 30 days after receipt of Mortgagee's notice that First Mortgagee intends to cure the default, Mortgagee shall not seek foreclosure or enforcement of its security interest

under the Rezoning Pledge Agreement for so long as First Mortgagee diligently and continuously proceeds to cure such default and notifies Mortgagee at reasonable intervals (but at least monthly) of the status of its actions to cure, but Mortgagee shall continue to be entitled at any time to draw on the Rezoning L/C pursuant to the terms of the Rezoning L/C Agreement, notwithstanding any agreement not to seek foreclosure or enforcement of its security interest as provided in this Section. Notwithstanding the foregoing, however, Mortgagee shall not be required to refrain from seeking foreclosure of the Rezoning Mortgage or enforcing its security interest under the Rezoning Pledge Agreement if at any time Mortgagee's forbearance under this Section could result in the waiver of any rights of Mortgagee to foreclose and/or to enforce such security interest.

5.2. Right to Pay off or Acquire First Mortgage. It shall be a condition to Mortgagee's agreement to subordinate this Mortgage as provided in Section 5.1 that Mortgagee shall have the right to pay off or acquire the First Mortgage (and that the First Mortgagee expressly acknowledge in writing Mortgagee's right to pay off or acquire the First Mortgage), as follows:

(a) First Mortgagee will send to Mortgagee copies of all default notices sent to the mortgagor under the First Mortgage or to any other Person from whom First Mortgagee holds security for performance of the First Mortgage or payment of the First Loan (in the manner set forth in Section 4.2).

(b) First Mortgagee will notify Mortgagee prior to seeking a judicial termination of the First Mortgage or this Mortgage in a foreclosure proceeding and/or enforcing its security interest under the First Pledge (an "Enforcement Notice").

(c) At any time after receiving an Enforcement Notice, Mortgagee may elect, by written notice to First Mortgagee (in the manner required in the First Mortgage) to purchase the First Loan and all First Loan Documents at a price equal to the then outstanding principal amount of the First Loan plus all accrued and unpaid interest thereon and any other accrued charges thereunder. During the 60 day period following delivery of Mortgagee's election notice, First Mortgagee may commence or continue its enforcement of the First Mortgage and/or First Pledge but shall not take any action (such as completing a foreclosure proceeding) which would prevent Mortgagee from purchasing the First Loan and all First Loan Documents pursuant to this Section 5.2. The closing shall occur on a date and at a place mutually acceptable to Mortgagee and First Mortgagee. If Mortgagee is unable or unwilling to close during such 60 day period, First Mortgagee shall close after such 60 day period upon tender of the purchase price by Mortgagee, provided that the First Loan has not been discharged and the First Loan Documents terminated as a result of First Mortgagee's enforcement of same.

(d) Upon the closing and payment to First Mortgagee, First Mortgagee shall deliver to Mortgagee or its designee, at Mortgagee's option, either: (x) a satisfaction of the First Mortgage and a termination of the First Pledge and all other First Loan Documents, or (y) the following documents: (i) the promissory note evidencing the First Loan, endorsed without recourse, representation or warranty to Mortgagee or its designee; (ii) an assignment of the First Pledge and all other First Loan Documents to Mortgagee or its designee in form reasonably satisfactory to Mortgagee; (iii) an estoppel letter in form reasonably satisfactory to Mortgagee addressed to Mortgagee and dated as of the closing date, which sets forth the principal indebtedness then outstanding under the First Loan and the total amount of all due and unpaid interest; (iv) originals of all of the First Loan Documents and amendments thereto; (v) the title policy issued to First Mortgagee insuring the First Mortgage; and (vi) any funds or security held by First Mortgagee in escrow with respect to the First Loan.

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the date first above written.

Mortgagor:

WITNESSED BY:

[_____]

By:

Name:

Title:

Acknowledgment

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

On the ___ day of _____, in the year 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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/she executed the same in his/her capacity, as a _____ of _____ and that by his/her signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE A

Property Description

SCHEDULE B

**Other Limited Liability Companies
Acquiring Other Current Properties**

AGREEMENT

THIS AGREEMENT is dated as of this ___ day of _____, 200_ between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having an address at 4 Irving Place, New York, New York 10003 ("Con Edison") and _____, a _____ having an address at _____ ("First Mortgagee").

Introductory Statement

Con Edison and FSM East River Associates LLC ("Developer") are parties to that certain Agreement dated as of November 15, 2000 (the "Sale Agreement"), pursuant to which Con Edison has conveyed to Developer's designee, _____ ("Title LLC"), real property known as _____ First Avenue, New York, New York, designated as Block ___ Lot ___ on the Tax Map of the City of New York and more particularly described in Schedule A hereto (the "Property").

Under the Sale Agreement, if Con Edison conveys title to the Property to Developer or its designee before the rezoning of the Property is complete, Developer and Title LLC are required, among other things, to execute and deliver to Con Edison certain documents and instruments as security for Developer's obligation to pay to Con Edison a portion of the purchase price upon completion of rezoning of the Property (the "Rezoned Price"). Since the rezoning of the Property is not yet complete, Developer and Title LLC have delivered to Con Edison a promissory note in an amount equal to the Rezoned Price (the "Rezoning Note"), a mortgage on the Property to secure the Rezoning Note (the "Rezoning Mortgage"), a pledge by Developer of all of the ownership interests in Title LLC (the "Rezoning Pledge Agreement") and a letter of credit in the face amount of \$ _____ (the "Rezoning L/C"). (Each of the foregoing instruments are referred to together in this Agreement as the "Rezoning Security Documents.")

First Mortgagee has loaned to Developer and Title LLC the amount of \$ _____ for the acquisition of the Property (the "First Loan"), which First Loan is secured by, among other things, a mortgage on the Property (the "First Mortgage") and a pledge by Developer all of the ownership interests in Title LLC (the "First Pledge"). The First Mortgage, First Pledge and all other documents evidencing and securing the First Loan shall be referred to together in this Agreement as the First Loan Documents.

Con Edison has agreed to subordinate the Rezoning Security Documents to the First Mortgage and the First Pledge on the condition, among other things, that Con Edison have the right to pay off or acquire the First Loan (and all First Loan Documents), and First Mortgagee is willing to grant Con Edison this right, all upon the terms set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Con Edison and First Mortgagee agree as follows:

1. Right to Acquire First Mortgage. In consideration of Con Edison's agreement to subordinate the Rezoning Security Documents as provided in Section 5.1 of the Rezoning Mortgage, First Mortgagee grants Con Edison the right, at Con Edison's election, to pay off or acquire the First Loan (and

all First Loan Documents) in accordance with the provisions of Section 5.2 of the Rezoning Mortgage. Con Edison shall use the proceeds of the Rezoning L/C and/or its own funds to pay off or acquire the First Loan and shall thereafter discharge the First Mortgage of record and cancel the other First Loan Documents; provided, however, that if for any reason Con Edison is unable to draw the full amount of the Rezoning L/C (provided that Con Edison has presented the documentation required to draw under the Rezoning L/C), or if the costs paid or incurred by Con Edison to pay off or acquire the First Loan (including collection costs) exceed the amount actually available to and received by Con Edison under the Rezoning L/C (such excess amount, the "Shortfall"), Con Edison shall not be required to release the lien of the First Mortgage or cancel the other First Loan Documents after paying off or acquiring the First Loan (except for separate guaranties and indemnities delivered in connection with the First Loan, which Con Edison shall cancel), and the First Mortgage shall thereafter be deemed to secure repayment only of the Shortfall.

2. No Reliance. First Mortgagee agrees that it has independently underwritten the First Loan and is not relying in any way on the expectation that Con Edison will exercise its right to pay off or acquire the First Loan pursuant to this instrument.

3. Miscellaneous. This Agreement shall not be modified, waived or amended except by written agreement executed by both parties. This Agreement shall inure to the benefit of and be binding upon Con Edison, First Mortgagee and their respective successors and assigns. This Agreement shall be governed by and construed under the laws of the State of New York without regard to principles of conflicts of law. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Agreement may be brought and/or defended in the Supreme Court of the State of New York, New York County. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement may be executed in counterparts, a complete set of which together shall constitute an original.

IN WITNESS WHEREOF, Con Edison and First Mortgagee have executed this Agreement as of the date first set forth above.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

[FIRST MORTGAGEE]

By: _____
Name:
Title:

Acknowledgments

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

On the ___ day of _____, in the year 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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/she executed the same in his/her capacity, as a _____ of Consolidated Edison Company of New York, Inc. and that by his/her signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____, in the year 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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/she executed the same in his/her capacity, as a _____ of _____ and that by his/her signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A

PROPERTY DESCRIPTION

Exhibit "G"

Form of Memorandum of Sale Contract Provision

MEMORANDUM OF SALE CONTRACT PROVISION

THIS MEMORANDUM OF SALE CONTRACT PROVISION (this "Memorandum") dated as of _____, 200__ is made by **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.** ("Con Edison") a New York corporation having an address at 4 Irving Place, New York, New York 10003, **FSM EAST RIVER ASSOCIATES LLC** ("Developer"), a New York limited liability company and [insert name of Title LLC] ("Title LLC"), a _____ limited liability company, each having an address c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171. Con Edison, Developer and Title LLC shall be referred to collectively herein as the "Parties".

Con Edison and Developer are parties to that certain Agreement dated as of November 15, 2000 (the "Purchase Agreement"). Pursuant to the Purchase Agreement, as of the date hereof, Con Edison has conveyed to Title LLC, as Developer's designee, real property located at ____ First Avenue in the City and State of New York and designated as a portion of Block ____ Lot ____ on the Tax Map of the City of New York, as more particularly described in Exhibit A attached hereto (the "Property"). By agreement dated as of the date hereof, Title LLC has agreed to be bound by all of the terms and provisions of the Purchase Agreement applicable to Developer with respect to the Property.

Developer and Title LLC have represented to Con Edison that Title LLC has acquired the Property for development, and not for resale at any time before the Designated Date. Accordingly, pursuant to the terms of the Purchase Agreement, Developer and Title LLC have agreed to pay (or cause to be paid) to Con Edison fifty percent (50%) of the net sale proceeds of certain sales, assignments, pledges, encumbrances and other transfers of the Property and certain direct and indirect sales, assignments, pledges, encumbrances and other transfers in Developer, Title LLC and/or the members and managers of Developer (as defined in the Purchase Agreement, "Covered Sales") which occur prior to the "Article 26 Date" (as defined in the Purchase Agreement). Payment is due to Con Edison at the closing or other completion of each Covered Sale. Certain sales, assignments, pledges, encumbrances and other transfers for financing purposes and estate planning purposes are not considered Covered Sales, as more particularly set forth in the Purchase Agreement.

This Memorandum is intended to provide notice of the payment and related obligations of Developer and Title LLC with respect to Covered Sales to third parties, including all persons and entities acquiring an interest in the Property, Title LLC, Developer, or any manager or member of Developer (which persons and entities shall be subject to and bound by such obligations). This Memorandum shall not be deemed to create any separate or additional rights or obligations on the part of any of the Parties and shall not be deemed to modify any terms or conditions of the Purchase Agreement or any other documents relating to the transactions contemplated thereby.

This Memorandum is executed and delivered by the Parties as of the date first set forth above.

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

By: _____
Name:
Title:

FSM EAST RIVER ASSOCIATES LLC

By: _____
Name:
Title:

[TITLE LLC]

By: _____
Name:
Title:

State of New York)

ss.:

County of)

On the _____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____, and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the _____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the _____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

Property Description

[insert]

Exhibit "H"
Form of Deed

DEED

THIS INDENTURE, made as of the ____ day of _____, _____

BETWEEN

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at Four Irving Place, New York, New York 10003 ("Grantor")

and

_____ a _____, with an office c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Grantee"),

WITNESSETH, that Grantor, in consideration of Ten Dollars, and other valuable consideration paid by Grantee, does hereby grant and release unto Grantee, its heirs or successors and assigns forever,

ALL that certain plot, piece or parcel of land more particularly described in Schedule A annexed hereto and made a part hereof, with the buildings and improvements thereon,

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of Grantor in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto Grantee, its heirs or successors and assigns forever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties"; whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

In presence of:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____

Name:

Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the _____ day of _____, _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Section:

Block & Lot:

Town:

County: New York

Return By Mail To:

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.
125 West 55th Street
New York, New York 10019
Attention: Alan M. Berman, Esq.

Schedule A
Legal Description

Exhibit "I"
Form of Future Rezoning Covenant

FUTURE REZONING COVENANT

FUTURE REZONING COVENANT (this "Covenant") made as of _____, 200__ by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at 4 Irving Place, New York, NY 10003 ("Con Edison") and _____, a New York limited liability company, with an office c/o Fisher Brothers, 299 Park Avenue, New York, NY 10171 ("Title LLC").

Introductory Statement

Con Edison and FSM East River Associates LLC, a _____ limited liability company ("Developer"), are parties to an agreement dated as of November 15, 2000 (the "Agreement") pursuant to which Con Edison has conveyed to Title LLC, as Developer's designee under the Agreement, real property located in the City of New York, commonly known as _____ First Avenue, New York, New York, and designated as Block ___ Lot ___ on the Tax Map of the City of New York as more particularly described in Exhibit "A" hereto (the "Property"). By agreement dated as of the date hereof, Title LLC has agreed to be bound by all terms, conditions, covenants, and provisions of the Agreement applicable to Developer with respect to the Property; and Title LLC has also executed and delivered this Covenant pursuant to the Agreement.

Con Edison, Developer, and Title LLC intend that Con Edison will receive, as increments of the Purchase Price for the Property under the Agreement, payment for increases in the Floor Area of the Property resulting from each and every Future Rezoning (as defined below) of the Property. The price to be paid by the then-fee owner of the Property (the "Fee Owner", as defined below) as to each Future Rezoning will be \$125 per square foot of additional Floor Area created by such Future Rezoning plus 50% of the fair market value of such additional Floor Area in excess of \$125 per square foot (all as set forth below).

If, as, and when each such Future Rezoning occurs, Fee Owner will give notice to Con Edison, as set forth below, and will not seek a building permit for, construct, Transfer, or otherwise utilize the respective increased Floor Area until the Fee Owner has made the payments specified below.

NOW, THEREFORE, in consideration of the promises set forth below and in the Agreement, and payments made and to be made under the Agreement and this Covenant, and intending to be legally bound hereby, Title LLC and Con Edison covenant and agree as follows:

Article 1. _____ Certain Definitions

1.1 The words and phrases set forth below have the following meanings in this Covenant:

"AAA" means the American Arbitration Association or a successor organization (and, for all proceedings and applications under this Covenant, the New York City office of the same).

"Fee Owner" means Title LLC and each and every successor fee owner of all or any portion of the Property at any time and from time to time (and specifically at the time when any payment of the Future Rezoning Price is due under this Covenant or when any other action is required of Fee Owner under this Covenant). If at any time a condominium has been created on the Property or any part thereof, "Fee Owner" shall mean the Board of Managers or other governing body of such condominium.

"Fees-And-Costs" means reasonable fees of attorneys, architects, engineers, expert witnesses, consultants and others, and reasonable costs, expenses and disbursements charged by, or reimbursable to, the foregoing.

"Final Determination" means a decision or determination of (i) any administrative, regulatory or other governmental or quasi governmental agency or (ii) any court of competent jurisdiction, from which the time in which to take an appeal or to otherwise seek review has expired or from which no appeal can be taken. A "Final Determination" shall be deemed to occur as of the date of such expiration of the appeal period or the date of such unappealable decision or determination, as the case may be.

"Floor Area" means Floor Area as defined in the Zoning Resolution.

"Future Floor Area" means the Floor Area of the Property resulting from the particular Future Rezoning in excess of the Floor Area of the Property before that particular Future Rezoning (whether or not then permitted under the Zoning Resolution).

"Future Rezoning" means each and every Rezoning of the Property occurring (a) after the Initial Rezoning; or (b) after the date of this Covenant if there is no Initial Rezoning. (There may be any number of Future Rezonings.)

"Government Entity" means the United States; the State of New York; the City of New York; any other political subdivision of any of the foregoing; and any agency, authority, department, court, local development corporation, business improvement district, commission or other legal entity of any of the foregoing.

"Initial Rezoning" means the Rezoning of the Property if such Rezoning occurs before the Outside Date under the Agreement.

"Legal Proceeding" means an action, litigation, administrative or other governmental proceeding, or other legal or equitable proceeding of any kind (other than a dispute resolution pursuant to Article 4).

"Person" means an individual person, corporation, partnership, trust, joint venture, limited liability company, proprietorship, estate, association, land trust, other trust, Government Entity or other incorporated or unincorporated enterprise, entity or organization of any kind.

"Rezoning" means a Final Determination pursuant to the procedures set forth in the New York City Charter and/or such other laws, rules and regulations as are applicable thereto in respect of applications for any change in the zoning map affecting the Property and/or any special permits, authorizations, and/or certifications under and pursuant to the Zoning Resolution

with respect to the Property creating, revising, or permitting Floor Area for the development of the Property for residential, commercial, community facility, or other uses permitted from time to time by the Zoning Resolution.

"Transfer" or "to Transfer" means to sell, transfer, assign, pledge, donate, exchange, swap, hypothecate, grant a security interest in, mortgage, option or otherwise encumber or dispose of, voluntarily or involuntarily, with or without consideration.

"Utilization" or "to Utilize" means to occupy or put to any business or profitable use (and in this Covenant refers to any additional Floor Area that may be obtained by Developer in a Future Rezoning).

"Zoning Resolution" means the Zoning Resolution of the City of New York (or any successor law), as amended from time to time.

1.2 Other words and phrases are defined elsewhere in this Covenant and in the Exhibits hereto.

1.3 Wherever used in this Covenant:

(a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";

(b) the word "day" means a calendar day unless otherwise specified;

(c) the word "law" (or "laws") means any law, rule, regulation, order, statute, ordinance, resolution, regulation, code, decree, judgment, injunction, mandate or other legally binding requirement of a Government Entity applicable in the particular context;

(d) the word "notice" shall mean notice in writing (whether or not specifically so stated);

(e) the word "month" means a calendar month unless otherwise specified;

(f) the word "amended" means "amended, modified, extended, renewed, changed, or otherwise revised"; and the word "amendment" means "amendment, modification, extension, change, renewal, or other revision"; and

(g) references to "dollars" or "\$" mean United States dollars.

Article 2.

Future Rezoning Price; Payment

2.1 In this Covenant, "Future Rezoning Price" means one hundred twenty five dollars (\$125) per square foot of Future Floor Area, plus fifty percent (50%) of the Fair Market Value of such Future Floor Area in excess of one hundred twenty five dollars (\$125) per square foot, determined as of the date of the particular Future Rezoning.

2.2 Fee Owner shall pay the Future Rezoning Price as follows:

(a) one hundred twenty five dollars (\$125) per square foot of Future Floor Area, by wire transfer of funds to Con Edison (i) within 30 days after the occurrence of the particular Future Rezoning, if Fee Owner applied for such Future Floor Area, or (ii) prior to engaging in any of the activities described in Sections 3.1(a)-(d) below, if Fee Owner did not apply for such Future Floor Area; and

(b) fifty percent (50%) of the Fair Market Value in excess of one hundred twenty five dollars (\$125) per square foot of such Future Floor Area (the "Additional Amount"), by wire transfer of funds to Con Edison. If the parties have agreed upon FMV, Fee Owner shall pay the Additional Amount within the applicable time period set forth in Section 2.2(a)(i) or 2.2(a)(ii). If the parties have not agreed on FMV within the applicable time period set forth in Section 2.2(a)(i) or 2.2(a)(ii) above, either party may send notice to commence the procedure for determining Fair Market Value pursuant to Article 5, and the Additional Amount shall be payable within 15 days after the determination of Fair Market Value pursuant to Article 5.

In no event shall the Future Rezoning Price be less than \$125 per square foot of the respective Future Floor Area.

2.3 All wire transfers to Con Edison shall be transmitted to the account or accounts specified from time to time for payment of wire transfers by notice from Con Edison in each case at least seven days before the event requiring a wire transfer.

Article 3.

Covenant

3.1 Unless and until Fee Owner has paid the full Future Rezoning Price due to Con Edison with respect to the particular Future Rezoning (*i.e.*, the payments specified under both (a) and (b) of Section 2.2), Fee Owner shall not: (a) Utilize any Future Floor Area created by the particular Future Rezoning; (b) apply for or obtain a building permit or other governmental permit to construct, alter, or otherwise improve any such Future Floor Area; (c) construct, alter, or otherwise improve any such Future Floor Area; or (d) Transfer any such Future Floor Area.

3.2 Fee Owner shall give notice to Con Edison within 30 days after the occurrence of each and every Future Rezoning. Alternatively, Con Edison may give notice to Fee Owner at any time of the occurrence of any Future Rezoning.

3.3 Each Person acquiring any fee interest in all or any portion of the Property after the date of this Covenant shall give notice to Con Edison within 15 days after the respective conveyance: (a) specifying the name and postal and electronic addresses of the Person acquiring such interest and, if such Person is a legal entity, the name of the individual(s) authorized to act on behalf of such legal entity; and (b) acknowledging this Covenant and agreeing to be bound by the terms, covenants, conditions, and provisions of this Covenant.

3.4 Failure of any Person to give any notice required under this Article shall not waive or otherwise avoid the obligations of the respective Fee Owner to give notice or to make payment as required under this Covenant.

Notices to Con Edison shall be sent to:

Consolidated Edison Company of New York
4 Irving Place
New York, New York 10003
Attn: Treasurer

with copies to:

Consolidated Edison Company of New York
4 Irving Place
New York, New York 10003
Attn: General Counsel

and

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attn: Alan M. Berman, Esq.

Notices to Fee Owner shall be sent to:

c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attn: Mr. Richard L. Fisher

and

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attn: Mr. Sheldon H. Solow

with copies to:

Paul, Hastings, Janofsky & Walker LLP
Park Avenue Tower
75 East 55th Street
New York, New York 10022
Attn: Martin L. Edelman, Esq.

and

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attn: Chris M. Smith, Esq.

Article 9.

Miscellaneous

9.1. Each of the parties shall take such additional actions and sign and deliver such other instruments and documents as may be reasonable, necessary or appropriate to effectuate the transactions contemplated under this Covenant; provided, however, that the taking of such acts or the execution of such documents will not result in material cost or liability to the respective party which is not otherwise required under this Covenant.

9.2. This Covenant shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law). This Covenant is intended to be recorded in the land records of the City of New York and may be recorded by either Con Edison or Fee Owner.

9.3. This Covenant shall not be modified, waived, or amended except by written agreement executed by Con Edison and Fee Owner.

9.4. This Covenant, together with any Exhibits hereto, constitute(s) the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties relating thereto.

9.5. Except as expressly provided in this Covenant, no delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or as a waiver of any other right, power or privilege hereunder; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereunder. The rights and remedies of each party under this Covenant are cumulative and are not exclusive of any rights or remedies which the party may otherwise have at law or in equity.

9.6. This Covenant may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Covenant showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

9.7. This Covenant (and all terms thereof, whether so expressed or not), shall be binding upon the respective permitted successors, assigns and legal representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives. To the maximum extent permitted by law, this Covenant shall run with the land and be construed as a covenant running with the land.

9.8. The Exhibits attached hereto or subsequently incorporated herein are (and shall be deemed) parts of this Covenant. The headings of this Covenant are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

9.9. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Covenant may be brought and/or defended in the Supreme Court of the State of New York, New York County.

9.10. If any term, covenant, condition or provision of this Covenant is determined by Final Determination to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Covenant shall not be affected thereby but shall be valid and enforceable to the fullest extent permitted by law. This Covenant shall be construed without regard to any presumption requiring construction against the party drafting this Covenant.

9.11. Nothing in this Covenant, express or implied, is intended: (a) to confer on any Person—(other than the parties hereto)—any rights, obligations, liabilities, or remedies; (b) to constitute Con Edison as a partner or co-venturer of Fee Owner, or vice versa; or (c) to waive any claim or right of any party against any Person who is not a party to this Covenant.

9.12. Con Edison shall be responsible for any real property transfer taxes if and to the extent that Con Edison's actual receipt of payment of any Future Rezoning Price is deemed taxable consideration for the conveyance of the Property by Con Edison.

9.13. Fee Owner shall pay Con Edison interest on any payment due under this Covenant which is not paid within 10 days after the date when due at an annual rate equal to the prime or base rate of Citibank, N.A. (or its successors) plus two percentage points from time to time (or, if Citibank shall cease to exist and have no successor, a bank designated by Con Edison which is a member of the New York Clearing House Association).

9.14. In event of any Legal Proceeding between or among Con Edison and Fee Owner concerning this Covenant, the prevailing party shall be entitled to reimbursement from the losing party for the Fees-And-Costs of such proceeding incurred by the prevailing party. For this purpose, "prevailing party" means the party who obtains a Final Determination adverse to the other party in or by reason of such Legal Proceeding.

IN WITNESS WHEREOF, Con Edison and Title LLC have executed this
Covenant as of the date first above written.

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.

By: _____
Name:
Title:

[TITLE LLC - FEE OWNER]

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York)
 ss.:
County of)

On the __ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of Consolidated Edison Company of New York, Inc., and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT

State of New York)
 ss.:
County of)

On the __ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit "A"

Property Description

Exhibit "J"

Form of As-Built Amount Guaranty

AS-BUILT AMOUNT GUARANTY

THIS AS-BUILT AMOUNT GUARANTY (this "Guaranty") dated as of _____, 200_ by and from **FISHER EAST RIVER ASSOCIATES LLC**, a New York limited liability company having an address c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171, **EAST RIVER REALTY DEVELOPMENT LLC**, a Delaware limited liability company having an address at 9 West 57th Street, New York, New York 10019 **[INSERT NAMES AND ADDRESSES OF OTHER DEVELOPER PRINCIPALS]** (individually and collectively, "Guarantor") in favor of **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**, a New York corporation having an address at 4 Irving Place, New York, New York 10003 ("Con Edison").

Introductory Statement

Con Edison and FSM East River Associates LLC ("Developer") are parties to that certain Agreement dated as of November 15, 2000 (the "Purchase Agreement"). Words and phrases used but not defined herein shall have the meanings set forth in the Purchase Agreement.

Pursuant to the Purchase Agreement, as of the date hereof, Con Edison has conveyed to Developer's designee and subsidiary, [_____] ("Title LLC"), real property located in the City of New York and commonly known as _____ First Avenue, New York, New York, designated as Block ___ Lot ___ on the Tax Map of the City of New York (the "Property"). By agreement dated as of the date hereof, Title LLC has agreed to be bound by all of the terms and provisions of the Purchase Agreement applicable to Developer with respect to the Property.

Fisher East River Associates LLC, East River Realty Development LLC **[INSERT OTHER NAMES]** are all of the Developer Principals.

Pursuant to the terms of the Purchase Agreement, Developer and Title LLC are jointly and severally liable for, and are required to pay to Con Edison, the As-Built Amount for each Development on the Property within 30 days after the Rezoning Approval Date, if the As-Built Amount for such Developments can be calculated on the Rezoning Approval Date. To the extent that Developer's plans are insufficient at that time to calculate the As-Built Amount for any Development, the As-Built Amount for each such Development is due and payable within 30 days after issuance of a temporary certificate of occupancy for each such Development.

Since Developer does not have sufficient plans with respect to [some of] the proposed Developments for the Property at this time to calculate the As-Built Amount, pursuant to the terms of the Purchase Agreement, and as an inducement for Con Edison to

convey the Property to Title LLC, Guarantor delivers this Guaranty to Con Edison to guarantee payment of the As-Built Amount for the Developments on the Property as and when due pursuant to the Purchase Agreement.

NOW, THEREFORE, in consideration of the indirect benefit to Guarantor from, and as an inducement for, the conveyance of the Property to Title LLC and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor and Con Edison agree as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees to Con Edison the full and timely payment of the As-Built Amount with respect to all Developments on the Property, as well as all interest due and payable to Con Edison if the As-Built Amount is not timely paid, pursuant to the terms of the Purchase Agreement (the "Guaranteed Obligations").

2. This Guaranty is an absolute and unconditional guaranty of payment. Guarantor acknowledges and agrees that each Guarantor shall be jointly and severally liable for the Guaranteed Obligations. Guarantor acknowledges and agrees, also, that its liability hereunder shall be primary and that in any right of action which shall accrue to Con Edison hereunder, Con Edison may proceed against any Guarantor under this Guaranty regardless of whether Con Edison has commenced any suit or proceeding of any kind or nature whatsoever against Developer or Title LLC or obtained any judgment against Developer or Title LLC, and without any presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice of protest, nonperformance or nonobservance, or any notice of acceptance of this Guaranty or any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives.

3. Guarantor expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of (a) the assertion of or the failure by Con Edison to assert against Developer or Title LLC any of the rights or remedies reserved to Con Edison pursuant to the Purchase Agreement, (b) the nonliability of Developer or Title LLC under the Purchase Agreement, by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Developer or Title LLC or their respective successors or assigns, whether or not notice thereof is given to Guarantor, or (c) any other circumstance or condition that may grant or result in a discharge, limitation or reduction of liability of Guarantor, or any other surety or guarantor (except for payment in full of all Guaranteed Obligations).

4. Guarantor acknowledges and agrees that this Guaranty shall be a continuing Guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of (a) any modification or termination of the Purchase Agreement, (b) any consent, indulgence or other action, inaction or omission under or concerning the Purchase Agreement, (c) any dealings or transactions or matter or thing

occurring between Con Edison and Developer and/or Title LLC, (d) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Developer or Title LLC or their respective successors or assigns, whether or not notice thereof is given to Guarantor, (e) the release of Developer or Title LLC from the performance or observance of any of the terms, covenants or conditions contained in the Purchase Agreement pursuant to the terms thereof or by operation of law, or otherwise, (f) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty, or (g) the execution and delivery to Con Edison of any other guaranty of the Guaranteed Obligations (or any of them).

5. No delay on the part of Con Edison in exercising any right, power or privilege under this Guaranty nor any failure to exercise the same shall operate as a waiver of or otherwise affect any right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

6. Guarantor waives any and all rights of subrogation to the rights of Con Edison, contractual, statutory or otherwise, arising out of the performance of Guarantor's obligations hereunder.

7. Con Edison and Guarantor shall each, at any time and from time to time, within ten (10) Business Days following the request by the other, execute, acknowledge and deliver to the other a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications) and that to the best of the certifying party's knowledge, Guarantor is not in default hereunder (or if there is such a default, describing such default in reasonable detail).

8. The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without regard to principles of conflicts of law. Guarantor acknowledges and agrees that all disputes arising, directly or indirectly, out of or relating to this Guaranty may be adjudicated in the state courts of New York sitting in New York County or the federal court of the Southern District of New York. Con Edison and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, Con Edison and Guarantor shall and do waive trial by jury.

9. Guarantor represents to Con Edison that:

(a) Guarantor has full power, authority and legal right to sign, deliver, perform and observe the provisions of this Guaranty, including without limitation, the payment of all moneys hereunder.

(b) The signature, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary organizational action of Guarantor.

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms.

(d) Guarantor, as of the date of the execution of this Guaranty, is not in violation of any decree, ruling, judgment, order or injunction applicable to it nor any law of whatever nature, nor are there any Legal Proceedings pending or threatened against or affecting Guarantor (or any basis therefor known to Guarantor) before or by any court, arbitrator, administrative agency or other Government Entity, any of which, if adversely decided, would materially and adversely affect its ability to carry out any of the terms, covenants and conditions of this Guaranty.

(e) No authorization, approval, consent or permission (governmental or otherwise) of any court, agency, commission or other Government Entity or other Person is required for the due execution, delivery, performance or observance by Guarantor of this Guaranty or for the payment of any sums hereunder. Guarantor covenants that if any such authorization, approval, consent, filing or permission shall be required in the future in order to permit or effect performance of the obligations of Guarantor under this Guaranty, Guarantor shall promptly inform Con Edison or its successors or assigns and shall use its best efforts to obtain promptly such authorization, approval, consent, filing or permission.

(f) Guarantor, as of the date of the execution of this Guaranty, is not in default in the observance or performance of the terms and conditions of any loan or other agreement to which it is a party or by which it is bound, which default might materially and adversely affect its ability to carry out any of the terms, covenants or conditions of this Guaranty.

(g) Neither the execution and delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach of any of the terms, conditions or provisions of Guarantor's organizational documents, or any order, writ, injunction or decree of any Government Entity, or any agreement or instrument to which Guarantor is a party or by which it is bound, or constitutes or will constitute a default thereunder.

10. In the event Con Edison shall be obligated by any bankruptcy, insolvency or other Legal Proceedings to repay to Guarantor or pay to Developer or Title LLC, or to any trustee, receiver or other representative of Developer or Title LLC, any portion of the Guaranteed Obligations, this Guaranty shall be deemed reinstated to the extent of the payment made by Con Edison to Guarantor, Developer and/or Title LLC. Con Edison shall not be required to litigate or otherwise dispute its obligation to make such repayments if it in good faith and on the advice of counsel believes that such obligation exists.

11. Guarantor acknowledges and agrees that it shall be deemed in default under this Guaranty if at any time during the duration of this Guaranty any of the following shall occur:

(a) if, after notice to Guarantor that Developer and/or Title LLC has failed to pay the Guaranteed Obligations when due, Guarantor shall fail to pay the Guaranteed Obligations to Con Edison within 10 Business Days after delivery of such notice, or if Guarantor shall otherwise default in the performance of its obligations under this Guaranty and such default shall continue for 10 Business Days after Con Edison notifies Guarantor thereof; or

(b) if any of the representations made by Guarantor in this Guaranty shall be untrue in any material respect.

12. No waiver or modification of any provision of this Guaranty nor any termination of this Guaranty shall be effective unless in writing and signed by the party against which the waiver, modification or termination is sought to be enforced; nor shall any waiver be applicable except in the specific instance for which it is given.

13. All notices, consents or other communications under this Guaranty must be in writing and addressed to each party at its respective notice address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Guaranty to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

If to Guarantor:

Fisher East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attention: Mr. Richard L. Fisher

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attention: Mr. Sheldon H. Solow

with copies to:

Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street
New York, New York 10019
Attention: Martin L. Edelman, Esq.

and

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attention: Chris M. Smith, Esq.

If to Con Edison:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: Mr. Robert P. Stelben
Vice President and Treasurer

with copies to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: General Counsel

and

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attention: Alan M. Berman, Esq.

14. This Guaranty shall be binding upon and inure to the benefit of Guarantor and Con Edison and their respective successors and permitted assigns.

15. All remedies afforded to Con Edison by reason of this Guaranty are separate and cumulative remedies and it is agreed that no one remedy, whether exercised by Con Edison or not, shall be deemed to be in exclusion of any other remedy available to Con Edison and shall not limit or prejudice any other legal or equitable remedy which Con Edison may have.

16. If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed the day and year first above written.

FISHER EAST RIVER ASSOCIATES LLC
Guarantor

By: _____
Name:
Title:

EAST RIVER REALTY DEVELOPMENT LLC
Guarantor

By: _____
Name:
Title:

[_____]
Guarantor

By: _____
Name:
Title:

State of New York)

ss.:

County of)

On the ___ day of _____ in the year 200_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of Fisher East River Associates LLC, and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the ___ day of _____ in the year 200_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of East River Realty Development LLC and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the ___ day of _____ in the year 200_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit "K"

Form of Assignment of Ground Lease

ASSIGNMENT OF GROUND LEASE

THIS ASSIGNMENT OF GROUND LEASE (the "Assignment"), entered into this ___ day of _____, 2000, between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at 4 Irving Place, New York, New York 10003 ("Con Edison") and _____, a _____ limited liability company, with an office c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Title LLC").

Introductory Statement

Con Edison and FSM East River Associates LLC ("Developer") are parties to that certain Agreement dated as of November 15, 2000 (the "Purchase Agreement"). Words and phrases used but not defined herein shall have the meanings set forth in the Purchase Agreement.

Pursuant to the Purchase Agreement, as of the date hereof, Con Edison has conveyed to Title LLC, as Developer's designee, real property located at 700 First Avenue in the City and State of New York commonly known as the Waterside Generating Station, and designated as a portion of Block 970 Lot 1 on the Tax Map of the City of New York (the "Property"). By agreement dated as of the date hereof, Title LLC has agreed to be bound by all of the terms and provisions of the Purchase Agreement applicable to Developer with respect to the Property.

Con Edison is the ground lessee of a portion of the Property pursuant to that certain Lease between The Mayor, Aldermen and Commonality of the City of New York, as landlord and William Austin, as tenant, dated November 11, 1861 and recorded May 28, 1863 in Liber 875, Page 608, which was assigned by William Austin to Thomas Kane pursuant to that certain Assignment and Transfer dated May 27, 1862 and recorded May 28, 1863 in Liber 875, Page 612, and further assigned by Thomas Kane to James Udell, William S. Peck and Henry A. Peck pursuant to that certain Assignment and Transfer dated August 11, 1866 and recorded August 14, 1866 in Liber 962, Page 650, and further assigned by James Udell to William S. Peck pursuant to that certain Assignment and Transfer dated September 3, 1873 and recorded January 27, 1874 in Liber 1267, Page 663, and further assigned by Henry A. Peck and William S. Peck to James Parker Dodd pursuant to that certain Assignment and Transfer dated February 10, 1898 and recorded February 16, 1898 in Section 3 Liber 57, Page 13, and further assigned to The Edison Electric Illuminating Company (predecessor-in-interest to Con Edison) pursuant to that certain Assignment and Transfer dated March 3, 1898 and recorded November 18, 1899 in Section 3 Liber 64, Page 437 (such lease, as assigned, the "Lease").

Pursuant to the Purchase Agreement, Con Edison now desires to assign and transfer to Title LLC and Title LLC desires to accept and assume all of Con Edison's estate, right, title and interest in, to and under the Lease, subject to the rentals, terms, covenants, obligations and restrictions set forth therein.

NOW, THEREFORE, in consideration of the terms and conditions set forth below and the payment made under the Purchase Agreement, and intending to be legally bound hereby, Con Edison and Title LLC agree as follows:

1. Con Edison hereby assigns and transfers to Title LLC, as of the date hereof, all of Con Edison's estate, right, title and interest in, to and under the Lease, subject to the rentals, terms, covenants, obligations and restrictions set forth therein.

2. Title LLC hereby accepts the assignment of the Lease and hereby assumes and agrees to perform and pay all obligations of ground lessee accruing and arising thereunder from and after the date hereof.

3. Con Edison makes no representation or warranty in connection with this Assignment, except as set forth in the Purchase Agreement and/or the estoppel certificate of Con Edison executed simultaneously herewith.

4. Con Edison, in compliance with Section 13 of the Lien Law, covenants that Con Edison will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

5. This Assignment shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of laws). Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Assignment may be brought and/or defended in the Supreme Court of the State of New York, New York County. This Assignment shall not be modified, waived or amended except by written agreement executed by all of the parties. This Assignment may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Assignment showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals. If any term, covenant, condition or provision of this Assignment is determined by Final Determination to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Assignment shall not be affected thereby but shall be valid and enforceable to the fullest extent permitted by law. This Assignment (and all terms thereof, whether so expressed or not), shall be binding upon the respective permitted successors, assigns and legal

representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives.

IN WITNESS WHEREOF, Con Edison and Title LLC have executed this Assignment of Ground Lease as of the date set forth above.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

[TITLE LLC]

By: _____
Name:
Title:

Exhibit "L"

Form of 685 Zoning Lot Agreement

[Form of 685 Zoning Lot Agreement]

**ZONING LOT
DEVELOPMENT AGREEMENT**

by and between

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

and

[_____]

Address:

**685 First Avenue
New York, New York
Block 945, Lot 33
on the Tax Map of the City of New York**

Record and return to:

**LeBoeuf, Lamb, Greene & MacRae L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.**

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**ZONING LOT
DEVELOPMENT AGREEMENT**

ZONING LOT DEVELOPMENT AGREEMENT (this "Agreement") dated as of _____, 200-, by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having an office at 4 Irving Place, New York, New York ("Con Edison"), and [_____] a [_____] limited liability company having an office c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Title LLC"). Con Edison and Title LLC shall be referred to collectively as the "Parties" and the "Owners".

Introductory Statement

As of the date hereof, Con Edison has conveyed to Title LLC fee title to real property in the City of New York, located in the Borough of Manhattan, County of New York, designated as part of Block 945, Lot 33, in the Tax Map of the City of New York [and tentatively designated as Block ___, Lot ___ in the Tax Map of the City of New York], as more particularly described in Schedule 1 annexed hereto ("Lot A", and the Lot A Buildings (as defined below), shall be collectively referred to as the "Lot A Premises").

Con Edison owns certain real property adjacent to Lot A ("Lot B") together with all Buildings located thereon ("Lot B Buildings") in the City of New York, located in the Borough of Manhattan, County of New York, currently designated as part of Block 945, Lot 33 [and tentatively designated as Block ___, Lot ___ in the Tax Map of the City of New York], as more particularly described in Schedule 2 annexed hereto (Lot B and the Lot B Buildings shall be collectively referred to as the "Lot B Premises"). The Lot A Premises and the Lot B Premises shall be referred to collectively as the "Premises".

The Lot B Buildings consist of an electric substation having an elevation of 73 and 13/100ths feet (relative to the Datum of the Topographical Bureau, Borough of Manhattan) and associated equipment. The Floor Area (as defined below) currently utilized by the Lot B Buildings is deemed to be 55,800 square feet for purposes of this Agreement.

Lot A and Lot B (collectively, the "Lots," and each, a "Lot") are located on the same Zoning Lot (as defined below). [Lot A and Lot B currently comprise a single tax lot but may be subdivided into separate tax lots after the date hereof.]

Con Edison wishes to convey to Title LLC all Development Rights (as defined below) which currently exist or may in the future become available with respect to the Zoning Lot, except for the Floor Area currently utilized by the Lot B Buildings. In addition, Con Edison will reserve, pursuant to the terms set forth herein, an additional area on Lot B adjacent to the Lot B Buildings, as described herein, for its use in maintaining and operating the Lot B Buildings (but will not utilize any additional Floor Area in connection with such use). The

Parties enter into this Agreement to convey certain Development Rights to Title LLC, as described herein, and to define their continuing rights, obligations and responsibilities with respect to their respective Premises located on the Zoning Lot.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

ARTICLE 1. Definitions

Section 1.1 Definitions.

The following words and phrases shall have the meanings set forth below in this Agreement:

"Building" means any building, structure, equipment or other improvement.

"CE Reserved Area" means the Substation Area and the Easement Area, having an aggregate area of 48,313 square feet, and an elevation of 83 and 13/100ths feet (relative to the Datum of the Topographical Bureau, Borough of Manhattan).

"Development Rights" means, with respect to the Zoning Lot, the Floor Area pertaining to the Zoning Lot and all rights to construct on, above, or under such Zoning Lot permitted by the Zoning Resolution.

"Easement Area" means the area described on Schedule 3 hereto which is owned by Con Edison and used for purposes of maintenance and operation of the Lot B Buildings.

"Fees-And-Costs" means reasonable fees of attorneys, architects, engineers, expert witnesses, consultants and others, and reasonable costs, expenses and disbursements charged by, or reimbursable to, the foregoing.

"Floor Area" means Floor Area as defined in Section 12-10 of the Zoning Resolution.

"Lot A Buildings" means all Buildings which may in the future be located on Lot A.

"Substation Area" means the area described on Schedule 4 hereto, owned by Con Edison, on which the Lot B Buildings are located.

"Substation Floor Area" means the Floor Area currently utilized by the Lot B Buildings as of the date hereof, which is deemed to be 55,800 square feet, together with the right to construct Buildings within the CE Reserved Area.

"Zoning Lot" means Zoning Lot as defined in Section 12-10 of the Zoning Resolution.

"Zoning Resolution" means the Zoning Resolution of the City of New York (or any successor law), as amended from time to time.

Section 1.2 Wherever used in this Agreement:

- (a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";
- (b) the word "day" means a calendar day unless otherwise specified;
- (c) the phrase "at Title LLC's expense" or "at Con Edison's expense", means, as applicable, at the sole cost and expense of the particular party;
- (d) the word "law" (or "laws") means any law, rule, regulation, order, statute, ordinance, resolution, regulation, code, decree, judgment, injunction, mandate or other legally binding requirement of a Government Entity applicable in the particular context;
- (e) the word "notice" shall mean notice in writing (whether or not specifically so stated);
- (f) the word "month" means a calendar month unless otherwise specified;
- (g) the word "amended" means "amended, modified, extended, renewed, changed, or otherwise revised"; and the word "amendment" means "amendment, modification, extension, change, renewal, or other revision";
- (h) the phrase "subject to the terms of this Agreement" means "upon and subject to all terms, covenants, conditions and provisions of this Agreement";
- (i) the words "approval", "approve", and "consent" shall mean approval, approve, or consent in writing (whether or not so specified); and
- (j) references to "dollars" or "\$" mean United States dollars.

Section 1.3 Interpretation. When a reference is made in this Agreement to an Article, Section, or Schedule such reference shall be to an Article or Section of, or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References to a person are also to its permitted successors and assigns.

ARTICLE 2. Existing and Future Development Rights

Section 2.1 Existing Development Rights.

(a) Con Edison hereby grants and conveys to Title LLC, from and after the date hereof, without representation or warranty of any kind, all Development Rights appurtenant to the Zoning Lot other than the Substation Floor Area, which Substation Floor Area is specifically retained by Con Edison. The rights granted to Title LLC shall be referred to herein as the "Title LLC Rights". Con Edison covenants to Title LLC, for the benefit of and as an appurtenance to Lot A, that subject to Section 2.2, from and after the date hereof, Con Edison shall not take any action which would result in the use by Con Edison of Floor Area in excess of the Substation Floor Area. For the avoidance of doubt, Con Edison reserves the right to use the Easement Area (subject to Section 3.3), although Con Edison shall not utilize additional Floor Area in connection with such use.

(b) Title LLC covenants to Con Edison, for the benefit of and as a appurtenance to Lot B, that subject to Section 2.2, from and after the date hereof, Title LLC shall not take any action which would result in the use by Title LLC of Floor Area in excess of the Title LLC Rights. Title LLC shall be entitled to construct Buildings which are cantilevered over the Easement Area in accordance with Section 3.3; however, Title LLC covenants to Con Edison, for the benefit of and as an appurtenance to Lot B, that from and after the date hereof, no Buildings shall be erected or installed or allowed or suffered to exist above the Lot B Buildings, whether by cantilevering or otherwise.

(c) Each of Con Edison and Title LLC covenant to the other party, for the benefit of and as an appurtenance to the other party's Lot, that from and after the date hereof no Buildings on its Lot, or combination of Buildings, including any addition or extension of its Buildings, shall be erected or installed or allowed or suffered to exist on its Lot, and no repair, alteration, reconstruction or rebuilding of its Buildings (following a casualty or otherwise) shall be made or allowed or suffered to be made, and each party agrees that it shall not take any action, which would result in the creation on its Lot of (i) a new use that does not conform to the use regulations in the Zoning Resolution or (ii) a failure of any Building on its Lot to comply with any provision of the Zoning Resolution, including coverage, yard and bulk requirements, which would in any manner adversely affect the other party's Lot or any actions that the other party may wish to take with respect thereto consistent with and pursuant to this Agreement or (iii) a violation of the Zoning Resolution when both Lots are considered together as a single Zoning Lot.

(d) Subject to applicable laws and Section 2.2, each Owner shall have the absolute right to construct replacement buildings on its Lot not violative of the restrictions set forth in subsection (a), (b) or (c) of this Section 2.1.

Section 2.2 Future Increase or Decrease in Development Rights.

(a) If, as a result of any amendment or change in the Zoning Resolution, the Zoning Lot shall become entitled to fewer Development Rights in the future, then (i) Con Edison shall have the right to use the Substation Floor Area to the maximum extent permitted by law and (ii) Title LLC shall have the right to construct replacement and/or additional Buildings on Lot A with a Floor Area equal only to the total Floor Area to which the Zoning Lot is then entitled, less the Substation Floor Area; it being understood that no reduction in Development Rights shall decrease the Development Rights utilized by or reserved to Con Edison as of the date hereof pursuant to this Agreement.

(b) If, as a result of any amendment or change in the Zoning Resolution, the Zoning Lot shall become entitled to additional Development Rights in the future, then Title LLC shall be entitled to use all such additional rights in excess of the Substation Floor Area (but not to use the Substation Floor Area), subject to the terms of this Agreement and all applicable provisions of the Zoning Resolution.

ARTICLE 3. Requirements for Development on the Zoning Lot

Section 3.1 Construction Permits. The Owners hereby agree that construction plans and specifications for, and applications to, the New York City Department of Buildings or such other governmental agency with jurisdiction over the permitting process for demolition, alteration and construction of buildings or structures (each, a "Permitting Agency"), for or in connection with any Building on their respective Lots, shall be separate and independent from one another and shall be filed with the applicable Permitting Agency so as to obtain separate "new building" and/or "alteration" treatment and numbers and separate certificates of occupancy, as applicable, each to the extent allowed by law. No Owner shall make any application, or any amendment, modification, supplement or withdrawal relating to demolition, alteration, construction or other similar work (each, an "Application" and collectively, the "Applications") to any Permitting Agency with respect to any of its Buildings or its Lot, which could in any way, except as set forth herein, restrict or hinder the exercise of the rights of the other Owner with respect to use of CE Reserved Area, the Substation Floor Area or Title LLC Rights, as applicable.

Section 3.2 Cooperation.

(a) (i) Each Owner shall, upon request of the other Owner (for the purposes of this Section, the "Requesting Party"), cooperate with the Requesting Party in all reasonable respects in order to carry out the provisions of this Agreement. Without limiting the generality of the foregoing:

(ii) Within thirty (30) days after a request which includes the information described in this Section 3.2(a)(ii) is made by the Requesting Party, the other Owner (A) shall furnish the Requesting Party with all additional consents and other instruments (in form and substance reasonably satisfactory to the Owner

furnishing the consent or instrument) as may be necessary or appropriate to permit the Requesting Party to utilize all of its rights under this Agreement, including without limitation the Development Rights allocated to the Requesting Party hereunder, whether such Development Rights are used on the Zoning Lot or on another parcel of real property, and (B) shall join in, authorize and/or consent to any Applications (including, without limitation, Applications for any licenses, permits, authorizations, variances, rezonings, approvals, certificates, rulings or amendments as are necessary and appropriate in the exercise by the Requesting Party of its rights to construct, maintain, renovate, alter, reconstruct, demolish or otherwise build or modify in any manner permitted by this Agreement any building or improvements located on the Requesting Party's land) for which the other Owner's consent or approval is required. Each such request shall include (1) a certification of an architect that the consent or instrument being executed or the Application being filed, as the case may be, is consistent with the requirements set forth in this Agreement, (2) a copy of the completed consent, instrument or Application, as the case may be, in a form suitable for submission to the Permitting Agency, and (3) a copy of any plans and specifications relating to the work described in the consent, instrument or Application, as the case may be, in a form suitable for submission to the Permitting Agency. Each such request shall be made no less than thirty (30) days prior to the Requesting Party's intended delivery of such consent or instrument or submission to a Permitting Agency of such Application. The Requesting Party shall pay the Fees-And-Costs incurred by the other Owner in reviewing the consent, instrument or Application and the related materials.

(iii) If an Owner submits an Application to a Permitting Agency which does not require the consent or approval of the other Owner, within ten (10) days after such Owner's submission of an executed Application to a Permitting Agency (other than permits for interior work, maintenance and repair that have no effect on Floor Area), it shall submit to the other Owner (A) a certification prepared by an architect demonstrating that the Application being filed is consistent with the requirements set forth in this Agreement, (B) a copy of any completed Application, in a form suitable for submission to such Permitting Agency, and (C) a copy of any plans and specifications relating to the work described in the Application, in a form suitable for submission to such Permitting Agency.

(iv) Neither Owner shall at any time voluntarily appear in opposition to the other Owner in any action or hearing brought, sought or defended by the other party before any community board, the City Planning Commission or Department of City Planning of the City of New York, the Department of Buildings, the City Council of the City of New York, the Board of Standards and Appeals of the City of New York, or any other Permitting Agency, arising out of or in connection with any zoning or variance applications relating to the use, development or redevelopment of the other Owner's property in a manner permitted by this Agreement.

Section 3.3 Cantilevered Improvements. If Title LLC intends to construct Buildings above the Easement Area (collectively, the "Cantilevered Improvements"), in addition to

complying with the other requirements of this Section and Sections 3.4 and 3.5, Title LLC shall, prior to submission of its Application, obtain Con Edison's approval to such Cantilevered Improvements. Title LLC shall provide Con Edison for its review and approval detailed plans and construction schedules which show the location of the proposed Buildings in relation to the Lot B Buildings and the Easement Area, the structural support for such proposed Buildings, and Title LLC's plans for maintaining Con Edison's access to, and precautions for the safety of persons using, the Easement Area during the construction period, as well as such additional information regarding such Cantilevered Improvements as Con Edison may reasonably request. Upon receipt of all required information, Con Edison shall within thirty days approve such proposed Cantilevered Improvements provided that such Cantilevered Improvements and/or the construction thereof: (i) do not penetrate or touch any part of the CE Reserved Area; (ii) do not prevent Con Edison's access to the Easement Area at all times for purposes of operation and maintenance of the Lot B Buildings; (iii) do not interfere with Con Edison's continuous uninterrupted maintenance and operation of the Lot B Buildings, it being understood that no structural supports for the Lot A Buildings may be constructed or maintained in the CE Reserved Area; and (iv) are not located above the Lot B Buildings (whether by cantilevering or otherwise). Title LLC agrees to indemnify, defend, and hold harmless Con Edison, all persons and entities controlled by Con Edison, and the officers, directors and employees of each of them (the "Con Edison Indemnitees") from and against all loss, damages, cost, claim or expense (including Fees-And-Costs), whether direct, indirect or consequential, arising out of any bodily injury (including death) or property damage arising out of, relating to, or resulting from the breach of Title LLC's obligations under this Article 3 with respect to, or otherwise relating to or arising from, the construction, maintenance, operation or existence of the Cantilevered Improvements. If Title LLC requires temporary access to the Easement Area for construction purposes, Con Edison agrees to grant such temporary access upon reasonable terms and conditions acceptable to Con Edison, taking into account Con Edison's need to operate its Buildings on a continuous, uninterrupted basis.

Section 3.4 No Access. The Requesting Party shall not have any rights of access to the other Owner's Lot or Buildings which are not expressly stated herein or in any other agreement between the Owners. All Applications shall be made in accordance with all applicable laws. The right of either Owner to alter, reconstruct or replace its Buildings shall be subject to the restrictions and/or benefits of the Zoning Resolution and other provisions of law as same may hereafter be amended or enacted and in effect at the time that such Applications are made.

Section 3.5 Performance of Work.

(a) All work to be performed under this Agreement by an Owner (for purposes of this Section, the "Constructing Party"): (i) shall not impair the structural integrity of any Building situated on the other Lot; (ii) shall not be undertaken until the Constructing Party shall have procured and paid for all required permits and liability, builder's risk and other types of insurance then customarily obtained in connection with such work, with such coverages and in such amounts as are then customarily obtained in connection with such work; (iii) except for routine maintenance activity, shall not be undertaken until the Constructing

Party shall have submitted to the other Owner all applicable documents, plans and specifications required to be filed with any Permitting Agency or to be delivered to the other Owner pursuant to this Agreement, as well as evidence of all insurance required hereunder; (iv) shall be performed in compliance with all applicable laws; (v) shall be performed by Owner's employees or by contractors licensed (to the extent required by applicable law) to do the work being undertaken; (vi) shall be performed in a manner that does not materially adversely affect or substantially interfere with the use and enjoyment by the other Owner or the occupants of its Premises (except in the exercise of Self-Help Rights, where such work may temporarily affect or interfere, but only to the extent necessary to perform the work); and (vii) shall be diligently prosecuted to completion. During any construction or reconstruction work, the construction site shall be kept in an orderly, clean and safe condition.

(b) The Constructing Party shall pay when due all claims for labor performed or material furnished and not permit any lien of mechanics or materialmen to attach to the other Owner's Lot, and if any such liens do attach, the Constructing Party shall not permit such liens to interfere with the other Owner's financing arrangements or work. The Constructing Party shall also be responsible for the Fees And Costs incurred by the other Owner in reviewing the Constructing Party's plans and specifications.

(c) The review of or comments on any documents, drawings, plans, specifications or other documentation provided by the Constructing Party shall not relieve the Constructing Party of, or affect in any way, its responsibility for the correctness and adequacy of the work to be performed. The other Owner shall have no liability whatsoever with respect to any review or non-review of any documentation submitted to it by the Constructing Party.

ARTICLE 4. Conveyance of the Zoning Lot; Conveyance of Development Rights

Section 4.1 (a) Notwithstanding anything to the contrary contained in this Agreement, either Party (for purposes of this Section, a "Conveying Party") may from time to time convey its Lot without the consent of the other Party (the "Non-Conveying Party"); provided, however, that every such conveyance(s) shall not violate this Agreement and shall be subject and subordinate in all respects to the terms of this Agreement. No conveyance by the Conveying Party shall increase the Development Rights available to the Conveying Party under this Agreement or reduce the Development Rights of the Non-Conveying Party under this Agreement.

(b) In the event that either Lot is converted to condominium ownership, the board of managers of the condominium shall be considered the Owner of the Lot for purposes of this Agreement and shall have full authority to bind all owners of its Lot with respect to all matters requiring the consent, approval or other action of the Owner of such Lot.

Section 4.2 Each Owner shall have the right to convey Development Rights to parties other than future owners of its Lot in accordance with the Zoning Resolution; provided, however, that such conveyance(s) shall not violate this Agreement, and shall be subject to the

terms of this Agreement. No conveyance of Development Rights pursuant to the preceding sentence shall be effective unless and until the Conveying Party's grantee shall have executed and delivered to the Non-Conveying Party documents in form reasonably satisfactory to the Non-Conveying Party agreeing to comply with and be bound by the terms of this Agreement (other than Sections 3.3 and 3.5 (except that such grantee shall comply with and be bound by the second sentence of Section 3.5(b))).

Section 4.3 Each Owner shall have the right to convey for use on other lots all or any portion of its Development Rights, and the Non-Conveying Party hereby consents to, and waives its right to execute any documents implementing, any such conveyance, subject to Section 4.2; provided that such conveyance does not diminish or reduce in any way the rights of the Non-Conveying Party under this Agreement. Any Application to a Permitting Agency for authority to carry out such a conveyance shall be subject to the provisions of Section 3.2(a)(i).

ARTICLE 5. Violations

Section 5.1 Curing Violations. Each Party covenants and agrees to cure and remove of record with diligence any and all violations, the circumstances or conditions of which arise after the date of this Agreement, of the Zoning Resolution, any building code, fire code, or other law hereafter in force and effect with respect to its Premises ("Violations") which may in any manner adversely affect the other Party's Premises or any actions which the other Party may wish to undertake with respect thereto pursuant to and consistent with this Agreement. If each such Party (for purposes of this Section, a "Violating Party") has not, within thirty (30) days after it receives notice of such Violation, cured such Violation, or if not susceptible of being cured within such thirty (30) day period, if such Violating Party has not commenced diligently to prosecute a cure of such Violation until completion; or, in the case of an emergency immediately by verbal notice followed by written notice, the other Party shall have the right, at the Violating Party's expense, to cure said Violation ("Self-Help Rights") and such Violating Party hereby grants to the other Party the right of access to such Violating Party's Premises for such purpose. Each such Violating Party shall pay to the other Party on demand sums equal to all costs incurred by each such Party as a result of the failure by such Violating Party to cure its Violations including all fines, penalties and expenses and reasonable attorneys' fees and disbursements. Whenever a Party intends to enter upon the Premises of the other Owner to perform any work in exercising its Self-Help Rights, such Party shall give the other Owner (i) at least twenty-four (24) hours' prior written notice or (ii) immediate verbal notification followed by written notice in the case of any emergency. Notwithstanding anything to the contrary in this Agreement, no Self-Help Rights may be exercised by Title LLC on, under or relating to the Lot B Buildings except in the event of an emergency.

ARTICLE 6. Binding Effect

Section 6.1 Covenants Running with the Land. The benefits and burdens, rights and obligations created by this Agreement shall be appurtenant to and run with and burden and be binding upon the Lots, and shall inure to the benefit of and be binding upon the Parties and those claiming by, through, or under them until this Agreement shall terminate. The covenants, agreements, terms, provisions and conditions of this Agreement shall bind and benefit the successors in interest (as owners of the Lots, whether by sale, foreclosure or otherwise) of the Parties, and any such Party's successors and assigns, as the case may be, it being understood and agreed that upon any transfer of ownership (whether by sale, foreclosure or otherwise) of all or any part of the Lots, each such successor in interest shall, without the requirement of any further documentation, thereupon and thereafter automatically be deemed to have assumed and shall perform and observe, any and all of the obligations of its predecessors in interest under this Agreement with respect to such Lot. Notwithstanding the foregoing, each Party shall use reasonable efforts to cause any such successor in interest to execute an agreement in recordable form pursuant to which such successor in interest shall assume any and all obligations of its predecessors in interest under this Agreement; provided, however, that the failure to obtain any such agreement shall not detract from the provisions of the previous sentence.

Section 6.2 Assignment. Neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by any Party, except (1) to a party acquiring a Lot and assuming this Agreement or (2) to a lending institution or trustee in connection with a pledge or granting of a security interest in all or any part of a Lot and this Agreement, without the prior written consent of the other Party. To the extent that rights hereunder are assigned to the holder of any mortgage encumbering any of the Premises, or any interest therein, they shall be enforceable by any such assignee after default under any such mortgage and the acquisition of fee title to the respective Lot by such mortgagee.

ARTICLE 7. Miscellaneous

Section 7.1 Default and Remedies.

(a) In the event that a Party defaults, breaches or otherwise fails to perform any obligation of such Party under this Agreement, the other Party shall have the right to all remedies available at law or in equity, including the right to injunctive relief and the right to exercise its Self-Help Rights (and shall be entitled to reimbursement in connection therewith) without any requirement to pursue or exhaust any other remedies available to such Party under any other agreement; provided, that the Party exercising any such right(s) and pursuing any such remedy(ies) shall have first given no less than ten (10) days' notice pursuant to Section 7.3 of this Agreement to the other Party and to the institutional holder of a first mortgage (if any) encumbering such other Party's Lot which has been designated as a notice party. All such remedies shall be cumulative and not exclusive. A Party shall have the right, following notice to the other Party, to take such action as it may deem necessary or advisable, including payment of any delinquent taxes, to prevent a foreclosure for nonpayment of taxes or

other action by any court, administrative or regulatory agency or commission or other governmental entity or instrumentality, domestic, foreign or supranational or any department thereof (each, a "Government Entity") that might affect its rights and interests hereunder and any such action shall be deemed an exercise of Self-Help Rights (and, accordingly, give rise to reimbursement rights). Notwithstanding anything to the contrary in this Agreement, however, in no event shall any party have the right to recover punitive or consequential damages in the event of a breach of this Agreement by the other Party. In the event a Party is entitled to reimbursement hereunder and reimbursement is not received within thirty (30) days after written demand by the Party entitled to same, the unpaid obligations shall accrue interest at an annual rate equal to the "prime" or "base" rate announced from time to time by Citibank, N.A. or any successor thereto, plus 2%.

(b) Any duty or obligation under or pursuant to this Agreement in respect of Lot A or Lot B, as the case may be, shall be enforceable only against the then fee owner of Lot A or Lot B, as the case may be. Notwithstanding the foregoing, nothing contained herein shall be deemed to relieve any Owner from any liability for a breach of the Agreement while such Owner was the fee owner of Lot A or Lot B, as applicable. No liability under this Agreement shall be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against any Owner, or any past, present or future partner, member, manager, officer, director or shareholder of such Owner, but any such liability shall rather be limited to and enforceable solely against, and each Owner agrees to look solely to, only the assets of such other Owner constituting an interest Lot A or Lot B, as the case may be, (including rental insurance, condemnation and sales proceeds attributable to Lot A or Lot B, as the case may be) and no other assets of such Owner.

Section 7.2 Recording. Either party may record this Agreement immediately after the execution of this Agreement.

Section 7.3 Notices. All notices, consents and other communications hereunder shall be in writing and addressed to each party at its respective notice address set forth below (or at any other address which either party may designate by notice to the other party from time to time). In addition each Party may designate not more than one institutional holder of a first mortgage encumbering its Lot as an additional notice party hereunder. Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain shall be deemed given or made if sent by hand or by U.S. express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

To Con Edison:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: Vice President and Treasurer

with copies to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: General Counsel

and

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attn: Alan M. Berman, Esq.

To Title LLC:

[Title LLC]
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171
Attn: Mr. Richard L. Fisher

and

East River Realty Development LLC
9 West 57th Street
New York, New York 10019
Attn: Mr. Sheldon H. Solow

with copies to:

Paul, Hastings, Janofsky & Walker, LLP
75 East 55th Street
New York, New York 10019
Attn: Martin L. Edelman, Esq.

and

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Attn: Chris M. Smith, Esq.

Section 7.4 Estoppel Certificate. Each Party agrees, within ten (10) days after written request by the other, to execute, acknowledge and deliver to and in favor of any present or proposed lender, ground lessor, purchaser, tenant or the like of all or any part of the other Party's Lot, an estoppel certificate stating: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) whether there are any sums then due and owing under this Agreement from either Party to the other, and if so, specifying the amount thereof and reason therefor; and (iv) whether the Party giving such certificate knows of any default (or event which, with the passage of time, the giving of notice, or both, would constitute a default) on the part of the other Party, or has any outstanding claim against the other Party arising under this Agreement, and, if so, specifying the nature of such default or claim.

Section 7.5 Waivers by Subsequent Parties-in-Interest. If an interest attaches to either Party's Premises subsequent to the date hereof which would otherwise confer upon the holder of such interest the status of a "Party-in-Interest" (as that term is defined in the Zoning Resolution), then (a) any conveyance of Development Rights by any Owner permitted by this Agreement, and (b) any modification, amendment or termination of this Agreement, may be executed without the joinder, waiver, consent or other act of the holder of such interest. Notwithstanding the foregoing, the affected Party shall use good faith efforts to obtain from such holder a waiver of execution of any subsequent amendments to this Agreement and to subordinate its interest to such Agreement, as it may be amended. For the avoidance of doubt, the interest of any person or entity which acquires an interest in the Lots, whether by mortgage, deed or otherwise, shall be subject and subordinate in all respects to this Agreement.

Section 7.6 Mortgagees' Status. The Parties intend that this Agreement be superior to any mortgages or other instruments evidencing security for indebtedness granted by either Party from time to time with respect to its Lot. Accordingly, each Party agrees to obtain and deliver to the other party such documents and instruments, in recordable form, as may be reasonably necessary or requested by the other Party to evidence and confirm the subordination of any such mortgages or other security instruments to the provisions of this Agreement.

Section 7.7 Counterparts. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original, and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction may be used for all purposes as originals.

Section 7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law).

Section 7.9 Extension; Waiver. Any Party may extend the time for performance of any of the obligations or other acts of the other Party or waive compliance by the other Party with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 7.10 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

Section 7.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 7.12 Amendment and Modification. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of the owners from time to time of each Lot.

Section 7.13 Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the Supreme Court of the State of New York, New York County or the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or otherwise breached. It is accordingly agreed that each Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled to at law or in equity.

Section 7.14 No breach by any Party to this Agreement of this Agreement or any agreement ancillary hereto shall have any effect on the treatment of the Lots as one Zoning Lot for purposes of the Zoning Resolution, and the Lots shall be treated as one Zoning Lot unless and until it is hereafter subdivided in accordance with the provisions of the Zoning Resolution.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first set forth above.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

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

On this ____ day of _____, _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he resides at _____; that s/he is the _____ of Consolidated Edison Company of New York, Inc., the corporation described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by order of the board of trustees of said corporation.

Notary Public

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

On this ____ day of _____, _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he resides at _____; that s/he is the _____ of _____, [complete acknowledgment for Title LLC as appropriate].

Notary Public

SCHEDULE 1
Description of Lot A

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

BEGINNING at the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue;

RUNNING THENCE westerly, along the northerly line of East 39th Street, 163'-10 1/2";

THENCE northerly, parallel with the westerly line of First Avenue, 197'-6" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 163'-10 1/2" to the corner formed by the intersection of the southerly line of East 40th Street with the westerly line of First Avenue;

THENCE southerly, along the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

SCHEDULE 2
Description of Lot B

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

BEGINNING at a point in the northerly line of East 39th Street distant 163'-10 1/2" westerly from the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue;

RUNNING thence westerly, along the northerly line of East 39th Street, 244'-7 1/2";

THENCE northerly, parallel with the westerly line of First Avenue, 197'-6" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 244'-7 1/2";

THENCE southerly, parallel with the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

SCHEDULE 3
Description of Easement Area

ALL that portion of the following parcel lying below an elevation of 83 and 13/100ths feet (relative to the Datum of the Topographical Bureau, Borough of Manhattan):

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

BEGINNING at a point in the northerly line of East 39th Street distant 163'-10½" westerly from the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue:

RUNNING thence westerly, along the northerly line of East 39th Street, 48'-10";

THENCE northerly, parallel with the westerly line of First Avenue, 55'-6½";

THENCE easterly, parallel with the northerly line of East 39th Street, 4'-3";

THENCE northerly parallel with the westerly line of First Avenue, 86'-5";

THENCE westerly, parallel with the southerly line of East 40th Street, 4'-3";

THENCE northerly, parallel with the westerly line of First Avenue, 55'-6½" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 48'-10";

THENCE southerly, parallel with the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

SCHEDULE 4
Description of Substation Area

ALL that portion of the following parcel lying below an elevation of 83 and 13/100ths feet (relative to the Datum of the Topographical Bureau, Borough of Manhattan):

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

BEGINNING at a point in the northerly line of East 39th Street distant 212'-8½" westerly from the corner formed by the intersection of the northerly line of East 39th Street with the westerly line of First Avenue;

RUNNING thence westerly, along the northerly line of East 39th Street, 195'-9½";

THENCE northerly, parallel with the westerly line of First Avenue, 197'-6" to a point in the southerly line of East 40th Street;

THENCE easterly, along the southerly line of East 40th Street, 195'-9½";

THENCE southerly, parallel with the westerly line of First Avenue, 55'-6½";

THENCE easterly, parallel with the southerly line of East 40th Street, 4'-3";

THENCE southerly, parallel with the westerly line of First Avenue, 86'-5";

THENCE westerly, parallel with the southerly line of East 40th Street, 4'-3";

THENCE southerly, parallel with the westerly line of First Avenue, 55'-6½" to the point of BEGINNING.

Exhibit "M"

Form of Assumption by Title LLC

ASSUMPTION

ASSUMPTION made this _____ day of _____, 200__ by _____, a _____ limited liability company having an address c/o Fisher Brothers, 299 Park Avenue, New York, New York 10171 ("Title LLC").

Introductory Statement

FSM East River Associates LLC ("Developer") and Consolidated Edison Company of New York, Inc. ("Con Edison") are parties to that certain Agreement dated as of November 15, 2000 (the "Agreement"). The Agreement contemplates that a limited liability company of which Developer owns directly or indirectly all (100% of) the membership interests (subject to the terms of the Agreement) will take title to the real property commonly known as _____ First Avenue, New York, New York (the "Property"). The Agreement requires such company, upon acquiring the title to the Property, to assume the obligations of Developer with respect to the Property.

As of the date hereof, Con Edison has conveyed the Property to Title LLC, a limited liability company owned directly or indirectly 100% by Developer.

Title LLC enters into this Assumption pursuant to the terms of the Agreement.

NOW, THEREFORE, in consideration for the conveyance of the Property to Title LLC, and for other good and valuable consideration, Title LLC hereby certifies to Con Edison and agrees as follows:

1. Title LLC assumes and agrees to be subject to the terms of the Agreement and bound by the Agreement, as it relates to the Property, to the same extent as Developer, and agrees that Developer and Title LLC shall be jointly and severally liable for the obligations of Developer under the Agreement with respect to the Property.

2. All references to, or obligations of, Developer in the Agreement with respect to the Property shall be deemed to include Title LLC.

3. This Assumption is and shall be deemed effective from and as of the date of the signing of the Agreement.

[Title LLC]

By: _____
Name:
Title:

Exhibit "N"

[omitted]

Exhibit "O"

Form of Developer Call L/C

[Developer Call L/C]

[Letterhead of Issuer]
Standby Letter of Credit

No. _____

_____, 200_

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of FSM East River Associates LLC ("Account Party") for up to an aggregate amount of U.S. Seventy Nine Million Nine Hundred Eighty Six Thousand One Hundred Eighty Seven Dollars (\$79,986,187) (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that:
 - (a) Account Party has defaulted in paying the "Rezoned Price" for any "Property" under that certain Agreement dated as of November 15, 2000 between Account Party and the Beneficiary (the "Sale Agreement") when due and payable under the Sale Agreement; or
 - (b) a "Developer Event of Default" (other than as described in (a) above) has occurred under the Sale Agreement (and specifying, by reference to a particular paragraph of the Sale Agreement, the particular Developer Event of Default which has occurred); or
 - (c) this Letter of Credit will expire in less than thirty days and Account Party has not given Beneficiary a replacement Letter of Credit which meets the criteria set forth in Section 5.6 of the Sale Agreement; or

- (d) Account Party has made an assignment for the benefit of creditors or has filed a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law has been filed against Account Party and such involuntary petition has not been dismissed within 90 days after filing; or a petition has been filed by or against Account Party under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition has not been dismissed within 90 days after filing; or a receiver, trustee or liquidator has been appointed for Account Party or its property and such receiver, trustee or liquidator has not been discharged within 90 days from the date of his/her appointment;

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail, return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

_____ BANK
By: _____

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____
Date of Letter of Credit: _____
Date of this Draft: _____
Issuing Bank: _____
Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., SEVENTY NINE MILLION NINE HUNDRED
EIGHTY SIX THOUSAND ONE HUNDRED EIGHTY SEVEN (\$79,986,187) DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

¹ NOTE: IF A PARTIAL DRAW, INSERT (INSTEAD OF \$79,986,187)
SUCH LESSER AMOUNT AS IS REQUESTED BY BENEFICIARY IN
SUCH PARTIAL DRAW.

Exhibit "P"
Forms of Opinions of Counsel

Exhibit "P-1"

Form of Opinion of Counsel to Developer (PHJW Opinion)

FORM OF OPINION OF COUNSEL TO DEVELOPER

[PHJW OPINION]

_____, 200__

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003

Ladies and Gentlemen:

We have acted as counsel to FSM East River Associates LLC ("Developer"), a New York limited liability company, _____ ("Title LLC"), a _____ limited liability company, Fisher East River Associates LLC ("East River"), a _____ limited liability company, and _____¹, a _____ ("Title LLC Manager") (Developer, Title LLC, East River and Title LLC Manager, collectively, the "Developer Entities") in connection with the purchase from Consolidated Edison Company of New York, Inc. ("Con Edison") of certain real property in the City and State of New York commonly described as _____ First Avenue (the "Property"), pursuant to the terms of that certain Agreement dated as of November 15, 2000 between Con Edison and Developer, as amended by that certain First Amendment dated as of November 15, 2000 (collectively, the "Agreement").

In that connection, we have examined the instruments and agreements specified on Schedule "A" hereto (the "Documents") and the certificate(s) set forth on Schedule "B" hereto and the documents referred to therein (the "Certificates").

In rendering our opinion, we have examined originals or copies identified to our satisfaction of the Documents to which any of the Developer Entities is a party. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies. We have not examined any documents or instruments other than the Documents and those documents and instruments specified in or attached to the Certificates, nor have we examined other records of the Developer Entities or certificates or comparable documents of public officials. (Our opinions are limited to the matters set forth below and do not cover the legality, validity, binding effect or enforceability

¹ Insert name of manager of Title LLC.

Article 4.

Expiration

4.1 This Covenant shall expire, automatically and without the filing of termination documents, on _____, 203__ [30 years after the date this Covenant].

Article 5.

Fair Market Value Appraisals

5.1 This Article provides the mechanism for determining the Fair Market Value of Future Floor Area for purposes of this Covenant.

5.2 In this Covenant:

(a) "Fair Market Value" or "FMV" means the fair market value of the Future Floor Area resulting from a particular Future Rezoning, determined as of the date of the Final Determination with respect to such Future Rezoning, taking into account those facts and circumstances which are then reasonably and customarily taken into account by professional appraisers valuing similar property and rights.

(b) "Independent FMV Appraiser" means an individual, jointly selected by Fee Owner and Con Edison (or the appraisers appointed by them), who has no less than 15 years of commercial appraisal experience in midtown Manhattan and who has not been engaged (and whose firm has not been engaged) within the previous ten years by Fee Owner, Con Edison, Developer, Title LLC (or any of the following, as defined in the Agreement: any Developer Principal, Solow, any of the Fishers, and/or Morgan Stanley).

5.3 When Fair Market Value must be determined for purposes of this Covenant, an appraiser for each of Con Edison and Fee Owner shall submit an appraisal in MAI form to the other for the value of the respective Future Floor Area within 30 days after either notifies the other that an FMV appraisal is required under this Section. If either Con Edison or Fee Owner fails to submit such an appraisal by such 30th day, the appraisal submitted by the other shall bind both parties. If the two appraisers cannot agree on the applicable FMV within 10 days after the appraisals are exchanged, and if the parties have not previously designated such individual, the appraisers shall jointly designate an Independent FMV Appraiser within five days after the end of such 10-day period. If the two appraisers cannot agree upon an Independent FMV Appraiser within such five day period, then the Independent FMV Appraiser shall be appointed by the AAA upon request of either party. The AAA shall appoint the Independent FMV Appraiser within 10 days after the date of such request. Within 30 days after such appointment, the Independent FMV Appraiser shall determine the applicable Fair Market Value by selecting the Fair Market Value specified in the appraisal previously submitted (as set forth above) by one or the other of the parties. The determination of the Independent FMV Appraiser shall be conclusive and binding on the parties as the decision of an arbitrator under the CPLR. Each party shall pay fifty percent (50%) of the Fees-And-Costs of the Independent FMV Appraiser. For purposes of this Covenant, an appraisal in MAI form means an appraisal conforming to generally accepted appraisal standards of the Appraisal Standards Board which uses three market value approaches — cost, income, and comparable sales — and reconciles the results of each to estimated market value.

Article 6.

Default; Remedies

6.1 The following shall constitute "Events of Default" under this Covenant:

- (a) Fee Owner shall fail to pay the Future Rezoning Price as and when due and payable with respect to a particular Future Rezoning under this Covenant;
- (b) Fee Owner shall fail to give notice to Con Edison as and when required under Sections 3.2 or 3.3;
- (c) Fee Owner shall take any action contemplated under (a) through (d) of Section 3.1 without paying the full Future Rezoning Price due to Con Edison under Section 2.2(a) and (b); and/or
- (d) Fee Owner shall default materially in performing any of Fee Owner's other obligations to be performed under this Covenant and shall fail to cure the same within 30 days after notice from Con Edison.

6.2 Upon the occurrence of an Event of Default, Con Edison shall have the following rights and remedies:

- (a) the right to bring a Legal Proceeding for an injunction prohibiting Fee Owner from taking any of the actions described in (a) through (d) of Section 3.1 or for specific performance of any obligation of the respective Fee Owner under this Covenant;
- (b) the right to bring an action for payment of all or any part of the Future Rezoning Price then due and payable to Con Edison under Section 2.2(a) and/or (b); and
- (c) any and all other remedies available to Con Edison at law, in equity, or otherwise.

6.3 The remedies of Con Edison in this Covenant are intended to be cumulative; and the exercise of one remedy shall not preclude the concurrent or future exercise of any other remedy under this Covenant.

Article 7.

Certain Representations and Covenants

7.1 Fee Owner represents and warrants to Con Edison as of the date of this Covenant as follows:

- (a) Fee Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of _____ and is qualified or otherwise legally permitted to conduct business in the State of New York.
- (b) Fee Owner has all necessary power and lawful authority to own and operate its assets and properties and to carry on its business (including all transactions contemplated under this Covenant).

(c) The execution and delivery by Fee Owner of this Covenant, and the consummation by Fee Owner of the transactions contemplated thereby, have been duly authorized by all necessary action of Fee Owner and have been duly approved and/or authorized by all members, managers, partners, shareholders, or directors of Fee Owner and by any and all other Persons whose approval is required for such approval and authorization under the organizing documents of Fee Owner and/or any other agreements applicable to Fee Owner under which such approval or authorization is required.

(d) The execution and delivery of this Covenant by Fee Owner, and the consummation of the transactions contemplated hereby, will not violate any provision of Fee Owner's certificate of incorporation or by-laws, articles of organization, limited liability operating agreement, partnership agreement, or other organizing or constituent documents, or result in the acceleration of any material indebtedness of Fee Owner.

7.2 Fee Owner agrees that this Covenant, and Con Edison's rights in this Covenant, are intended to be (and shall be) superior and prior in title and interest in all respects whatsoever to any and all fee interests, mortgages, leases, or other agreements, instruments, or interests of any kind or nature in, to, or affecting the Property.

7.3 Fee Owner agrees that this Covenant, and Con Edison's rights hereunder, are irrevocable, exclusive, and not subject to rescission or cancellation by Fee Owner or any other Person acting by, through, or under Fee Owner. Fee Owner agrees that, subject to Article 5, the payments due to Con Edison under this Covenant shall not be subject to any defense, offset, set off, counterclaim, injunction, or other remedy of any kind. Fee Owner agrees that the granting of this Covenant to Con Edison is in consideration of a material benefit to Fee Owner, bargained for and supported by consideration to Fee Owner; and that any attempt by Fee Owner or any other Person to prevent Con Edison from enforcing its rights under this Covenant would deny Con Edison a material part of its bargain.

7.4 Fee Owner hereby irrevocably waives, to the fullest extent permitted by law, any and all defenses (legal, equitable, or otherwise) to the validity and enforceability of this Covenant.

Article 8.

Notices

8.1 All notices, consents or other communications under this Covenant must be in writing and addressed to each party at its respective address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Covenant to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

of any of the Documents or any provision therein). We have relied, with respect to factual matters, on the Certificates and the documents and instruments specified in or attached to the Certificates without independent inquiry.

Based solely on the foregoing and subject to the qualifications and assumptions set forth herein, we are of the opinion that, as of the date hereof:

1. Organization of Developer and Title LLC. Developer is a limited liability company organized and is in good standing under the laws of the State of New York. Title LLC is a limited liability company organized and is in good standing under the laws of the State of [New York] [_____] and is duly authorized to conduct business in the State of New York]. Each of Developer and Title LLC has all requisite power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party. East River and East River Realty Development LLC are the only members² and managers of Developer. Developer is the only member and Title LLC Manager is the only manager of Title LLC.

2. Organization of East River and Title LLC Manager. East River is a limited liability company organized and is in good standing under the laws of the State of [New York] [_____] and is duly authorized to conduct business in the State of New York]. Title LLC Manager is a _____ organized and is in good standing under the laws of the State of [New York] [_____] and is duly authorized to conduct business in the State of New York]. Each of East River and Title LLC Manager have all requisite power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party, either individually or as a member or manager of any of the Developer Entities. _____ are the only members and _____ is the only manager of East River. _____ are the only [members/partners/shareholders] and _____ is the [only manager/only general partner] of Title LLC Manager.

3. Authorization. Each of the Developer Entities has taken or caused to be taken all necessary [corporate, partnership, or] limited liability company action, [as applicable,] (including but not limited to obtaining the consent of its [members and managers whose consent may be required/partners whose consent may be required/board of directors, as applicable]) to authorize the execution, delivery and performance of each of the Documents to which it is a party.

²

If Morgan Stanley entity becomes a member of Developer prior to Closing, its membership will be indicated here and a separate legal opinion with respect to such entity will be delivered by its counsel, in form substantially similar to this opinion.

4. Execution by the Developer Entities. Each Document to which any of the Developer Entities is a party has been duly authorized and validly executed and delivered by such Developer Entity.

5. Conflicts. Neither the execution and delivery of any Document to which any of the Developer Entities is a party, nor the consummation of the transactions therein contemplated or compliance with the provisions thereof, will violate any provision of the articles of organization or the operating agreement of Developer, East River or Title LLC, or the _____ or _____ of Title LLC Manager³.

[For opinions delivered at a GMV closing, add the following:

6. Security Interest.

The Pledge Agreement is effective to create in favor of Con Edison a valid security interest under the New York Uniform Commercial Code ("NYUCC") in all of Developer's right, title and interest in the Pledged Interests (as defined in the Pledge Agreement) to secure the payment and performance by Developer of the obligations specified in the Pledge Agreement, to the extent a security interest may be created therein under the NYUCC. References in this opinion letter to the NYUCC are to the Uniform Commercial Code currently in effect in the State of New York. The Financing Statements are in appropriate form for filing and recording with the office of the City Clerk of New York, New York and the Secretary of State of New York. Upon such filings and recordings, assuming the representations made by Developer in Sections 3(d) and (e) of the Pledge Agreement with respect to the Pledged Interests are and remain true and correct, Con Edison will have a good, valid and perfected security interest in all of Developer's right, title and interest in the Pledged Interests, to the extent such security interest can be perfected under Article 9 of the NYUCC. We express no opinion as to the priority of any security interest in any uncertificated security. We advise you that NYUCC continuation statements must be re-recorded, re-registered or re-filed in order to maintain the notice and protection and perfection referred to in this paragraph. Such NYUCC continuation statements must be filed in the same offices as were the original Financing Statements within the six month period prior to each fifth anniversary of the original filing date. We assume, for purposes of this opinion, that all applicable taxes and recording and filing fees and charges have been paid in conformance with all applicable laws, and that Con Edison will timely file all necessary continuation statements.]

We are members of the bar of the State of New York and our opinion is limited to the present internal law of such jurisdiction, the limited liability company [, corporate and

³

Insert applicable organizational documents of Title LLC Manager.

Consolidated Edison Company of New York, Inc.

_____, 200__

Page 4

partnership] law of the State of [insert state(s) of formation of Title LLC, Title LLC Manager and East River, if other than New York], and the federal laws of the United States of America. The opinions expressed herein are as of the date hereof only, and we assume no obligation to update or supplement such opinions to reflect any fact or circumstance that may hereafter come to our attention or any change in law that may hereafter occur or become effective.

The foregoing opinions are subject to the effect of any applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally. Such opinion is further subject to the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law). Such principles applied by a court might include a requirement that parties to an agreement act with reasonableness and in good faith.

The opinions set forth herein shall be deemed addressed to, and may be relied upon only by, Con Edison and its successors, and is solely for their benefit in connection with the transactions contemplated in the Documents and is not to be relied upon for any other purpose, or quoted to or relied upon by any other person for any other purpose. Except as may be specifically addressed in this letter, we express no opinion with respect to the law of any other jurisdiction and no opinion with respect to the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction. This opinion letter is limited to the matters set forth herein, and no opinions are intended to be implied or may be inferred beyond those expressly stated herein.

Very truly yours,

SCHEDULE A

The Documents

All of the following constitute the "Documents" for purposes of the foregoing letter, and unless specifically noted below, all of the Documents are dated the date of (or as of the date of) this letter:

1. Executed but unfiled copies of financing statements (the "Financing Statements") under the NYUCC, naming the Developer as debtor and Con Edison as secured party, which Financing Statements are intended to be filed with the Secretary of State of New York and the New York County, New York filing offices; and
2. That certain Pledge Agreement entered into by and between Con Edison and Developer dated as of even date herein (the "Pledge Agreement").

[insert other documents to which any of the Developer Entities is a party]

SCHEDULE B

The Certificates

[Attach a certificate of each authorized representative of each of the Developer Entities certifying to the organizational documents of the applicable Developer Entities.]

Exhibit "P-2"

Form of Opinion of Counsel to Developer (S&S Opinion)

FORM OF OPINION OF COUNSEL TO DEVELOPER¹
[S&S OPINION]

_____, 200__

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003

Ladies and Gentlemen:

We have acted as counsel to East River Realty Development LLC ("River Realty"), a Delaware limited liability company, in connection with the purchase by _____, as designee of FSM East River Associates LLC ("Developer"), from Consolidated Edison Company of New York, Inc. ("Con Edison") of certain real property in the City and State of New York commonly described as _____ First Avenue (the "Property"), pursuant to the terms of that certain Agreement dated as of November 15, 2000 between Con Edison and Developer, as amended by that certain First Amendment dated as of November 15, 2000 (collectively, the "Agreement").

In that connection, we have examined the instruments and agreements specified on Schedule "A" hereto (the "Documents") and the certificate set forth on Schedule "B" hereto and the documents referred to therein (the "Certificate").

In rendering our opinion, we have examined originals or copies identified to our satisfaction of the Documents to which River Realty is a party. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies. We have not examined any documents or instruments other than the Documents and those documents and instruments specified in or attached to the Certificate, nor have we examined other records of River Realty or certificates or comparable documents of public officials. (Our opinions are limited to the matters set forth below and do not cover the legality, validity, binding effect or enforceability of any of the Documents or any provision therein). We have relied, with respect to factual matters, on the Certificate and the documents and instruments specified in or attached to the Certificate without independent inquiry.

¹ To be delivered at any Closing at which East River Realty Development LLC will be signing any documents on its own behalf.

While we have acted as special counsel to River Realty in the preparation and/or negotiation of the Documents, we do not represent Developer, River Realty or any partner, officer, director or shareholder of Developer or River Realty or any affiliate of Developer or River Realty as general counsel².

Based solely on the foregoing and subject to the qualifications and assumptions set forth herein, we are of the opinion that, as of the date hereof:

1. Organization of River Realty. River Realty is a limited liability company organized and is in good standing under the laws of the State of Delaware. River Realty has all requisite power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party, either individually or as a member or manager of Developer. Sheldon H. Solow is the only member and the only manager of River Realty.

2. Authorization. River Realty has taken or caused to be taken all necessary limited liability company action (including but not limited to obtaining the consent of all members and managers whose consent may be required) to authorize the execution, delivery and performance of each of the Documents to which it is a party.

3. Execution by River Realty. Each Document to which River Realty is a party has been duly authorized and validly executed and delivered by River Realty.

4. Conflicts. Neither the execution and delivery of any Document to which River Realty is a party, nor the consummation of the transactions therein contemplated or compliance with the provisions thereof, will violate any provision of the articles of organization or the operating agreement of River Realty.

[For opinions delivered at a GMV closing, add the following:

5. Security Interest.

The Pledge Agreement is effective to create in favor of Con Edison a valid security interest under the New York Uniform Commercial Code ("NYUCC") in all of Developer's right, title and interest in the Pledged Interests (as defined in the Pledge Agreement) to secure the payment and performance by Developer of the obligations specified in the Pledge Agreement, to the extent a security interest may be created therein under the NYUCC. References in this opinion letter to the NYUCC are to the Uniform Commercial Code currently in effect in the State

²

Delete/modify if inapplicable/inaccurate.

of New York. The Financing Statements are in appropriate form for filing and recording with the office of the City Clerk of New York, New York and the Secretary of State of New York. Upon such filings and recordings, assuming the representations made by Developer in Sections 3(d) and (e) of the Pledge Agreement with respect to the Pledged Interests are and remain true and correct, Con Edison will have a good, valid and perfected security interest in all of Developer's right, title and interest in the Pledged Interests, to the extent such security interest can be perfected under Article 9 of the NYUCC. We express no opinion as to the priority of any security interest in any uncertificated security. We advise you that NYUCC continuation statements must be re-recorded, re-registered or re-filed in order to maintain the notice and protection and perfection referred to in this paragraph. Such NYUCC continuation statements must be filed in the same offices as were the original Financing Statements within the six month period prior to each fifth anniversary of the original filing date. We assume, for purposes of this opinion, that all applicable taxes and recording and filing fees and charges have been paid in conformance with all applicable laws, and that Con Edison will timely file all necessary continuation statements.]

We are members of the bar of the State of New York and our opinion is limited to the present internal law of such jurisdiction, the limited liability company law of the State of Delaware, and the federal laws of the United States of America. The opinions expressed herein are as of the date hereof only, and we assume no obligation to update or supplement such opinions to reflect any fact or circumstance that may hereafter come to our attention or any change in law that may hereafter occur or become effective.

The foregoing opinions are subject to the effect of any applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally. Such opinion is further subject to the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law). Such principles applied by a court might include a requirement that parties to an agreement act with reasonableness and in good faith.

The opinions set forth herein shall be deemed addressed to, and may be relied upon only by, Con Edison and its successors, and is solely for their benefit in connection with the transactions contemplated in the Documents and is not to be relied upon for any other purpose, or quoted to or relied upon by any other person for any other purpose. Except as may be specifically addressed in this letter, we express no opinion with respect to the law of any other jurisdiction and no opinion with respect to the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction. This opinion letter is limited to the matters set forth herein, and no opinions are intended to be implied or may be inferred beyond those expressly stated herein.

Very truly yours,

SCHEDULE A

The Documents

All of the following constitute the "Documents" for purposes of the foregoing letter, and unless specifically noted below, all of the Documents are dated the date of (or as of the date of) this letter:

1. Executed but unfiled copies of financing statements (the "Financing Statements") under the NYUCC, naming the Developer as debtor and Con Edison as secured party, which Financing Statements are intended to be filed with the Secretary of State of New York and the New York County, New York filing offices; and
2. That certain Pledge Agreement entered into by and between Con Edison and Developer dated as of even date herein ("Pledge Agreement").

[insert other documents to which River Realty is a party]

SCHEDULE B

The Certificate

[Attach a certificate of an authorized representative of River Realty certifying to its organizational documents.]

Exhibit "P-3"

Form of Opinion of Counsel to Con Edison

FORM OF OPINION OF COUNSEL TO CON EDISON

_____, 200__

[Title LLC]
FSM East River Associates LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

We have acted as counsel to Consolidated Edison Company of New York, Inc. ("Con Edison"), a New York corporation, in connection with the purchase by _____ ("Title LLC") from Con Edison of certain real property in the City and State of New York commonly described as _____ First Avenue (the "Property"), pursuant to the terms of that certain Agreement dated as of November 15, 2000 between FSM East River Associates LLC ("Developer") and Con Edison, as amended by that certain First Amendment dated as of November 15, 2000 (collectively, the "Agreement").

In that connection, we have examined the instruments and agreements specified on Schedule "A" hereto (the "Documents") and the certificate set forth on Schedule "B" hereto and the documents referred to therein (the "Certificate").

In rendering our opinion, we have examined originals or copies identified to our satisfaction of the Documents to which Con Edison is a party. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies. We have not examined any documents or instruments other than the Documents and those documents and instruments specified in or attached to the Certificate, nor have we examined other records of Con Edison or certificates or comparable documents of public officials. (Our opinions are limited to the matters set forth below and do not cover the legality, validity, binding effect or enforceability of any of the Documents or any provision therein.) We have relied, with respect to factual matters, on the Certificate and the documents and instruments specified in or attached to the Certificate without independent inquiry.

While we have acted as special counsel to Con Edison in the preparation and/or negotiation of the Documents, we do not represent Con Edison or any partner, officer, director or shareholder of Con Edison or any affiliate of Con Edison as general counsel.

Based solely on the foregoing and subject to the qualifications and assumptions set forth herein, we are of the opinion that, as of the date hereof:

1. Organization of Con Edison. Con Edison is a corporation organized and is in good standing under the laws of the State of New York. Con Edison has all requisite power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party.

2. Authorization. Con Edison has taken or caused to be taken all necessary corporate action (including but not limited to obtaining the consent of its board of directors) to authorize the execution, delivery and performance of each of the Documents to which it is a party.

3. Execution by Con Edison. Each Document to which Con Edison is a party has been duly authorized and validly executed and delivered by Con Edison.

4. Conflicts. Neither the execution and delivery of any Document to which Con Edison is a party, nor the consummation of the transactions therein contemplated or compliance with the provisions thereof, will violate any provision of the certificate of incorporation or by-laws of Con Edison.

We are members of the bar of the State of New York and our opinion is limited to the present internal law of such jurisdiction, and the federal laws of the United States of America. The opinions expressed herein are as of the date hereof only, and we assume no obligation to update or supplement such opinions to reflect any fact or circumstance that may hereafter come to our attention or any change in law that may hereafter occur or become effective.

The foregoing opinions are subject to the effect of any applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally. Such opinion is further subject to the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law). Such principles applied by a court might include a requirement that parties to an agreement act with reasonableness and in good faith.

The opinions set forth herein shall be deemed addressed to, and may be relied upon only by, Developer and Title LLC and their respective successors, and is solely for their benefit in connection with the transactions contemplated in the Documents and is not to be relied upon for any other purpose, or quoted to or relied upon by any other person for any other purpose. Except as may be specifically addressed in this letter, we express no opinion with respect to the law of any other jurisdiction and no opinion with respect to the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction. This opinion letter is limited to the matters set forth herein, and no opinions are intended to be implied or may be inferred beyond those expressly stated herein.

Very truly yours,

SCHEDULE A

The Documents

All of the following constitute the "Documents" for purposes of the foregoing letter, and unless specifically noted below, all of the Documents are dated the date of (or as of the date of) this letter:

SCHEDULE B

The Certificate

[Attach a certificate of an authorized representative of Con Edison certifying to its organizational documents.]

Exhibit "Q"
Form of Estoppel Certificate

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
4 Irving Place
New York, New York 10003

_____, 200_

[Title LLC]
c/o Fisher Brothers
299 Park Avenue
New York, NY 10171

[insert Lender name and address]
[insert Title Insurer name and address]

Re: 700 First Avenue, New York, New York (the "Property")

Dear Sirs/Madames:

Consolidated Edison Company of New York, Inc. ("Tenant") is the ground lessee of a portion of the Property (the "Premises") pursuant to that certain lease between The Mayor, Aldermen and Commonality of the City of New York ("Landlord"), as landlord, and William Austin, as tenant, dated November 11, 1861 and recorded May 28, 1863 in Liber 875, Page 608 (such lease, as assigned to Con Edison by mesne assignments, the "Lease").

Simultaneously herewith, pursuant to the terms of that certain Agreement dated as of November 15, 2000 (the "Purchase Agreement") between Con Edison and FSM East River Associates LLC ("Developer"), [Title LLC] ("Purchaser"), as Developer's designee, is purchasing the remainder of the Property from Tenant, and, in connection therewith, the Lease shall be assigned to _____ ("Lender") in connection with a loan that Lender is making to Purchaser. _____ ("Title Insurer") is providing title insurance to Purchaser and Lender in connection with such transactions.

Tenant hereby certifies to and agrees with Purchaser, Lender and Title Insurer and their representatives, successors and assigns as follows:

1. Attached hereto as Exhibit 1 is a full, true and complete copy of the Lease, and except as set forth in Exhibit 1, there are no other documents or instruments which form part of the Lease.
2. The Lease is in full force and effect.
3. Tenant holds the tenant's interest under the Lease and has not assigned or pledged its interest in the Lease or sublet any portion of the Premises.
4. To Tenant's knowledge, there presently exist no defaults, or events that with the passage of time, the giving of notice, or both, would constitute a default under the Lease by Tenant or Landlord.

This estoppel letter is executed by Tenant as of the date set forth above in connection with the purchase of the Property by Purchaser, the financing of such purchase by Lender, and the issuance of title insurance to Purchaser and Lender by Title Insurer. Tenant understands and acknowledges that this estoppel letter is being delivered for the benefit of, and may be relied upon, by Purchaser, Lender and Title Insurer; provided, however, that in the event of any inaccuracy or omission in any representation or warranty of Tenant set forth herein, Purchaser, Lender and Title Insurer shall be limited to the remedies of Developer for breach of representation or warranty set forth in Section 23.3 of the Purchase Agreement; and provided, further, that (notwithstanding anything to the contrary in Section 23.3) in order for Purchaser or Lender to make a claim against Tenant for breach of representation or warranty, Purchaser or Lender (as applicable) must give notice of such claim to Con Edison within 365 days after the date hereof. However, this 365 day limitation period shall not apply to claims hereunder for breach of representation or warranty made by Title Insurer. All notices of claims to Con Edison shall be given in accordance with the notice provisions set forth in the Agreement.

TENANT:

**CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.**

By: _____

Name:

Title:

EXHIBIT 1

The Lease

Exhibit "R"
Form of Call Date L/C

[Call Date L/C]

[Letterhead of Issuer]
Standby Letter of Credit

No. _____

_____, 200__

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of FSM East River Associates LLC ("Account Party") for up to an aggregate amount of U.S. **[insert sum of: (a) \$552,928,313 less the Developer Call Price previously paid for any Property or Properties, plus (b) interest on the amount set forth in (a) for a period of 2 1/2 years at the Money Market Rate on the day that is 3 Business Days before delivery of this L/C]** (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that:
 - (a) Account Party has defaulted in paying the "Developer Call Price" with respect to any "Property" when due and payable under that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") between Account Party and the Beneficiary; or
 - (b) Account Party has defaulted in paying the "Rezoned Price" with respect to any "Property" when due and payable under the Sale Agreement; or
 - (c) Account Party has failed to deliver to the Beneficiary the "additional L/C" described in Section 3.4 of the Sale Agreement on the date required under the Sale Agreement; or

- (d) a "Developer Event of Default" (other than as described in (a), (b) or (c) above) has occurred under the Sale Agreement (and specifying, by reference to a particular paragraph of the Sale Agreement, the particular Developer Event of Default which has occurred); or
- (e) this Letter of Credit will expire in less than thirty days and Account Party has not given Beneficiary a replacement Letter of Credit which meets the criteria set forth in Section 5.6 of the Sale Agreement; or
- (f) Account Party has made an assignment for the benefit of creditors or has filed a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law has been filed against Account Party and such involuntary petition has not been dismissed within 90 days after filing; or a petition has been filed by or against Account Party under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition has not been dismissed within 90 days after filing; or a receiver, trustee or liquidator has been appointed for Account Party or its property and such receiver, trustee or liquidator has not been discharged within 90 days from the date of his/her appointment.

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail,

return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

_____ BANK
By: _____

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____
Date of Letter of Credit: _____
Date of this Draft: _____
Issuing Bank: _____
Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., _____ (\$ _____)
DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____
Name:
Title:

¹ INSERT STATED AMOUNT HERE. IF A PARTIAL DRAW, INSERT
(INSTEAD OF STATED AMOUNT) SUCH LESSER AMOUNT AS IS
REQUESTED BY BENEFICIARY IN SUCH PARTIAL DRAW.

Exhibit "S"

Form of L/C for Additional Interest on Developer Call Price

[Additional L/C]

[Letterhead of Issuer]
Standby Letter of Credit

No. _____

_____, 200_

Beneficiary:
Consolidated Edison Company
of New York, Inc.
Four Irving Place
New York, NY 10003

Ref: Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby issue our Standby Letter of Credit No. _____ (the "Letter of Credit") in favor of Consolidated Edison Company of New York, Inc. or its designees (the "Beneficiary"), for the account of FSM East River Associates LLC ("Account Party") for up to an aggregate amount of U.S. **[insert amount equal to interest on the Developer Call Price for each Property as to which no Developer Call Closing has occurred on date of this L/C, for a period of 2 years at the Money Market Rate, as determined on the day that is 3 Business Days before delivery of this L/C]** (the "Stated Amount"), available by your sight draft(s) in the form of Exhibit A with the blanks appropriately completed and signed by an authorized officer of the Beneficiary (the "Sight Draft"), when accompanied by the following documents:

1. this original Letter of Credit, and
2. a statement signed by an authorized officer of Beneficiary, certifying that:
 - (a) Account Party has defaulted in paying "Developer Call Price" with respect to any "Property" when due and payable under that certain Agreement dated as of November 15, 2000 (the "Sale Agreement") between Account Party and the Beneficiary; or
 - (b) Account Party has defaulted in paying the "Rezoned Price" with respect to any "Property" when due and payable under the Sale Agreement; or
 - (c) a "Developer Event of Default" (other than as described in (a) or (b) above) has occurred under the Sale Agreement (and specifying, by

reference to a particular paragraph of the Sale Agreement, the particular Developer Event of Default which has occurred); or

- (d) this Letter of Credit will expire in less than thirty days and Account Party has not given Beneficiary a replacement Letter of Credit which meets the criteria set forth in Section 5.6 of the Sale Agreement; or
- (e) Account Party has made an assignment for the benefit of creditors or has filed a voluntary petition under any bankruptcy or insolvency law; or an involuntary petition under any bankruptcy or insolvency law has been filed against Account Party and such involuntary petition has not been dismissed within 90 days after filing; or a petition has been filed by or against Account Party under the reorganization provisions of the United States Bankruptcy Code or any similar law and such petition has not been dismissed within 90 days after filing; or a receiver, trustee or liquidator has been appointed for Account Party or its property and such receiver, trustee or liquidator has not been discharged within 90 days from the date of his/her appointment.

If the drawing in respect of payment is made by Beneficiary hereunder at or prior to Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the same Banking Day. If a drawing in respect of payment is made by you hereunder after Noon (New York time), on a Banking Day, and provided that the documents described above are delivered to us, payment shall be made to Beneficiary as provided herein of the amount specified, in immediately available funds, on the next succeeding Banking Day.

As used herein (i) "Banking Day" means a day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to close and (ii) "authorized officer" of the Beneficiary means the president, any vice president, the general counsel, secretary or treasurer of the Beneficiary.

This Letter of Credit shall expire (except as to valid Sight Drafts previously submitted to the undersigned) at the close of business on _____, 200_ (as such date may be extended from time to time pursuant to the terms of this Letter of Credit, the "Expiration Date"), at the counters of our office located at _____ New York, New York (the "Office").

The Expiration Date shall automatically be extended for additional periods of one year from the present or any future Expiration Date, unless at least forty five (45) days before any such Expiration Date, we send Beneficiary notice in writing by registered or certified mail, return receipt requested, to the attention of the Treasurer, that we elect not to so extend this Letter of Credit for any such additional period.

Partial drawings are permitted provided that the aggregate amount of all such drawings may not exceed the Stated Amount of this Letter of Credit. Except to the extent reduced thereby, this Letter of Credit shall survive any partial drawings.

Any drawing by Beneficiary shall not exceed the amount of the Letter of Credit still available at the time of drawing.

We shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present on us any draft under this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, please direct correspondence to our Office, making specific mention of the Letter of Credit number indicated above.

Except as far as otherwise expressly stated herein, this Standby Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce, Publication No. 590, and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Yours very truly,

By: _____ BANK

EXHIBIT A

SIGHT DRAFT

Standby Letter of Credit No.: _____

Date of Letter of Credit: _____

Date of this Draft: _____

Issuing Bank: _____

Payee (if other than the Undersigned): _____

FOR VALUE RECEIVED, PAY ON DEMAND TO CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., _____ (\$ _____)
DOLLARS¹.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: _____

Name:

Title:

¹ INSERT STATED AMOUNT HERE. IF A PARTIAL DRAW, INSERT
(INSTEAD OF STATED AMOUNT) SUCH LESSER AMOUNT AS IS
REQUESTED BY BENEFICIARY IN SUCH PARTIAL DRAW.

FIRST AMENDMENT dated as of November 15, 2000 by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation with offices at Four Irving Place, New York, NY 10003 ("Con Edison") and FSM EAST RIVER ASSOCIATES LLC, a New York limited liability company, with an office c/o Fisher Brothers, 299 Park Avenue, New York, NY 10171 ("Developer").

Introductory Statement

Developer and Con Edison have signed an agreement dated as of the date hereof (the "Agreement") for the sale by Con Edison to Developer of four parcels of real estate in the City of New York described in the Agreement as 616 First Avenue, 685 First Avenue, 708 First Avenue, and Waterside.

Also as of the date hereof, Con Edison has entered into an agreement with TRC Engineers, Inc., TRC Companies, Inc., and TRC Environmental Corporation (together, the "RDE Contractor") which is the "RDE Contract" as defined in the Agreement; and Con Edison and the RDE Contractor have also procured an insurance policy from Granite State Insurance Company (the "Exit Insurer" as defined in the Agreement) to provide the "Exit Insurance" as defined in the Agreement. Developer is a third-party beneficiary of the RDE Contract and a named insured under the Exit Insurance, in each case upon the terms and conditions set forth in the respective documents.

In connection with the Agreement, the RDE Contract and the Exit Insurance, and various matters pertaining thereto, Developer and Con Edison have reached certain additional understandings which they wish to integrate into, or relate to, those agreements. This instrument (this "Amendment") is intended to confirm their agreement on such understandings.

NOW, THEREFORE, in consideration of the respective agreements and undertakings of the parties and for other good and valuable consideration, as part of the Agreement, and intending to be legally bound hereby, Developer and Con Edison agree as follows:

ARTICLE 1. Definitions.

1.1 Words and phrases defined in the Agreement and in the RDE Contract have the same meanings in this Amendment unless otherwise specified. As between the Agreement and the RDE Contract, definitions in the Agreement shall govern in the event of inconsistency. In the event of inconsistencies between this Amendment and the Agreement, this Amendment shall govern.

ARTICLE 2. Certain Matters Under RDE Contract

2.1 This Section deals with the consequences if either Developer or Con Edison causes an Owner Delay under the RDE Contract which is the principal cause of the RDE Contractor's failure to achieve RDE Completion on or before the Phase I Completion date for the particular Property under the RDE Contract. In such event:

(a) if Con Edison is the party causing such Owner Delay:

(i) Developer shall have the right (at its option) to adjourn the Outside Date as to such Property day-for-day for each day of such delay so that Developer will have at least 60 days to complete the Closing for the particular Property (provided that Developer is otherwise ready and able to close); and

(ii) if as to any one Property Con Edison is the sole cause of Owner Delays which exceed in the aggregate 180 days, the Developer Call Date shall be adjourned day-for-day for each day after 180 days that such Owner Delays caused solely by Con Edison continue (provided, however, that the maximum adjournment of the Developer Call Date shall not exceed 180 days in the aggregate regardless of the number of days of Owner Delay caused solely by Con Edison for any or all Properties); and

(b) if Developer is the party causing such Owner Delay, Con Edison shall have the right (at its option) to adjourn the Outside Date as to such Property day-for-day for each day of such delay so that Con Edison will have at least 60 days to complete the Closing for the particular Property (provided that Con Edison is otherwise ready and able to close).

(c) if an Owner Delay occurs for which neither Developer nor Owner is the principal cause, there shall be no extension of the Outside Date by reason of the same; and

(d) delays caused by each party shall be offset so that only the cumulative net delay shall be taken into account.

A party claiming the right to an extension of time under (a) or (b) shall furnish to the other party documentation in reasonable detail specifying the date or dates when the alleged Owner Delay(s) commenced, the duration thereof, the causes thereof, and the effect on the Phase I Completion Date for the particular Property. (Such documentation may include any Owner Delay Notices received from the RDE Contractor pursuant to Section 24 of the RDE Contract. Either party, upon request from the other (but not more often than every six months), shall give notice of any alleged Owner Delay(s) then known to such party (including the dates, duration and causes thereof and the estimated impact on the Phase I Completion Date). Failure to identify a particular Owner Delay shall not constitute a waiver of rights to an extension under this Section, however.)

2.2 If either Con Edison or Developer is the principal cause of an Owner Delay under the RDE Contract, the respective party agrees to pay costs of demobilization and remobilization (if any) which become due and payable to the RDE Contractor pursuant to the RDE Contract (upon the terms for payment of the same under the RDE Contract). The parties shall share equally the demobilization/remobilization costs of any Owner Delay for which neither party is the principal cause.

2.3 As a third-party beneficiary of the RDE Contract, Developer shall comply with its obligations thereunder and not violate the terms of the RDE Contract.

2.4 After the occurrence (and during the continuance) of a Developer Event of Default under the Agreement, Developer shall have no right to exercise, and hereby waives, any rights of Developer under the RDE Contract or under the Exit Insurance.

2.5 If the Agreement terminates as to any Property before the Closing of title to such Property, effective as of such termination, Developer shall cease to be a Named Insured under the Exit Insurance and a third-party beneficiary under the RDE Contract (and shall have no further rights under either) with respect to the particular Property; provided, however, in such event, that Developer shall continue to be covered under the Exit Insurance and the RDE Contract after such termination for liabilities and costs occurring or accruing thereunder which would have been covered thereby for the period prior to such termination.

2.6 The Pollution Legal Liability Policy which forms part of the Exit Insurance includes a sublimit of \$25,000,000 for Delay Damages. With respect to that sublimit, the parties agree as follows: (a) until Phase I Completion has occurred with respect to all four Properties¹, neither party shall claim more than \$12,500,000 in Delay Damages under the sublimit; and (b) after Phase I Completion has occurred with respect to all four Properties¹, if either party has incurred Delay Damages of less than \$12,500,000 and the other party has incurred more than such amount, the party with the greater damages may claim under the sublimit to the extent that the other party has claimed less than its original \$12,500,000.

2.7 If Developer becomes entitled to a refund of the portion of the RDE Deposit allocable to Waterside under Section 9.6 of the Agreement, Developer will simultaneously receive, also, 50% of the unearned portion (if any) of the Cost Cap insurance premiums (excluding Site Work costs as to Waterside) as computed by the Exit Insurer and returned to Con Edison as part of the Waterside Allocation Amount under Section 13(a) of the RDE Contract (such payment to Developer not to exceed \$3,375,000 in the aggregate)². For the avoidance of doubt:

(a) any refund to Developer of the portion of the RDE Deposit allocated to Waterside (plus interest thereon) under Section 9.6 of the Agreement plus the allocable insurance premiums as specified above, is in lieu of any other payments to Developer relating to the RDE Contract or the Exit Insurance solely upon the occurrence of a Waterside Termination Event; and

(b) any amounts to which Developer is entitled under Section 13(b) of the RDE Contract shall be payable only on the Closing of the particular Properties under the Agreement; and, as to such amounts, if Con Edison receives payment from the RDE Contractor or the Exit Insurer before the respective Closing, Con Edison shall invest Developer's share in an interest-bearing account and pay Developer such amount (with interest as accrued on such account) if and when the respective Closings occur.

¹ Excluding Waterside if a Waterside Termination Event has occurred or it becomes manifestly clear that such an event will occur.

² Developer's share of the unearned portion of the foregoing insurance premiums shall be deemed part of the RDE Deposit for purposes of Section 22.2 of the Agreement.

2.8 For the avoidance of doubt, Con Edison and Developer shall share equally the costs of any deductible under the Pollution Legal Liability Policy required to be paid as part of a claim thereunder (excluding any portion of such deductible paid by the RDE Contractor).

2.9 For the avoidance of doubt, Con Edison shall pay the Convenience Termination Payment in the event of a termination for convenience of the RDE Contract pursuant to Section 18(a) thereof.

2.10 For the avoidance of doubt, if the conditions to Developer's obligations under Section 10.1 of the Agreement to close title to any Property other than Waterside are not satisfied and the Agreement terminates as to such Property, Con Edison shall repay to Developer 50% of the unearned portion (if any) of the Cost Cap insurance premiums attributable to such Property (excluding Site Work costs attributable to such Property) as computed by the Exit Insurer as of the date of such termination, whether or not Con Edison terminates the insurance policy or receives any amounts from the Exit Insurer. Promptly after the Agreement terminates as to any such Property, Con Edison shall request the Exit Insurer to calculate the unearned portion of such premium.

ARTICLE 3.

39th and 40th Street and Related Matters.

3.1 Schedule 1-DD to the Agreement [700 First Avenue (Waterside)], and the survey dated August 18, 2000 referred to in item 1 of Schedule 1-DD (the "700 Survey"), describes a proposed reservation of certain easements with respect to (a) the former areas of 39th Street and 40th Street and (b) along the eastern perimeter of Waterside running generally north to south (all the foregoing as more particularly reflected in the 700 Survey). In this Section all the foregoing proposed easements are referred to as the "Proposed 700 Easements". Developer has asked Con Edison to forego the reservation of the Proposed 700 Easements, and Con Edison is willing to do so, upon the terms and conditions set forth in this Section.

3.2 Promptly after the date of this Amendment Con Edison will cause its engineers and other appropriate personnel to study the technical feasibility and cost of the following activities (collectively, the "Easement RDE/Relocations"): (a) demolishing or otherwise removing through the RDE Contractor the wiring, lines, pipes, equipment, and other installations (collectively, the "CE Infrastructure") now located within the area of the Proposed 700 Easements; (b) causing the RDE Contractor to perform all RDE within that same area in accordance with the RDE Contract (including Section 14 and Exhibit I thereof); and (c) through the RDE Contractor, other Persons, or Con Edison's own employees, relocating off Waterside (or installing substitutes for) any CE Infrastructure which cannot be demolished and must be replaced. Any such relocated or substitute CE Infrastructure shall consist of installations required by Con Edison's then-current standard specifications for the respective facility as installed in accordance with then-current good practice for the same. (The CE Infrastructure shall not include any installations to be constructed for the benefit of Developer's Developments on Waterside or otherwise at Developer's specific request.) For purposes of this Article, the costs of the Easement RDE/ Relocations will be deemed to include the costs of: (i) Con Edison's feasibility study; (ii) amounts paid to the RDE Contractor and/or the Exit Insurer with respect to the activities which constitute RDE under the RDE Contract; (iii) amounts paid to other Persons—and/or incurred by Con Edison through the use of its own employees—for engineering, other

consulting work, labor, materials, and other services and work; and (iv) payments to or for the benefit of Persons other than Con Edison having existing easements in the area of the Proposed 700 Easements. Commencing immediately, Developer shall pay Con Edison for costs incurred to study the technical feasibility and cost of the Easement RDE/Relocations (the "Feasibility Costs") monthly within 15 days after invoice.

3.3 After completing the study of technical feasibility and cost under Section 3.2, Con Edison will deliver to Developer: (a) a scope of work describing the proposed Easement RDE/Relocations; (b) a breakdown in reasonable detail of the estimated hard and soft cost of the Easement RDE/Relocations (including the Feasibility Costs and any additional coverages under the Exit Insurance); and (c) a proposed timetable for completion of the Easement RDE/Relocations. Con Edison will then consult in good faith with Developer concerning the foregoing and, after such consultations, commence to undertake and complete the Easement RDE/Relocations. (The work and services needed to complete all Easement RDE/Relocations are referred to in this Article as the "ERDE Work".) In such event, Con Edison shall: (a) direct the RDE Contractor to perform the portion of the ERDE Work covered by the RDE Contract; and (b) engage other Persons, or perform through Con Edison's own employees, the portion of the ERDE Work not covered by the RDE Contract, subject to Section 3.4.

3.4 Con Edison and Developer shall share the costs of the ERDE Work as follows:

(a) as of the date hereof, Con Edison has paid \$4,934,000 to the RDE Contractor towards the portion of the ERDE Work and the Exit Insurance covered by the RDE Contract;

(b) Developer shall pay for the next \$10,000,000 of the cost of the ERDE Work ("Developer's Share"); and

(c) Con Edison shall pay the costs of the ERDE Work in excess of the amounts specified in (a) and (b) above, subject to Section 3.6 below.

As to the costs of the ERDE Work other than the portion covered by the RDE Contract, if Developer and Con Edison have not agreed on a not-to-exceed cost for the same as part of their consultations under Section 3.3, Developer shall pay (to the extent of Developer's Share) for the reasonable and actual costs of the same on a time and materials basis plus Con Edison's standard overhead (computed in the same manner as for other similar projects) for the performance of such work. In either case (to the extent of Developer's Share), Developer shall pay Con Edison for work and services furnished the previous month upon the submission of requisitions or invoices by Con Edison (or the applicable other Person), in each case within 15 days after the applicable submission. Subject to the foregoing: (i) completion by the RDE Contractor of the ERDE Work covered by the RDE Contract shall be deemed to be part of (and required by) RDE Completion for purposes of the Agreement and (ii) completion of the portion of the ERDE Work not covered by the RDE Contract and which affects Waterside (i.e., excluding any such work outside Waterside and which does not affect Waterside) shall be a condition to the Closing of Waterside for purposes of Section 10.1 of the Agreement.

3.5 Any failure by Developer to pay any amount due to Con Edison under this Article 3 shall constitute a default by Developer in the material performance of an obligation of Developer for purposes of Section 22.1(c) of the Agreement.

3.6 Notwithstanding Section 3.4, if the aggregate cost of the ERDE Work—other than the portion thereof to be performed by the RDE Contractor—is less than \$7,500,000, Developer shall pay Con Edison the difference between such aggregate cost and \$7,500,000 within 30 days after completion of the ERDE Work (but such payment by Developer to Con Edison shall not exceed \$2,434,000).

3.7 If the Agreement terminates as to Waterside for any reason (or if it becomes manifestly clear that a Waterside Termination Event will occur), the obligations of the parties under this Article 3 shall cease as of the date of such termination (but each party shall be responsible for its obligations accrued to such date); and (absent a Con Edison Event of Default) Developer shall not be entitled to repayment of Developer's Share or any part thereof.

ARTICLE 4.

Possible 616 Temporary Easement

4.1 Attached as Exhibit M-1 to the RDE Contract is a sketch showing the area of a temporary easement referred to as the "Fuel Oil Depot and Laydown Area" which Con Edison will need during the performance of the RDE Work on 616 First Avenue. If Developer takes title to 616 First Avenue pursuant to the Developer Call Option before Con Edison has completed the work for which such temporary easement is needed, Developer shall allow Con Edison to continue the use of such easement on the terms set forth in the RDE Contract until Con Edison completes the work for which such easement is needed. In such event, however, Con Edison agrees to work diligently to complete such work so as not to interfere with Developer's proposed Development on the Property.

4.2 If Con Edison fails to vacate the temporary easement area described in Section 4.1 within 90 days after the date originally scheduled for Phase I Completion with respect to 616 First Avenue (as extended pursuant to the RDE Contract for delays not attributable to Con Edison's failure to vacate the temporary easement area), Con Edison shall pay Developer three thousand dollars (\$3,000) per day as liquidated damages for each day thereafter until Con Edison vacates such temporary easement area. Con Edison shall pay such amounts within 15 days after notice from Developer from time to time after the same become due. (This Section shall not be construed as permission for Con Edison to continue to use the temporary easement area after the 90-day period specified above or as an excuse for contravening the last sentence of Section 4.1 hereof.) In addition to the liquidated damages specified above, Developer shall also have a right to enjoin Con Edison's use of the temporary easement area after such 90-day period and/or compel specific performance and seek other non-monetary equitable relief in order to cause Con Edison to vacate the temporary easement area. The remedies in this Section shall be Developer's exclusive remedies for Con Edison's failure to vacate the temporary easement area as described.

4.3 If Developer takes title to 616 First Avenue pursuant to the Developer Call Option before Con Edison has completed the work for which such temporary easement is needed, Con Edison shall include Developer as an additional insured (at Con Edison's expense)

under Con Edison's existing coverages of commercial general liability insurance in the amount of \$10,000,000 naming Developer as an additional insured, for the period before Con Edison vacates the temporary easement on 616 First Avenue. (Con Edison will also include Developer on the same basis in any other type of standard liability policies which Con Edison then maintains with respect to 616 First Avenue.) Con Edison shall be responsible for (and will defend Developer against) any claims for injuries or death to persons or damage to property occurring by reason of acts or omissions of Con Edison or its employees or contractors on or with respect to the temporary easement area before the date when Con Edison vacates the same to the extent that such claims are not covered by the insurance described in this Section.

ARTICLE 5.

Miscellaneous Matters under Agreement

5.1 With reference to Section 7.7 of the Agreement, if a mechanics lien is asserted against a Property by, through, or under the RDE Contractor, before the Closing Date for a particular Property, Developer shall be entitled to an extension of the Closing Date of up to 30 days to obtain the Removal of such lien by the RDE Contractor or otherwise; provided, however, that as between Con Edison and Developer such lien shall be a Permitted Encumbrance if Developer fails to obtain such Removal.

5.2 Con Edison has informed Developer that Con Edison has been advised informally that the New York City Department of Environmental Protection ("DEP") was considering 616 First Avenue and 685 First Avenue as possible locations for an access shaft to City water tunnel #3. As of the date of this Amendment, it is not clear that the City will select either of these locations. DEP has advised that constructing the access shaft would require a temporary taking for construction purposes as well as a permanent taking of a smaller area for access to the shaft and water tunnel.

5.3 With reference to the last sentence of Section 3.5, if the Rezoning Approval Date occurs before the Developer Call Date, and if Con Edison is unable to satisfy all conditions to Closing as to a particular Property before the Developer Call Date, Developer may avoid the increases to the Rezoned Price and the As-Built Amount under Section 3.5 if, on or before the Developer Call Date, Developer delivers to Con Edison the Call Date L/C in the amount of the full Rezoned Price for such Property³, provided that Developer has previously or simultaneously completed the Closing and paid the Rezoned Price on the Closing Date under Section 14.1(d) for all other Properties as to which the conditions to Closing have been satisfied before the Developer Call Date. In such event: (i) all references to the Call Date L/C in the Agreement shall mean a letter of credit in the full amount of the Rezoned Price determined under Article 6 of the Agreement (plus an amount computed for 2 1/2 years' interest thereon as set forth in (b) of the definitions of the Call Date L/C in Article 1 of the Agreement) and other applicable provisions of the Agreement but otherwise satisfying all requirements of the Call Date L/C; (ii) Developer shall not be required to deliver the Developer Call L/C; and (iii) Con Edison shall have the right to draw against the full amount of such Call Date L/C under Section 22.2(b) when the Rezoned Price is payable for the applicable Property pursuant to the Agreement.

³ Plus an amount for 2-1/2 years' interest on the Rezoned Price computed as set forth in (b) of the definition of the Call Date L/C in Article 1 of the Agreement.

5.4 Schedules AA, items 3 and 4, show as Permitted Encumbrances certain Letters Patent issued to prior owners of 616 First Avenue by the City of New York. Those Letters Patent set forth, inter alia, certain obligations for the creation and maintenance of streets and certain other items applicable to the period before the creation and dedication of the existing streets abutting that Property. The parties believe that these Letters Patent were released as to the FDR Drive by condemnation. However, although First Avenue and the adjacent streets was dedicated to, and constructed by, the City, it is not clear that the Letters Patent were formally released by such dedication and construction. Sec. 22-124 of the New York City Administrative Code, as amended ("NYAC 22-124") provides a procedure for the termination of such ancient letters patent, involving the filing of an affidavit and payment of a fee keyed to linear feet of street frontage. The Letters Patent will remain Permitted Encumbrances under Schedule 1-AA. However, Developer and Con Edison will endeavor to obtain the release of such Letters Patent by making application to the City pursuant to NYAC 22-124. For such purpose, Developer agrees to pay the first \$20 per linear foot of any fee required by the City; Con Edison shall pay up to the next \$20 per linear foot; and the parties shall each pay one-half of any additional fee which may be due and payable; provided, however, that any aggregate amount in excess of \$60 per linear foot shall be subject to the approval of both parties. Con Edison shall file the affidavit specified in NYAC 22-124 for the administrative termination of such Letters Patent based on the applicable facts as determined by Con Edison.

5.5 Developer believes that the consent of the City of New York as a "party-in-interest" may be required under the Zoning Resolution for transactions involving the acquisition or disposition of Floor Area on the Waterside Property in connection with the City's interest as landlord under the Waterside Lease. After the signing of this Amendment, Developer and/or Con Edison may seek to obtain such consent, in form and substance subject to the reasonable approval of both parties or to obtain a determination that the City's consent is not required for any such purpose. If neither party obtains the City's consent for such purpose or a determination that such consent is not required, the obtaining of such a consent shall be a condition to the Closing of Waterside under Section 10.1 of the Agreement.

5.6 With respect to 616 First Avenue, an issue was raised concerning a possible gap in the metes and bounds description involving a portion of the easterly part of the Property. Developer and Con Edison believe that the issue has been resolved and expect to receive a letter from the Title Insurers stating that the Title Insurer will not raise the issue as an exception to title in connection with the issuance of title insurance to Developer or its lenders at the Closing of title to 616 First Avenue. However, because the Title Insurer are not issuing such insurance on the signing of the Agreement, Con Edison and Developer agree that such gap in the metes and bounds description to 616 First Avenue will be deemed a Title Defect if, notwithstanding their letter, the Title Insurers raise the issue as a title exception in connection with their issuance of title insurance to Developer or its lenders at the Closing of title to 616 First Avenue.

5.7 The following sentence is added at the end of Section 5.6 of the Agreement:

"Thus, for example, if Con Edison received such funds by a draw against the First L/C under this Section, Con Edison would hold such funds, and any interest or other income accruing thereon, in

the same manner as if Con Edison continued to hold the First L/C and to apply the fund so held as permitted or required under this Agreement if and after Con Edison would have otherwise been entitled to draw under any provision of this Agreement other than Section 5.6. If Developer fails to deliver a Replacement L/C within the time specified in this Section and the particular L/C to be replaced expires before Con Edison is able to draw against the same, Developer shall deliver a Replacement L/C to Con Edison within 15 days after notice from Con Edison, time being of the essence, and Developer's failure to do so shall be a Developer Event of Default under this Agreement."

5.8 Notwithstanding the provisions of the Agreement, on the signing of the Agreement Developer has delivered to Con Edison two letters of credit drawn on Citibank, N.A., each in the face amount of ten million dollars (\$10,000,000) (the "Two L/Cs") which together are intended to, and shall, constitute the First L/C for all purposes of the Agreement, subject to the terms of this Section. Con Edison has agreed to accept the Two L/Cs to allow Developer until January 16, 2001 to deliver a single First L/C for purposes of the Agreement. Accordingly, Developer agrees to deliver to Con Edison on or before January 16, 2001 a single standby letter of credit drawn on a Qualified Bank in the face amount of twenty million dollars (\$20,000,000) but otherwise in form and substance the same as the Two L/Cs. In such event, the single L/C shall replace the Two L/Cs as, and shall be and constitute, the First L/C for all purposes of the Agreement; and Con Edison shall then return the Two L/Cs to Developer and shall execute and deliver such documents as are reasonably necessary to present the Two L/Cs to be cancelled or terminated. If Developer fails to deliver the single new L/C to Con Edison on or before January 16, 2001, time being of the essence, Con Edison shall have the right to draw the full amount of the Two L/Cs as if the Two L/Cs were L/Cs expiring in less than 30 days under Section 5.6 of the Agreement.

5.9 With respect to 685 First Avenue, the 685 Zoning Lot Agreement attached as Exhibit L to the Agreement (the "685 ZLDA") would prohibit Developer from placing construction columns within the "Easement Area" owned in fee by Con Edison in the portion of the 685 Adjacent Parcel described in the 685 ZLDA. (The Easement Area in the 685 ZLDA was intended to allow Developer to cantilever over, but not construct on, the described space.) Developer has asked Con Edison to study the possibility of allowing Developer to construct structural columns within the Easement Area provided that such columns do not: (i) touch the existing substation, (ii) prevent the free maneuverability of Con Edison trucks with the Easement Area, (iii) inhibit Con Edison from moving transformers into and out of the substation, or (iv) touch or impair any wiring or other equipment or infrastructure now located in the subsurface of the Easement Area (all the foregoing, the "Technical Constraint"). Con Edison has advised Developer that the placement of any such structural columns would be very difficult but that Con Edison will study the feasibility of the same (without any legal obligation as to the result). Developer shall pay Con Edison for the reasonable expenses of such feasibility study (including the costs of Con Edison's own engineers). If Con Edison concludes that the placement of any structural columns within the Easement Area is feasible, subject to the Technical Constraints, and if Developer wishes to proceed, Developer and Con Edison shall consult and cooperate in good faith as to design and development of plans (at Developer's

expense, including the reasonable cost of Con Edison's internal engineering) for the construction of such columns, subject to the Technical Constraints, all at Developer's expense. If the parties agree on such plans, the 685 ZLDA shall be revised to reflect the terms and conditions of such agreement. In no event, however, shall Developer propose (or have any right) to construct columns or any other improvements in any other part of Con Edison's 685 Adjacent Parcel or (except for any structural columns contemplated under this Section and permitted by the parties' new agreement) to construct below 83 and 13/100 feet above the ground level of the Easement Area (relative to the Datum of the Topographical Bureau, Borough of Manhattan). Moreover, Developer shall pay and be responsible if and to the extent that any construction of columns in the Easement Area requires extra payment under the RDE Contract (which shall also be subject to Section 6.2 of this Amendment).

5.10 If the Closing of title to Waterside and 708 First Avenue will not occur contemporaneously, unless the parties agree upon a zoning lot development agreement as between 708 First Avenue and Waterside which is satisfactory in all respects to each party at least six months before the earliest scheduled Closing Date for either Property, Con Edison shall cause the two Properties to be subdivided for purposes of the Zoning Resolution; and such subdivision shall be a condition to the Closing of each Property under Section 10.1 of the Agreement.

5.11 As of the date hereof, Developer and Con Edison have not confirmed whether 685 First Avenue and the 685 Adjacent Parcel presently constitute more than one zoning lot under the Zoning Resolution. If the two parcels presently do constitute more than one such zoning lot, Con Edison shall make necessary filings to merge all such zoning lots before the Closing of title to 685 First Avenue (and Con Edison and Developer shall each pay 50% of the cost of any such filings).

5.12 Recognizing that the Agreement, and the transactions contemplated thereunder, will be the subject of public interest and scrutiny, Developer and Con Edison agree to consult with each other before issuing any statements to any media or otherwise for public dissemination and to submit a draft of any such statement to the other party for review and comment at least 48 hours before the intended release date (unless the parties agree otherwise in a particular case).

5.13 Section 3.9 (b) of the Agreement specifies the Floor Area of the substation on the 685 Adjacent Parcel (the "Substation FAR") as 55,800 sq. ft. In the event that, before the issuance of a building permit for any Development on 685 First Avenue, the New York City Department of Buildings (the "Bldgs. Dept.") issues a Final Determination that the Substation FAR is more or less square footage than the above amount, such Final Determination shall be conclusive and binding (subject to the following sentence); and all square footages for the Floor Area of 685 First Avenue and the 685 Adjacent Parcel shall be adjusted commensurately. If either party intends to make a submission to the Bldgs. Dept. which may affect the Substation FAR for any reason, such party shall give at least 30 days advance notice to the other party and an opportunity to comment on the proposed submission. Both parties shall have the right to be present at all meetings which either party holds with the Bldgs. Dept. to discuss the Substation FAR or any related matters; and either party may contest, by Legal Proceedings (at its expense), any decision of the Bldgs. Dept. which purports to change the Substation FAR. In no event,

however, shall any change in the Substation FAR require Con Edison to change or alter any part of the existing substation.

ARTICLE 6.

Certain Residual Obligations

6.1 Notwithstanding any provision of the Agreement to the contrary (including any limitation of liability, waiver or release therein), but subject to Section 6.2 below:

(a) in the event that any liability or obligation relating to Pollution Conditions which are not Pre-Existing Environmental Conditions (as defined in the RDE Contract and referred to herein as "New Conditions") is asserted against, or incurred by, Developer and/or Con Edison which is not covered by the Exit Insurance and/or the RDE Contract, the parties shall attempt in good faith to procure insurance to cover the same and (if such insurance is commercially available) shall share equally the premiums for such coverage; and if the parties do not procure such insurance, Con Edison and Developer shall each be responsible for fifty percent (50%) of any such liability or obligation; provided that Con Edison's obligations under this (a) shall end 10 years after RDE Completion and the Closing of title to the particular Property, and thereafter Developer shall have full responsibility for New Conditions; and

(b) in the event that any liability or obligation is asserted against Developer or Con Edison for Pollution Conditions (other than New Conditions) which would have been covered by the RDE Contract and/or the Exit Insurance but for which payment is not available thereunder (whether because limits of liability have been exhausted, the RDE Contractor fails to honor its indemnity, the Exit Insurer fails to defend and/or indemnify in accordance with the Exit Insurance, or otherwise), Developer and Con Edison shall attempt in good faith to procure insurance to cover the same and (if such insurance is commercially available) shall share equally the premium for such coverage; but if the parties do not procure such insurance, Con Edison and Developer shall each be responsible for fifty percent (50%) of any such obligation.

In this Article 6, "Developer" shall mean both Developer and the Title LLC and/or any successor fee owner of the Property as to which the particular liability or obligation is asserted or incurred (all of whom shall be jointly and severally liable for this purpose). However: (i) Con Edison shall have no liability or obligation under (a) above or otherwise for any New Conditions occurring as the result of Developer's activities on any Property after the Closing of title to such Property; and (ii) Developer shall have no liability or obligation under (a) above or otherwise for any Contract Period CE Conditions. In this Section 6.1, "Contract Period CE Condition" means a Pollution Condition with respect only to 708, Waterside, and/or the substation located on the 685 Adjacent Parcel which is proven by clear and convincing evidence: (1) to have occurred or come into existence based on events occurring after the date of the Agreement and before the Closing of title as to the particular Property; and (2) to have resulted from the acts or omissions of Con Edison after the date of the Agreement. For purposes of the foregoing sentence, no acts or omissions of the RDE Contractor or the Exit Insurer (or their consultants or subcontractors) shall be attributed to Con Edison; and no conditions in the East River, or any conditions which are Pre-Existing Environmental Conditions for purposes of the RDE Contract, shall be deemed Contract Period CE Conditions. For the avoidance of doubt, this Section 6.1 is intended to

express only the agreement of Developer and Con Edison as to the matters set forth herein; and no other Person (including the Exit Insurer and/or the RDE Contractor) shall have any rights, derivative or otherwise, by reason of this Section 6.1. Moreover, Developer's exclusion from liability under (ii) above shall not be construed to mean that Con Edison shall be required to incur any liability to cure or correct a Contract Period CE Condition to clean up the affected Property so as to satisfy the condition set forth in Section 10.1(i) of the Agreement as to the particular Property.

6.2 Developer shall be responsible for all costs of work or services which Developer asks the RDE Contractor to perform and for which extra payment becomes due under the RDE Contract before the Closing of title to the particular Property. Moreover, prior to Phase I Completion as to a Property, Developer shall not permit any contractor other than the RDE Contractor (and/or its Subcontractors) to enter onto such Property for the performance of construction work or other work which is not "non-invasive" unless:

(a) the RDE Contractor and the Exit Insurer both agree in writing to allow such work;

(b) such work shall not affect in any way (i) the RDE Contractor's schedule for achieving Phase I Completion for the particular Property; (ii) any coverages under the Exit Insurance or any other insurance then in effect of which Con Edison is a beneficiary; and/or (iii) Con Edison's liability with respect to any Pollution Conditions on the Property; and

(c) such work shall comply with DEC and other legal requirements then in effect; and such work shall be covered by insurance complying with the requirements of Section 5(aa) of the RDE Contract.

In this context, Developer agrees, however, that all agreements with the RDE Contractor for the performance of any work or services must comply with the requirements of the RDE Contract.

6.3 Notwithstanding Section 8.2 of the Agreement if the RDE Contract and the Exit Insurance have terminated at any time before the Closing of title to any Property but the Agreement then remains in effect, Con Edison shall allow Developer to conduct inspections, investigations and tests on such Property (whether or not "non-invasive"), subject to the terms of Section 8.2 of the Agreement; and if the Closing does not occur as to such Property, Developer shall return such Property with all excavations and penetrations made by Developer closed, capped, or covered securely.

ARTICLE 7.

No Other Changes

7.1 This Amendment shall be deemed incorporated in, and part of, the Agreement. Except as modified by this Amendment, the Agreement and the RDE Agreement remain otherwise unchanged and in full force and effect.

[signature page follows]

IN WITNESS WHEREOF, DEVELOPER AND CON EDISON HAVE EXECUTED THIS AMENDMENT AS OF THE DATE FIRST WRITTEN ABOVE.

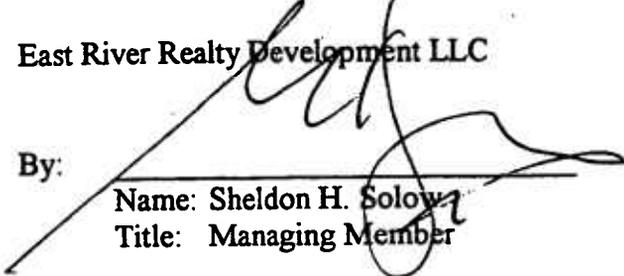
FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: 

Name: RICHARD L. FISHER
Title: MANAGING MEMBER

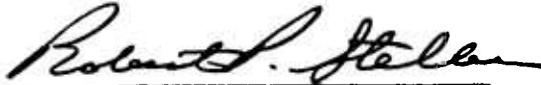
By: East River Realty Development LLC

By: 

Name: Sheldon H. Solow
Title: Managing Member

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: 

Name: ROBERT P. STELBEN
Title: TREASURER

FSM EAST RIVER ASSOCIATES LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

January 12, 2001

VIA HAND DELIVERY

Mr. Robert P. Stelben
Vice President and Treasurer
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 260-5713

Re: Initial Letter of Credit

Dear Mr. Stelben:

Reference is made to that certain Agreement dated as of November 15, 2000 between Consolidated Edison Company of New York, Inc. ("Con Edison") and FSM East River Associates LLC ("Developer"), as amended by that certain First Amendment ("First Amendment") dated as of November 15, 2000, between Con Edison and Developer (collectively, the "Agreement"). Words and phrases used but not defined in this letter shall have the meanings set forth in the Agreement.

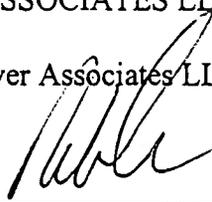
Notwithstanding Section 5.8 of the First Amendment, the parties agree that the date for delivery of the single standby letter of credit drawn on a Qualified Bank in the face amount of \$20,000,000 shall be extended until February 1, 2001.

Except as modified by this letter agreement, the Agreement remains otherwise unchanged and in full force and effect.

Very truly yours,

FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: 

Name:

Title:

By: East River Realty Development LLC

By: 

Name: Sheldon H. Solow

Title: Managing Member

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

cc By: 

Name: ROBERT P. STELBEN

Title: VICE PRESIDENT & TREASURER

cc: John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.
Fax: (212) 424-8500

FSM EAST RIVER ASSOCIATES LLC
c/o Fisher Brothers
299 Park Avenue
New York, New York 10171

January 29, 2001

VIA HAND DELIVERY

Mr. Robert P. Stelben
Vice President and Treasurer
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 260-5713

Re: Initial Letter of Credit

Dear Mr. Stelben:

Reference is made to that certain Agreement dated as of November 15, 2000 between Consolidated Edison Company of New York, Inc. ("Con Edison") and FSM East River Associates LLC ("Developer"), as amended by that certain First Amendment ("First Amendment") dated as of November 15, 2000 and that certain Letter Agreement dated as of January 12, 2001, between Con Edison and Developer (collectively, the "Agreement"). Words and phrases used but not defined in this letter shall have the meanings set forth in the Agreement. 3

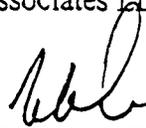
Notwithstanding Section 5.8 of the First Amendment, the parties agree that the date for delivery of the single standby letter of credit drawn on a Qualified Bank in the face amount of \$20,000,000 shall be extended until February 28, 2001.

Except as modified by this letter agreement, the Agreement remains otherwise unchanged and in full force and effect.

Very truly yours,

FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: 

Name: Richard L. Fisher

Title: Managing Member

By: East River Realty Development LLC

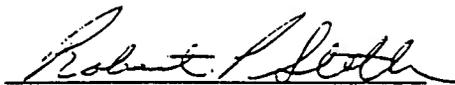
By: _____

Name: Sheldon H. Solow

Title:

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: 
Name:
Title:

cc: John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.
Fax: (212) 424-8500

Except as modified by this letter agreement, the Agreement remains otherwise unchanged and in full force and effect.

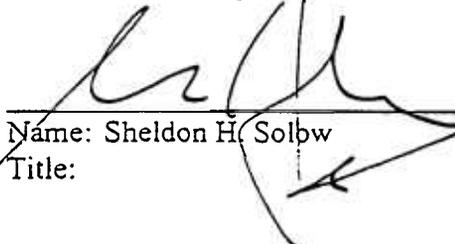
Very truly yours,

FSM EAST RIVER ASSOCIATES LLC

By: Fisher East River Associates LLC

By: _____
Name: Richard L. Fisher
Title: Managing Member

By: East River Realty Development LLC

By: 
Name: Sheldon H. Solbw
Title: _____

Agreed:

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____
Name:
Title:

cc: John D. McMahon, Esq.
Senior Vice President and General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Fax: (212) 674-7329

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019-5389
Attention: Alan M. Berman, Esq.
Fax: (212) 424-8500

EXHIBIT B

REDACTED

EXHIBIT C

**Requirements Under
16 NYCRR Parts 31 and 18**

The requirements of a petition pursuant to PSL Section 70 are set forth in Parts 31 and 18 of the Commission's regulations (16 NYCRR Parts 31 and 18). In accordance with the provisions of Parts 31 and 18, Petitioners state as follows:

Section 31.1(a) - - Financial Condition.

This section requires that the petition provide the facts called for in subdivisions (f) - (i) and (p) of Section 18.1 applicable to the property to be transferred.⁴ The information required by this section for Con Edison is set forth in Appendix A, attached hereto.

Section 31.1(b) - - General Description of the Facilities to be Transferred.

As described briefly in Section I of this Petition, the real property to be transferred comprises 616 First Avenue, a portion of 685 First Avenue, 700 First Avenue and 708 First Avenue. A complete description of the properties to be transferred is set forth in the Agreement between Con Edison and FSM, a copy of which is attached to this Joint Petition.

⁴ These subdivisions of Section 18.1 require the Petitioners: (i) to identify the case number and date of any order authorizing any bonds, notes, or other evidences of indebtedness (Section 18.1 (f)); (ii) to give a brief description of each mortgage upon the property to be transferred (Section 18.1 (g)); (iii) to provide information for each bond issued (Section 18.1 (h)); (iv) to submit a separate statement for each affiliated interest as defined by the PSL (Section 18.1 (i)); and (v) to provide a detailed income statement and balance sheets for the latest fiscal year, and latest available income statement and balance sheets for 12 months (Section 18.1 (p)).

Section 31.1 (c) - - List of Franchises, Consents and Rights to be Transferred.

Con Edison's franchised retail operations will not be transferred, merged or consolidated as part of the proposed transaction

Section 31.1 (d) - - Local Approvals.

Upon information and belief, New York City Planning Commission approval and other City agency approvals will be required for FSM to obtain a rezoning of the First Avenue Properties in order to develop them.

Section 31.1 (e) - - A Copy of the Proposed Agreement to be Approved.

Copies of the proposed agreements are attached to this Joint Petition.

Section 31.1 (f) and (g) - - Original Cost of the Property to be Transferred

See Appendix B attached hereto

Section 31.1 (h) - - Accumulated Depreciation Reserve of the Property to be Transferred.

See Appendix B attached hereto, for figures through 12/31/00.

See attachment 1, page 1 to Rasmussen affidavit for figures through anticipated dates of sale.

Section 31.1 (i) - - Cost of the Property to be Transferred.

See Appendix B attached hereto for figures through 12/31/00.

See attachment 1, page 1 to Rasmussen affidavit for figures through anticipated dates of sale.

Section 31.1 (j) - - Depreciation Reserves of Property to be Transferred.

See Appendix B attached hereto for figures through 12/31/00.

See attachment 1, page 1 to Rasmussen affidavit for figures through anticipated dates of sale.

Section 31.1 (k) - - Statement of Contributions.

There are no contributions toward construction of any of the facilities to be transferred.

Section 31.1 (l) - - Statement of Operating Revenues, Expenses and Taxes Relating to the Property to be Transferred.

See attachment 1, pages 1 and 2 to the Rasmussen affidavit for information relating to the Properties to be transferred. The balance sheet of Con Edison is set forth in Appendix A to this exhibit. FSM East River Associates LLC has no operating history to date and hence, does not yet have a balance sheet. Therefore, Petitioners request that the Commission waive the requirement in this section for submission of a balance sheet as such requirement applies to FSM.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
LONG TERM DEBT
As of June 30, 2000

				Date of Maturity	Amount of Original Issue	Redemptions	Amount Outstanding
NYSERDA TAX-EXEMPT DEBT							
35 Yr.	7.2500%	Series	1989C Note	Nov-01-2024	150,000,000	150,000,000	-
35 Yr.	7.5000%	Series	1990A Note	Jul-01-2025	150,000,000	150,000,000	-
35 Yr.	7.5000%	Series	1991A Note	Jan-01-2026	128,150,000	-	128,150,000
35 Yr.	6.7500%	Series	1992A Note	Jan-15-2027	100,000,000	-	100,000,000
35 Yr.	6.3750%	Series	1992B Note	Dec-01-2027	100,000,000	-	100,000,000
35 Yr.	6.0000%	Series	1993A Note	Mar-15-2028	101,000,000	-	101,000,000
27 Yr.	5.2500%	Series	1993B Note	Aug-15-2020	127,715,000	-	127,715,000
29 Yr.	5.3750%	Series	1993C Note	Sep-15-2022	19,760,000	-	19,760,000
35 Yr.	7.1250%	Series	1994A Note	Dec-01-2029	100,000,000	-	100,000,000
25 Yr.	6.1000%	Series	1995A Note	Aug-15-2020	128,285,000	-	128,285,000
35 Yr.	Variable (A)	Series	1999A Note	May-01-2034	292,700,000	-	292,700,000
TOTAL - NYSERDA TAX-EXEMPT DEBT					1,397,610,000	300,000,000	1,097,610,000
DEBENTURES							
8 Yr.	7.3750%	Series	1992A	Sep-15-2000	150,000,000	-	150,000,000 (1)
12 Yr.	7.6250%	Series	1992B	Mar-01-2004	150,000,000	-	150,000,000
8 Yr.	7.6000%	Series	1992C	Jan-15-2000	125,000,000	125,000,000	0
7 Yr.	6.5000%	Series	1992D	Sep-01-1999	75,000,000	75,000,000	0
8 Yr.	6.5000%	Series	1993B	Feb-01-2001	150,000,000	-	150,000,000 (1)
9 Yr.	6.6250%	Series	1993C	Feb-01-2002	150,000,000	-	150,000,000
10 Yr.	6.3750%	Series	1993D	Apr-01-2003	150,000,000	-	150,000,000
30 Yr.	7.5000%	Series	1993G	Jun-15-2023	380,000,000	-	380,000,000
35 Yr.	7.1250%	Series	1994A	Feb-15-2029	150,000,000	-	150,000,000
5 Yr.	Variable	Series	1994B	Jul-01-1999	150,000,000	150,000,000	0
10 Yr.	6.6250%	Series	1995A	Jul-01-2005	100,000,000	-	100,000,000
30 Yr.	7.7500%	Series	1996A	Jun-01-2026	100,000,000	-	100,000,000
5 Yr.	Variable (B)	Series	1996B	Dec-15-2001	150,000,000	-	150,000,000
5 Yr.	Variable (C)	Series	1997A	Jun-15-2002	150,000,000	-	150,000,000
10 Yr.	6.4500%	Series	1997B	Dec-01-2007	330,000,000	-	330,000,000
10 Yr.	6.2500%	Series	1998A	Feb-01-2008	180,000,000	-	180,000,000
30 Yr.	7.1000%	Series	1998B	Feb-01-2028	105,000,000	-	105,000,000
10 Yr.	6.1500%	Series	1998C	Jul-01-2008	100,000,000	-	100,000,000
30 Yr.	6.9000%	Series	1998D	Oct-01-2028	75,000,000	-	75,000,000
40 Yr.	7.3500%	PINES	1999A	Jul-01-2039	275,000,000	-	275,000,000
10 Yr.	7.1500%	Series	1999B	Dec-01-2009	200,000,000	-	200,000,000
10 Yr.	8.1250%	Series	2000A	May-01-2010	325,000,000	-	325,000,000
TOTAL - DEBENTURES					3,720,000,000	350,000,000	3,370,000,000
SUBORDINATED DEBENTURES							
35 Yr.	7.7500%	Series	1996A	Mar-31-2031	275,000,000	-	275,000,000
TOTAL - LONG TERM DEBT							4,742,610,000

(1) Due Within One Year \$ 300,000,000

(A) Interest rate reset weekly

(B) 6.2500% for period March 15, 2000 - June 14, 2000.

(C) 6.2100% through March 15 2000 - June 14, 2000.

MORTGAGES

There are no mortgages upon the property to be transferred.

STATEMENT OF AFFILIATED INTERESTS

There are no advances from affiliated interests or other indebtedness to affiliates.

Consolidated Income Statement Consolidated Edison Company of New York, Inc.

Year Ended December 31 (Thousands of Dollars)	1999	1998	1997
Operating revenues (Note A)			
Electric	\$ 5,672,348	\$ 5,717,119	\$ 5,635,575
Gas	943,641	959,609	1,093,880
Steam	340,026	321,932	391,799
Non-utility	-	-	74,898
Total operating revenues	6,956,015	6,998,660	7,196,152
Operating expenses			
Purchased power	1,669,227	1,252,035	1,349,587
Fuel	430,174	579,006	596,824
Gas purchased for resale	351,785	370,103	552,597
Other operations	1,047,748	1,117,785	1,124,703
Maintenance	423,322	477,413	474,788
Depreciation and amortization (Note A)	504,018	517,826	503,455
Taxes, other than federal income tax	1,134,079	1,202,610	1,181,156
Federal income tax (Notes A and K)	394,147	414,810	377,722
Total operating expenses	5,954,500	5,931,588	6,160,832
Operating income	1,001,515	1,067,072	1,035,320
Other income (deductions)			
Investment income (Note A)	8,647	6,162	12,214
Allowance for equity funds used during construction (Note A)	3,805	2,431	4,448
Other income less miscellaneous deductions	(9,344)	(5,275)	(4,100)
Federal income tax (Notes A and K)	28,066	575	(1,998)
Total other income	31,174	3,893	10,564
Income before interest charges	1,032,689	1,070,965	1,045,884
Interest on long-term debt	305,261	308,671	318,158
Other interest	17,363	18,400	17,083
Allowance for borrowed funds used during construction (Note A)	(1,778)	(1,246)	(2,180)
Net interest charges	320,846	325,825	333,061
Net income	711,843	745,140	712,823
Preferred stock dividend requirements	13,593	17,007	18,344
Net income for common stock	\$ 698,250	\$ 728,133	\$ 694,479

The accompanying notes are an integral part of these financial statements.

Consolidated Statement of Retained Earnings Consolidated Edison Company of New York, Inc.

Year Ended December 31 (Thousands of Dollars)	1999	1998	1997
Balance, January 1	\$ 4,517,529	\$ 4,484,703	\$ 4,283,935
Corporate restructuring to establish holding company	-	(198,362)	-
Net income for the year	711,843	745,140	712,823
Total	5,229,372	5,031,481	4,996,758
Dividends declared on capital stock			
Cumulative Preferred, at required annual rates	13,593	17,007	18,146
Cumulative Preference, 6% Convertible Series B	-	-	198
Common	1,327,786	496,945	493,711
Total dividends declared	1,341,379	513,952	512,055
Balance, December 31	\$ 3,887,993	\$ 4,517,529	\$ 4,484,703

The accompanying notes are an integral part of these financial statements.

Consolidated Balance Sheet Consolidated Edison Company of New York, Inc.

Assets

At December 31 (Thousands of Dollars)	1999	1998
Utility plant, at original cost (Note A)		
Electric	\$ 10,670,257	\$ 12,039,082
Gas	1,934,090	1,838,550
Steam	722,265	604,761
General	1,220,948	1,204,262
Total	14,547,560	15,686,655
Less: Accumulated depreciation	4,384,783	4,726,211
Net	10,162,777	10,960,444
Construction work in progress	359,431	347,262
Nuclear fuel assemblies and components, less accumulated amortization	84,701	98,837
Net utility plant	10,606,909	11,406,543
Current assets		
Cash and temporary cash investments (Note A)	349,033	30,026
Accounts receivable - customer, less allowance for uncollectible accounts of \$22,600 in 1999 and 1998	541,978	491,493
Other receivables	72,138	45,935
Fuel, at average cost	23,641	33,289
Gas in storage, at average cost	40,280	46,801
Materials and supplies, at average cost	138,300	184,916
Prepayments	178,693	130,198
Other current assets	34,008	20,911
Total current assets	1,378,071	983,569
Investments		
Nuclear decommissioning trust funds	305,717	265,063
Other	18,491	14,750
Total investments (Note A)	324,208	279,813
Deferred charges		
Regulatory assets (Notes A and J)	1,223,364	1,359,135
Other deferred charges	149,600	143,737
Total deferred charges	1,372,964	1,502,872
Total	\$ 13,682,152	\$ 14,172,797

Capitalization and Liabilities

At December 31 (Thousands of Dollars)	1999	1998
Capitalization (see Statement of Capitalization)		
Common shareholders' equity	\$ 4,393,771	\$ 5,842,724
Preferred stock subject to mandatory redemption (Note B)	37,050	37,050
Other preferred stock (Note B)	212,563	212,563
Long-term debt	4,243,080	4,050,108
Total capitalization	8,886,464	10,142,445
Noncurrent liabilities		
Obligations under capital leases	34,406	37,295
Other noncurrent liabilities	204,148	203,543
Total noncurrent liabilities	238,554	240,838
Current liabilities		
Long-term debt due within one year (Note B)	275,000	225,000
Notes payable	495,371	-
Accounts payable	505,357	357,315
Customer deposits	208,865	181,236
Accrued taxes	23,272	17,621
Accrued interest	51,581	76,507
Accrued wages	79,408	83,555
Other current liabilities	202,657	184,989
Total current liabilities	1,841,511	1,126,223
Deferred credits		
Accumulated deferred federal income tax (Note K)	2,121,054	2,382,273
Regulatory liabilities (Note J)	594,569	281,018
Total deferred credits	2,715,623	2,663,291
Contingencies (Note F)		
Total	\$ 13,682,152	\$ 14,172,797

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
 First Avenue Real Estate Sale
 Original Cost and Estimated Accrued Depreciation, Including Construction Work In Progress
 at December 31, 2000
 (\$ 000's)

Appendix B

Account		Description	Book Cost	Est. Accrued	Unrecovered	Construction
P.S.C.	Co.		at 12/31/00	Depreciation 12/31/00	Book Cost	Work In Progress
<u>Waterside Station</u>						
310	9510	Land and Land Rights	\$ 899	\$ -	\$ 899	\$ -
311	9514	Structures & Improvements	42,433	10,351	32,082	54
312	9516	Boiler Plant Equipment	140,447	42,171	98,276	2,126
314	9522	Turbogenerator Units	39,943	11,512	28,431	25
315	9524	Accessory Electric Equip.	15,244	4,693	10,551	3
316	9526	Misc. Power Plant Equipment	4,590	1,222	3,368	-
362	9554	Station Equipment	9,441	6,403	3,038	149
			<u>252,997</u>	<u>76,352</u>	<u>176,645</u>	<u>2,357</u>
<u>Waterside Switch House</u>						
360	9550	Land and Land Rights	49	-	49	-
361	9552	Structures & Improvements	2,290	936	1,354	6
			<u>2,339</u>	<u>936</u>	<u>1,403</u>	<u>6</u>
<u>Waterside Tie Station</u>						
361	9552	Structures & Improvements	861	764	97	-
362	9554	Station Equipment	4	-	4	-
			<u>865</u>	<u>764</u>	<u>101</u>	<u>-</u>
<u>Waterside Dock</u>						
310	9512	Leasehold	2,540	1,637	903	-
<u>Kips Bay Station</u>						
121	0060	Non-Utility Plant - 400-426 East 36th Street	262	-	262	-
310	9510	Land and Land Rights	264	-	264	-
311	9514	Structures & Improvements	705	146	559	-
312	9516	Boiler Plant Equipment	2,536	858	1,678	4
			<u>3,767</u>	<u>1,004</u>	<u>2,763</u>	<u>4</u>
<u>685-699 First Avenue</u>						
389	9810	Land and Land Rights	2,713	-	2,713	-
390	9812	Structures & Improvements	807	185	622	-
			<u>3,520</u>	<u>185</u>	<u>3,335</u>	<u>-</u>
<u>708 First Avenue</u>						
389	9810	Land and Land Rights	170	-	170	-
390	9812	Structures & Improvements	34,190	7,609	26,581	322
			<u>34,360</u>	<u>7,609</u>	<u>26,751</u>	<u>322</u>
<u>39th Street and East River Drive</u>						
353	9735	Desuperheating Equipment	7,000	1,852	5,148	1
<u>Underground Services</u>						
369	9567	Waterside Station	49	13	36	-
369	9567	Kips Bay Station	36	11	25	-
369	9567	685-699 First Avenue	11	4	7	-
369	9567	708 First Avenue	1	1	-	-
369	9567	39th Street and East River Drive	74	22	52	-
			<u>171</u>	<u>51</u>	<u>120</u>	<u>-</u>
<u>General Equipment</u>						
<u>Waterside Station</u>						
397	9832	Communication Equipment	618	325	293	-
<u>685-699 First Avenue</u>						
397	9832	Communication Equipment	88	15	73	-
<u>708 First Avenue</u>						
397	9832	Communication Equipment	3,659	1,571	2,088	-
		Total General Equipment	<u>4,365</u>	<u>1,911</u>	<u>2,454</u>	<u>-</u>
TOTAL			<u>\$ 311,924</u>	<u>\$ 92,301</u>	<u>\$ 219,623</u>	<u>\$ 2,690</u>

EXHIBIT D

TO BE SUBMITTED SHORTLY

AFFIDAVIT OF EDWARD J. RASMUSSEN

I, Edward J. Rasmussen, being duly sworn, depose and say as follows:

I am Vice President and Controller of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). The purpose of this affidavit is to provide preliminary calculations of the expected net after-tax gain to be realized by Con Edison from the sale of its properties comprising approximately 8.9 acres of land located at 616 First Avenue, 685 First Avenue, 700 First Avenue ("Waterside") and 708 First Avenue (collectively, the "Properties" or the "First Avenue Properties") to FSM East River Associates LLC ("FSM"), under the agreement between Con Edison and FSM dated as of November 15, 2000 (as amended to date, the "Agreement"). My affidavit will also describe the arrangements the Company has made for demolition and remediation with respect to the Properties and costs related thereto, the proposed ratemaking treatment for the expected net gain, and preliminary accounting entries necessary to implement the sale of the Properties.

Net After-Tax Gain

1. The closing date on each of the Properties is contingent on a number of factors some of which are outside of the Company's control, including, for example, the Commission's approval process. Assuming no unexpected delays in obtaining the rezoning and all necessary regulatory approvals, and assuming timely completion of the required demolition and remediation, the sale of 616 First Avenue (former Kips Bay station) is expected to be completed by the first quarter of 2003; 685 First Avenue (a

parking lot) by the first quarter of 2003; 708 First Avenue (an office building) by the fourth quarter of 2003; and 700 First Avenue (Waterside steam-electric generating station) by the fourth quarter of 2005. Completion and commercial operation of the East River Repowering Project ("ERRP"), must precede the sale of the Waterside property, since the ERRP will provide replacement steam and electric capacity for the retired Waterside steam and electric capacity. This is described more fully in the affidavit of Rick Shansky.

2. The calculations of high and low ends of the range of Con Edison's estimated net after-tax gain on the sale of the Properties (in current year dollars), assuming the rezoning of the Properties is successful, are shown on pages 1 and 2 of Attachment 1, respectively. Page 1 shows that the total purchase price of the Properties is estimated to be about \$632,915,000 at the high end, assuming all four Properties are sold. Page 2 shows an estimate of \$526,266,000 at the low end, assuming all four Properties are sold. There is a guaranteed minimum purchase price for all four Properties of \$300 million if the Properties are not rezoned. The purchase price is higher if FSM is successful in having the Properties rezoned. Additionally, there are potential purchase price adjustments for certain non-FAR space constructed by FSM, as well as possible escalations to reflect fair market value, which are not currently ascertainable and, therefore, have not been considered in preparing the attached calculations. After rezoning, the purchase price will be adjusted to \$125/square foot of floor area achieved (the "Rezoned Price"), plus payment for non-floor area revenue producing space, and market value adjustments (depending upon the timing of the closing of title). If the

rezoning results in a floor area which will result in an aggregate Rezoned Price for the Properties of less than about \$526,266,000 (4,210,130 square feet), the Company may terminate the sale or close title based on the actual Rezoned Price as then determined.

3. In order to facilitate allocation of net after-tax gains, I divided the purchase price in the case of the high end of the range into three parts for illustration purposes. Per page 1 of Attachment 1, the sale of 616 First Ave., 685 First Ave. and 708 First Ave., excluding the Waterside property in the package, would yield \$305,661,000 at the high end of the range (column entitled "Sub-total"). The sale of the Waterside property, which can not occur until the ERRP project is operational, is estimated to produce a purchase price at the high end of \$292,082,000. In addition, the inclusion of Waterside with the other three properties adds an incremental value to the sale of the First Avenue Properties. In accordance with the Agreement, I have assumed that the addition of the Waterside property would add 20% to the value of 685 First Avenue and 10% to the value of 708 First Avenue. This is an incremental value of \$35,172,000, assuming the high end of the range. There is no incremental value added to 616 First Avenue, as that property is physically located farther away from the other three Properties, which are located close together. This incremental value when added to the individual high-end values of the four Properties would produce a total purchase price for the Properties of \$632,915,000 on the high side as shown on Attachment 1, page 1. This high end of the range assumes an achieved rezoned area of approximately 5,063,316 square feet.

4. My low case scenario, page 2 of Attachment 1, assumes a Rezoned Price for the Properties of \$526,266,000, as at any price less than this, the Company may

terminate the sale. Further, the Agreement states that if the Company is unable to convey the Waterside property, there is an Aggregate Threshold amount of \$282,865,000, the minimum price for the other three properties.

5. As will be discussed below, FSM paid an additional \$50,000,000 to Con Edison upon signing of the Agreement (the "Deposit") and an additional \$6,750,000 for certain environmental insurance (which was immediately paid to the insurer). FSM has permitted Con Edison to use the Deposit prior to closing for the purpose of demolition and remediation. In the event the closings do not take place, FSM is entitled to a return of either all or a portion of the Deposit, as more particularly described in the Agreement. The purchase price plus the Deposit and payment for insurance premium equate to the adjusted purchase price of \$689,665,000 at the high end and \$583,016,000 at the low end, as shown on Attachment 1, pages 1 and 2.¹ As indicated above, these calculations do not reflect payment for non-floor area revenue-producing space and fair market value adjustments, as contemplated by the Agreement, since these amounts cannot be ascertained at this time. As shown on pages 1 and 2 of Attachment 1, the estimated net after-tax gain on the sale was calculated by subtracting from the adjusted purchase price:

(a) the estimated net book cost of the assets (original book cost less accrued depreciation)

¹ FSM's \$6,750,000 insurance premium payment, received by Con Edison, and then paid to the insurer, is not considered part of the purchase price.

including construction work in progress amounting to \$178,489,000 for all Properties by December 31, 2005 (See Appendix B to Exhibit C of the Joint Petition for actual balances as of December 31, 2000); (b) the cost of relocating 138 KV feeders at the 685 First Avenue property estimated at \$721,000; (c) the estimated cost of relocating and retiring steam mains at the Waterside station and 708 First Avenue building to facilitate the sale of 708 First Avenue in the amount of \$ 4.8 million; (d) certain relocation costs to prepare Waterside for demolition in the amount of \$950,000; (e) environmental upgrades to the Company's other steam plants to facilitate the retirement of the Waterside Generating Station in the amount of \$9.5 million; (f) the payment of \$103.5 million for demolition and remediation work (approximately \$90 million) plus insurance (approximately \$13.5 million), which is described below and is to be allocated approximately 48% to the non-Waterside Properties and 52% to Waterside, based on the estimated amount of work to be performed at the respective sites; (g) an estimated \$10 million allocated between the Properties based on their individual purchase price in relationship to the total purchase price of all four Properties to cover other costs incurred to date and those that are expected to arise during the next few years before the final closing of the Properties, including other site preparation and relocation costs and the cost of the East River Environmental Enhancement Program that is being negotiated in the Article X proceeding for the East River Repowering Project; (h) estimated selling costs, such as commissions, legal, filings, title and other fees, totaling \$20 million allocated between the Properties in the same manner; (i) statutory New York State and New York City transfer taxes at a rate of 3.025% of the purchase price (including the Deposit) totaling between approximately \$21 million and \$17 million at the high and low ends, respectively; (j)

New York State and New York City gross receipts taxes on the sales, totaling between approximately \$12 million and \$9 million at the high and low ends, respectively; (k) related New York State Income Taxes on the sales totaling approximately \$17 million and \$8 million at the high and low ends, respectively; (l) net Federal income tax expense of approximately \$130,099,000 at the high end and \$98,092,000 at the low end, consisting of Federal income tax payable and deferred Federal income taxes. Federal income tax payable in connection with the sale ranges from \$146,629,000 at the high end to \$114,622,000 at the lower end. Previously deferred Federal income taxes relating to depreciation deductions are estimated to total (\$16,530,000). The calculation of Federal income tax is more fully described on Attachment 1, page 3. This calculation results in an estimated net after-tax gain on the sale of the Properties by December 31, 2005, in current dollars, of approximately \$181,321,000 at the high end and approximately \$121,875,000 at the low end. The Company will periodically update its calculation of net gains and provide the actual net gain realized on the sale after the closing of all of the Properties. In addition, interest at the Commission-approved customer provided rate would be applied to all expenditures and receipts.

Demolition and Remediation

6. The Company has entered into a contract with TRC Engineers, Inc., TRC Companies, Inc., and TRC Environmental Corporation (collectively, "TRC") for remediation, which includes demolition and decommissioning of the Properties, and the transfer of related environmental liabilities (the "TRC Contract"). Under the TRC Contract, dated as of November 15, 2000, TRC is obligated to demolish structures

including the Waterside Plant as part of a comprehensive clean-up to be approved by NYSDEC, and TRC will also provide a broad corporate indemnity with respect to the performance of such work. At the time the TRC Contract was signed, Con Edison obtained "cost cap" and pollution legal liability insurance policies, issued by Granite State Insurance Company, an affiliate of AIG Environmental, insuring Con Edison, FSM and TRC, in connection with the performance of this work. The sum of \$103.5 million, representing the cost of TRC's work (approximately \$90 million) and the insurance premiums (approximately \$13.5 million), was paid to the insurer on November 28, 2000. The policies (collectively, the "Exit Insurance") provide coverage for: (a) for both known and unknown site conditions encountered during the performance of TRC's work, including any costs that are associated with changes in regulatory standards, as well as the performance of TRC's obligations in the event TRC is unable to perform the work, up to the policy limits of \$195 million (with sublimits for certain items); (b) certain third-party personal injury and property damage claims with respect to pre-existing environmental conditions at or emanating from the Properties, up to the policy limits of \$100 million; and (c) certain third-party personal injury and property damage claims with respect to new conditions at or emanating from the Properties, including offsite transportation of contaminated materials and the disposal sites to which these materials will be taken, up to the policy limits of \$100 million. The term of coverage for each of the policies in (a) and (b) is thirty years, and the term of coverage for the policy in (c) is ten years. Other coverage, including workers' compensation and commercial general liability insurance, will be obtained by TRC as part of the TRC Contract price.

7. Pursuant to the Agreement, FSM made the Deposit and permitted Con Edison to apply this Deposit toward the demolition and remediation work. FSM made an additional payment of \$6,750,000 for the Exit Insurance premiums. Con Edison also contributed approximately \$40 million for remediation and demolition work and \$6,750,000 for Exit Insurance premiums. Under the Agreement, the Deposit, or portions thereof, are refundable if a Property or Properties cannot be conveyed to FSM. However, the termination of the Agreement does not terminate the TRC Contract.

Allocation of Proceeds and Accounting

8. All of the net after-tax gain on the sale of the Properties will be deferred for the benefit of Con Edison's electric, gas and steam customers. As shown at the bottom of Attachment 1, page 1, the Company proposes that the net after-tax gain available from 616 First Avenue, 685 First Avenue and 708 First Avenue would be allocated to customers based upon the pre-sale usage of the Properties by various organizations within the Company. As a result, 616 First Avenue will be allocated 80% to steam and 20% to electric. 685 First Avenue and 708 First Avenue are classified as common utility plant and will be allocated 65.78% to electric, 17.27% to gas and 16.95% to steam. In recognition of the fact that the ERRP will provide the replacement steam and electric capacity required for the retirement and sale of Waterside, the Company proposes that the net after-tax gain from the sale of the Waterside property and the incremental value it adds to the sale of the other Properties be allocated to electric and steam customers in accordance with their respective allocations of ERRP capital costs. Based on a purchase price at the high end of the range, the resulting net after-tax gain to electric,

gas and steam customers by the end of 2005 will be approximately \$57,516,000, \$12,364,000 and \$53,824,000, respectively, plus an additional \$57,617,000 to be allocated between electric and steam customers, for a total of \$181,321,000 (per bottom of Page 1, Grand Total). The purchase price at the lower end of the range, would produce gains of \$52,937,000, \$11,663,000 and \$45,509,000, for electric, gas and steam customers, respectively, plus an additional \$11,766,000 to be allocated between electric and steam customers, for a total of \$121,875,000 (per bottom of Page 2, Grand Total).

9. As to the manner in which the net after-tax gains will be applied for the benefit of customers, the Company proposes to apply the electric portion of the net gains from 616 First Avenue, 685 First Avenue and 708 First Avenue towards the portion of the cost of the ERRP and ERRP-related improvements at the East River Complex to be allocated to electric operations. As directed by the Commission in approving Con Edison's Steam System Plan (Cases 96-S-1065 and 96-S-1121, Order Concerning Phase II Steam Plan Report, issued December 2, 1999), and as further developed in the Company's most-recent Settlement Agreement approved by the Commission in Opinion No. 00-15 (Case 99-S-1621, Opinion and Order Adopting Terms of Settlement, issued December 1, 2000), the ERRP costs will be included in steam rate base, but a portion of those costs will be recovered from electric ratepayers through interdepartmental rents. Under the Company's proposal, electric ratepayers would receive their share of the net gains through reduced interdepartmental rents charged to electric customers through the Monthly Adjustment Clause. The allocated gas portion of the net gain from these sales would be used to write-down interruptible gas plant. The allocated steam portion of the

net after-tax gain would be used to reduce the steam depreciation reserve deficiency and, as per Opinion No. 00-15 (p. 20) to permit the Company to recover the uncollected incremental revenues associated with the increased steam rates for the period between October 1, 2000, the effective date for the revised steam rates approved in Opinion No. 00-15, and December 8, 2000, the date on which the revised steam rates were put into effect. The portion of the net gain resulting from the sale of the Waterside property to be allocated to electric and steam customers will be applied to reduce the overall capital cost of the ERRP. The benefits of this reduction will accrue to electric and steam customers through reduced interdepartmental rents and reduced rate base, respectively.

10. Preliminary accounting entries necessary to implement the sales at the high end of the purchase price and ratemaking treatment are enumerated on Attachment 2 to my affidavit. The entries based on the purchase price at the low end of the range would be similar. The accounting entries relating to the TRC Contract and Exit Insurance are reflected in Attachment 3.


EDWARD J. RASMUSSEN

Sworn to before me this
19th day of March 2001



AUDREY LILLOO FRASER
Notary Public, State of New York
No. 41-4993984
Qualified in Queens County
Commission Expires March 30, 2002

Confidential

First Avenue Real Estate Sale - High Range

(\$ 000's)

	<u>Kips Bay (1st Qtr 2003)</u>	<u>685 1st Ave. (1st Qtr 2003)</u>	<u>708 1st Ave. (4th Qtr 2003)</u>	<u>Sub-total</u>	<u>Waterside (4th Qtr 2005)</u>	<u>Incremental Sale Value</u>	<u>Grand Total</u>
Estimated Sales Price	\$ 103,155	\$ 91,234	\$ 111,272	\$ 305,661	\$ 292,082	\$ 35,172	\$ 632,915
Demolition and Remediation Deposit	8,333	8,333	8,334	25,000	25,000	-	50,000
Insurance Premium	601	34	2,626	3,261	3,489	-	6,750
Total Adjusted Sales Price	<u>112,089</u>	<u>99,601</u>	<u>122,232</u>	<u>333,922</u>	<u>320,571</u>	<u>35,172</u>	<u>689,665</u>
Net Book Value:							
Land	526	2,713	170	3,409	3,488	-	6,897
Structures/Improvements	705	807	34,190	35,702	45,584	-	81,286
Construction Work In Progress	4	-	322	326	2,364	-	2,690
Equipment (Incl. Common)	2,572	99	3,660	6,331	217,410	-	223,741
Subtotal	<u>3,807</u>	<u>3,619</u>	<u>38,342</u>	<u>45,768</u>	<u>268,846</u>	<u>-</u>	<u>314,614</u>
Less Accumulated Depreciation	<u>(1,244)</u>	<u>(261)</u>	<u>(12,403)</u>	<u>(13,908)</u>	<u>(122,217)</u>	<u>-</u>	<u>(136,125)</u>
Net Book Value	2,563	3,358	25,939	31,860	146,629	-	178,489
Other Deferred Costs:							
138KV Feeders, 40th St. Lot	-	721	-	721	-	-	721
Steam Main Work	-	-	4,800	4,800	-	-	4,800
Relocation Projects	-	-	-	-	950	-	950
NOx Control Measures	-	-	-	-	9,500	-	9,500
Insurance Premium	1,202	68	5,252	6,522	6,978	-	13,500
Demolition and Remediation	8,010	450	35,010	43,470	46,530	-	90,000
All Other	1,630	1,441	1,758	4,829	5,171	-	10,000
Total Other Deferred	<u>10,842</u>	<u>2,680</u>	<u>46,820</u>	<u>60,342</u>	<u>69,129</u>	<u>-</u>	<u>129,471</u>
Selling Costs:							
Commissions & Legal Fees	<u>3,260</u>	<u>2,883</u>	<u>3,516</u>	<u>9,659</u>	<u>9,230</u>	<u>1,111</u>	<u>20,000</u>
Transfer Taxes 3.025%	3,373	3,012	3,618	10,003	9,592	1,064	20,659
Gross Receipts Taxes	3,400	4,120	2,567	10,086	773	1,366	12,226
NYS Income Tax	7,893	7,521	2,471	17,885	(3,341)	2,856	17,400
Total Taxes, Other	<u>14,665</u>	<u>14,652</u>	<u>8,657</u>	<u>37,975</u>	<u>7,024</u>	<u>5,286</u>	<u>50,285</u>
Gain Before FIT	80,759	76,027	37,300	194,086	88,559	28,775	311,420
FIT Payable	28,781	26,795	17,504	73,080	63,478	10,071	146,629
Deferred FIT	(135)	(145)	(2,418)	(2,698)	(13,832)	-	(16,530)
Net Gain After FIT	<u>\$ 52,113</u>	<u>\$ 49,377</u>	<u>\$ 22,214</u>	<u>\$ 123,704</u>	<u>\$ 38,913</u>	<u>\$ 18,704</u>	<u>\$ 181,321</u>
Allocation of Net Gain:							
Electric	\$ 10,423	\$ 32,480	\$ 14,613	\$ 57,516	-	-	\$ 57,516
Gas	-	8,528	3,836	12,364	-	-	12,364
Steam	41,690	8,369	3,765	53,824	-	-	53,824
ERRP (Electric & Steam)	-	-	-	-	\$ 38,913	\$ 18,704	57,617
	<u>\$ 52,113</u>	<u>\$ 49,377</u>	<u>\$ 22,214</u>	<u>\$ 123,704</u>	<u>\$ 38,913</u>	<u>\$ 18,704</u>	<u>\$ 181,321</u>

Confidential

First Avenue Real Estate Sale - Low Range

(\$ 000's)

	<u>Kips Bay (1st Qtr 2003)</u>	<u>685 1st Ave. (1st Qtr 2003)</u>	<u>708 1st Ave. (4th Qtr 2003)</u>	<u>Sub-total</u>	<u>Waterside (4th Qtr 2005)</u>	<u>Grand Total</u>
Estimated Sales Price	\$ 85,962	\$ 93,873	\$ 103,030	\$ 282,865	\$ 243,401	\$ 526,266
Demolition and Remediation Deposit	8,333	8,333	8,334	25,000	25,000	50,000
Insurance Premium	601	34	2,626	3,261	3,489	6,750
Total Adjusted Sales Price	<u>94,896</u>	<u>102,240</u>	<u>113,990</u>	<u>311,126</u>	<u>271,890</u>	<u>583,016</u>
Net Book Value:						
Land	526	2,713	170	3,409	3,488	6,897
Structures/Improvements	705	807	34,190	35,702	45,584	81,286
Construction Work In Progress	4	-	322	326	2,364	2,690
Equipment (Incl. Common)	2,572	99	3,660	6,331	217,410	223,741
Subtotal	3,807	3,619	38,342	45,768	268,846	314,614
Less Accumulated Depreciation	<u>(1,244)</u>	<u>(261)</u>	<u>(12,403)</u>	<u>(13,908)</u>	<u>(122,217)</u>	<u>(136,125)</u>
Net Book Value	2,563	3,358	25,939	31,860	146,629	178,489
Other Deferred Costs:						
138KV Feeders, 40th St. Lot	-	721	-	721	-	721
Steam Main Work	-	-	4,800	4,800	-	4,800
Relocation Projects	-	-	-	-	950	950
NOx Control Measures	-	-	-	-	9,500	9,500
Insurance Premium	1,202	68	5,252	6,522	6,978	13,500
Demolition and Remediation	8,010	450	35,010	43,470	46,530	90,000
All Other	1,633	1,784	1,958	5,375	4,625	10,000
Total Other Deferred	<u>10,845</u>	<u>3,023</u>	<u>47,020</u>	<u>60,888</u>	<u>68,583</u>	<u>129,471</u>
Selling Costs:						
Commissions & Legal Fees	<u>3,267</u>	<u>3,568</u>	<u>3,915</u>	<u>10,750</u>	<u>9,250</u>	<u>20,000</u>
Transfer Taxes 3.025%	2,852	3,092	3,369	9,313	8,119	17,432
Gross Receipts Taxes	2,842	4,205	2,286	9,334	-	9,334
NYS Income Tax	6,437	7,651	1,721	15,809	(7,487)	8,323
Total Taxes, Other	<u>12,131</u>	<u>14,949</u>	<u>7,376</u>	<u>34,456</u>	<u>633</u>	<u>35,088</u>
Gain Before FIT	66,090	77,342	29,740	173,172	46,795	219,967
FIT Payable	23,647	27,256	14,858	65,761	48,861	114,622
Deferred FIT	<u>(135)</u>	<u>(145)</u>	<u>(2,418)</u>	<u>(2,698)</u>	<u>(13,832)</u>	<u>(16,530)</u>
Net Gain After FIT	<u>\$ 42,578</u>	<u>\$ 50,231</u>	<u>\$ 17,300</u>	<u>\$ 110,109</u>	<u>\$ 11,766</u>	<u>\$ 121,875</u>
Allocation of Net Gain:						
Electric	\$ 8,516	\$ 33,042	\$ 11,380	\$ 52,937	-	\$ 52,937
Gas	-	8,675	2,988	11,663	-	11,663
Steam	34,062	8,514	2,932	45,509	-	45,509
ERRP (Electric & Steam)	-	-	-	-	\$ 11,766	11,766
	<u>\$ 42,578</u>	<u>\$ 50,231</u>	<u>\$ 17,300</u>	<u>\$ 110,109</u>	<u>\$ 11,766</u>	<u>\$ 121,875</u>

First Avenue Real Estate Sale
Federal Income Tax Calculation

(\$ 000's)

	<u>Low</u>	<u>High</u>
Income Before Federal Income Tax	\$ 219,967	\$ 311,420
<u>Required Adjustments:</u>		
Addition to Book Income - Book Basis of Net Plant	178,489	178,489
Subtraction from Book Income - Tax Basis of Net Plant	<u>70,969</u>	<u>70,969</u>
Total Adjustments to Book Income	<u>107,520</u>	<u>107,520</u>
Taxable Income	<u>\$ 327,487</u>	<u>\$ 418,940</u>
Federal Income Tax Payable at 35%	<u>\$ 114,622</u>	<u>\$ 146,629</u>
Other Adjustment - Accumulated Deferred Federal Income Taxes (A) Depreciation Related	<u>(16,530)</u>	<u>(16,530)</u>
Total Deferred Federal Income Tax	<u>(16,530)</u>	<u>(16,530)</u>
Net Federal Income Tax	<u>\$ 98,092</u>	<u>\$ 130,099</u>

(A) Excludes Excess Accumulated Deferred Federal Income Tax - Depreciation and Accumulated Deferred Investment Tax Credits of (\$860) and (\$1,078), respectively.

Consolidated Edison Company of New York, Inc.

Proposed Journal Entries - Sale of First Avenue Properties - High Range

	<u>Debit</u>	<u>Credit</u>
1		
Accounts Receivable	\$632,915,000	
Other Deferred Credits - Gain on Sale		\$632,915,000
Cash	\$632,915,000	
Accounts Receivable		\$632,915,000
To record the sale, receipt of cash and defer the income effect.		
2		
Accumulated Provision for Depreciation Plant in Service	\$311,924,000	\$311,924,000
Other Deferred Credits - Gain on Sale Construction Work in Progress	\$2,690,000	\$2,690,000
Other Deferred Credits - Gain on Sale Accumulated Provision for Depreciation	\$311,924,000	\$311,924,000
Accumulated Provision for Depreciation Other Deferred Credits - Gain on Sale	\$136,125,000	\$136,125,000
To retire plant in service and CWIP and defer the income effect.		
3		
Other Deferred Debits Cash	\$25,971,000	\$25,971,000
Other Deferred Credits - Gain on Sale Other Deferred Debits	\$25,971,000	\$25,971,000
To record the payment of site preparation, relocation, and other expenses and defer the income effect.		
4		
Other Deferred Debits Cash	\$20,000,000	\$20,000,000
Other Deferred Credits - Gain on Sale Other Deferred Debits	\$20,000,000	\$20,000,000
To record the payment of selling expenses and defer the income effect.		

Consolidated Edison Company of New York, Inc.

Proposed Journal Entries - Sale of First Avenue Properties - High Range

5	Other Deferred Debits	\$20,659,000	
	Cash		\$20,659,000
	Other Deferred Credits - Gain on Sale	\$20,659,000	
	Other Deferred Debits		\$20,659,000
	To record the payment of Transfer Taxes and defer the income effect.		
6	Other Deferred Credits - Gain on Sale	\$12,226,000	
	Taxes Accrued		\$12,226,000
	To record Gross Receipts Taxes.		
7	Other Deferred Credits - Gain on Sale	\$17,400,000	
	Taxes Accrued		\$17,400,000
	To record New York State Income Tax		
8	Other Deferred Credits - Gain on Sale	\$146,629,000	
	Federal Income Tax Payable		\$146,629,000
	To record the payment of Federal income tax and defer the income effect.		
9	Accumulated Deferred Federal Income Tax	\$16,530,000	
	Other Deferred Credits - Gain on Sale		\$16,530,000
	To reverse and defer the effect of previously normalized Federal Income Tax benefits.		

Consolidated Edison Company of New York, Inc.

Proposed Journal Entries - Sale of First Avenue Properties -
Demolition and Remediation and Related Insurance Premium

	<u>Debit</u>	<u>Credit</u>
1 Cash	\$56,750,000	
Other Deferred Credits - Deposit		\$50,000,000
Other Deferred Debits - Real Estate Strategic Program		\$6,750,000
To record the advance contribution of \$56,750,000 from the developer, FSM East River Associates LLC.		
2 Other Deferred Debits - Real Estate Strategic Program	\$103,500,000	
Cash		\$103,500,000
To record the payment for demolition and remediation work and related insurance premium to National Union Fire Insurance.		

BEHYMER

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

-----X
Joint Petition of Consolidated Edison Company :
of New York, Inc. and FSM East River :
Associates LLC : **Case No. _____**
For Authority Under Section 70 of :
the Public Service Law to Transfer Certain :
Real Property Located at 616 First Avenue, :
A portion of 685 First Avenue, 700 First Avenue :
And 708 First Avenue, New York, New York :
and for Related Relief :
-----X

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

AFFIDAVIT OF T. ANDREW BEHYMER

I, T. Andrew Behymer, Senior Account Director of Cushman & Wakefield, Inc. ("C&W"), do hereby certify as follows with respect to the auction procedures followed by C&W in connection with the potential sale of 616 First Avenue, 685 First Avenue, 700 First Avenue ("Waterside") and 708 First Avenue, New York, New York (each, a "Property" and collectively, the "Properties"), on behalf of Consolidated Edison Company of New York, Inc. ("Con Edison"):

1. Marketing of the Properties was formally initiated with the mailing in August 1998 of a "Preliminary Investment Summary" package and confidentiality letter to 151 prospective purchasers. These prospective purchasers were selected by Con Edison, with the assistance of C&W, based upon reputation and past development experience, and included New York-based developer/investors, area institutions, and

national real estate developers. The purpose of this initial mailing was to generate awareness that the Properties were being offered for sale and to obtain executed confidentiality agreements from prospective purchasers.

2. A total of forty-one (41) prospective purchasers executed confidentiality agreements. In November 1998, these forty-one respondents were provided with a Formal Offering Memorandum providing preliminary terms and conditions for the offering and additional details regarding the Properties. The respondents also were given access to due diligence material, including title reports and Phase I environmental reports, as well as access to the Properties for inspection.

3. In December 1998, bid guidelines and a form for first round non-binding bid submissions were provided to the forty-one respondents. The bid form required the respondent to provide an offer price for one or more of the Properties included in the Offering (excluding Waterside, which had not yet been included for sale in the Offering, except as a notation under the 708 First Avenue property description and a separate appendix), a general description of anticipated sources of funds for purchase of the Properties, a summary of relevant development and transactional experience, and conditions to the bid. Bidders were given the option of disclosing financial resources and relationships with financial institutions.

4. In December 1998, seventeen (17) first round bids were received. Two additional bids were received shortly thereafter and were included with the other bids.

Response was strongest from developers/investors, with proposals received from most of the recognized leaders in commercial and residential real estate in New York City. The proposals ranged from combined offers for all of the sites including Waterside, to proposals for individual sites, particularly for 616 First Avenue and 685 First Avenue. The terms of the offers, including but not limited to price and environmental conditions, varied greatly.

5. Over the next several weeks, C&W abstracted each of the proposals received and, together with Con Edison, ranked offers by pricing and conducted follow-up calls with respondents in order to clarify issues raised in their proposals. During this process, C&W advised Con Edison that it could receive significant upside value potential, while mitigating rezoning risk, through a two-tier pricing structure that would provide for a "rezoned price" for the Properties (upon rezoning from manufacturing to commercial/residential) as well as a "guaranteed minimum value" price at which the buyer would commit to purchase the Property or Properties regardless of the outcome of rezoning. In addition, the first round proposals as well as follow-up discussions confirmed that the inclusion of Waterside as part of the offering would significantly enhance the development potential and value for 708 First Avenue to the north of Waterside and 685 First Avenue to the west of Waterside.

6. In January 1999, upon completion of review and analysis of first round bid proposals, second round bid instructions were provided to twelve (12) bidders selected to participate in the second round. Bidders could bid on either a single Property or the

combined Properties, including Waterside. In the event bidders elected to bid on more than one but not all of the Properties, they were required to identify which Property or Properties were not included in their bid. As well as outlining terms and conditions for the sale, the bid instructions required the respondents to specify a rezoned price as well as a guaranteed minimum value price. In addition, the respondents were requested to provide a summary development plan for the Properties as well as targeted development densities and any conditions the respondent had for achieving a specific use and density under rezoning.

7. Eleven of the twelve respondents provided second round bids. Of the eleven bids received, eight bids were for three or four of the Properties, and three bids were for 616 First Avenue.

8. After receipt of the second round bids, C&W, Con Edison, and Merrill Lynch analyzed these bids, with emphasis on the bidders' pricing, development proposals and level of due diligence, as well as their current real estate holdings, development expertise, financial capabilities and bank/lending references. (Upon information and belief, Merrill Lynch was retained by Con Edison to provide a fairness opinion for the transaction and to evaluate C&W's recommendations). Four (4) bidders differentiated themselves in terms of price and were requested to provide financial information and references to demonstrate financial capabilities. Additionally, information regarding the bidders' New York City development experience was collected and Dun & Bradstreet reports were ordered and reviewed.

9. Based on the data collected, C&W developed financial profiles and summaries of development experience for the bidders and prepared a ranking of the four bidders based on financial capabilities and ability to perform. Merrill Lynch provided its independent recommendations as to finalists in May 1999. Merrill Lynch confirmed C&W's rankings of the four finalists.

10. During the summer of 1999, the finalists were provided with a "Selected Issues" document providing a summary outline of major business issues for the potential purchase of the Properties. In addition, the bidders were provided with a form purchase and sale agreement as well as non-binding "Offer to Purchase" form, and requested to provide comments to the former as well as submitting the latter. These responses were received in September 1999.

11. Based on the proposals and written comments, C&W, together with Con Edison and Merrill Lynch, evaluated and ranked the respondents on two major criteria—financial and price terms (rezoned price, guaranteed minimum value price and deposits offered) and ability to perform (development expertise and indicated financial capabilities). In December 1999, the two (2) bidders who received the highest rankings were provided a Revised Offer to Purchase Form in order to improve upon their pricing terms and other conditions to the purchase and sale agreement. Following receipt of the revised offers, meetings were held with the two finalists in order to further improve upon pricing terms and other conditions to the sale of the Properties.

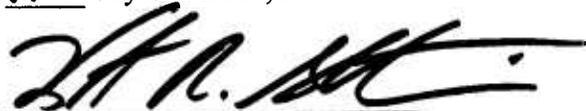
12. Based on superior pricing and other terms offered by FSM, in January 2000, Con Edison commenced negotiations with FSM with the understanding that Con Edison would not be bound unless and until a contract in form satisfactory to Con Edison had been executed and delivered to it. Over the course of the year 2000, negotiations on the agreement between FSM and Con Edison transpired, and Con Edison also negotiated the demolition/environmental remediation contract, and related environmental insurance with TRC. These negotiations culminated in contract signing in November 2000 on both the agreement between FSM and Con Edison and the contract between Con Edison and TRC.

13. I believe that the auction process outlined above was commercially reasonable and resulted in a competitive auction process which broadly exposed the Properties to the market and maximized the value to be received for the Properties.



T. ANDREW BEHYMER

Sworn to before me this
14th day of March, 2001.



Notary Public
KENNETH R. GOLDSTEIN
Notary Public, State of New York
No. 31-4945491
Qualified in New York County
Commission Expires September 19, 2002

SHANSKY

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

-----X
Joint Petition of Consolidated Edison Company :
of New York, Inc. and FSM East River :
Associates LLC : Case No. _____
For Authority Under Section 70 of :
the Public Service Law to Transfer Certain :
Real Property Located at 616 First Avenue, :
A portion of 685 First Avenue, 700 First Avenue :
And 708 First Avenue, New York, New York :
and for Related Relief :
-----X

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

AFFIDAVIT OF RICK SHANSKY

I, Rick Shansky, being duly sworn, depose and say as follows:

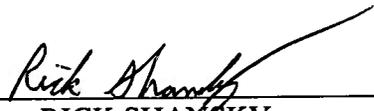
1. I am Section Manager of Planning and Forecasting for Steam Operations of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). I graduated from Rensselaer Polytechnic Institute with a Bachelor of Science degree in Electrical Engineering in 1981. I also earned a Master of Science degree in Energy Management from New York Institute of Technology in 1988. I am licensed as a Professional Engineer in the State of New York. From 1981 to 1984 I was employed by the Long Island Lighting Company in the Planning Department. I joined Con Edison in 1984 as an Associate Engineer in Generation Planning and have since been promoted to

increasing levels of responsibility. Since 1995, I have been responsible for steam planning including preparation of Con Edison's Steam System Plans in 1998 and 1999. I assumed my present position in August 1999 with the formation of the Steam Business Unit. The purpose of this affidavit is to explain that the sale of the First Avenue Properties will not affect steam system reliability.

2. The retirement of the Waterside Generating Station, to enable the sale of the Waterside property, will not affect steam system reliability. The Waterside Station provides 2,350,000 lbs/hour or approximately 17% of Con Edison's steam system capacity. Since Waterside's steam generating capacity is required to maintain reliable steam service, the Company will not retire the Waterside plant until its steam capacity has been replaced. The replacement capacity is expected to be provided by the East River Repowering Project (ERRP) for which the Company has filed an Application for an Article X Certificate with the New York State Board on Electric Generation Siting and the Environment (Case 99-F-1314). The Company will build a new steam main from the East River Complex to the uptown district currently being supplied by Waterside. The retirement of the Waterside Generating Station and sale of the Waterside property will not be completed until the ERRP is on-line and fully operational. Therefore, there will be no impact on the reliability of the steam system on account of the sale of Waterside.

3. The sale of the Kips Bay Property will also not affect steam system reliability. Although the site was once used for steam generation and continues to be zoned for that use, it is not required to meet current or reasonably foreseeable future steam generating needs. Likewise, 685 First Avenue and 708 First Avenue are also not

required to meet current or reasonably foreseeable future steam generating needs and their sale will not affect steam system reliability. Once the ERRP is completed, Con Edison does not foresee the need to construct any additional steam generating plants for at least the next 10 years. Furthermore, there is sufficient space at the 59th Street and Hudson Avenue Generating Stations to build additional capacity should it be required in the future (ERRP Article X Application, Section 4).



RICK SHANSKY

Sworn to before me this
14th day of March 2001



AUDREY LILLOO FRASER
Notary Public, State of New York
No. 41-4993984
Qualified in Queens County
Commission Expires March 30, 2002

SELIG

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

-----X
Joint Petition of Consolidated Edison Company :
of New York, Inc. and FSM East River :
Associates LLC : **Case No.** _____
For Authority Under Section 70 of :
the Public Service Law to Transfer Certain :
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A portion of 685 First Avenue, 700 First Avenue :
And 708 First Avenue, New York, New York :
and for Related Relief :
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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

AFFIDAVIT OF MARILYN B. SELIG

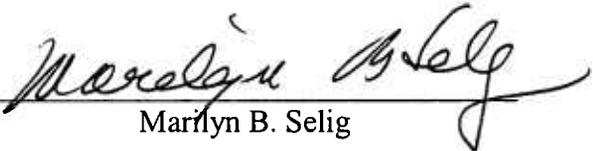
Marilyn B. Selig, having been duly sworn, deposes and says:

1. I am general counsel for FSM East River Associates LLC ("FSM").
2. Subject to paragraph 7 below, the purpose of this affidavit is to provide information in support of the Joint Petition of Consolidated Edison Company of New York, Inc. ("Con Edison") and FSM for authority under Section 70 of the Public Service Law (the "Joint Petition") to the transfer by Con Edison of the property described in Item 3 below to FSM, subject to the terms of the Agreement (as hereinafter defined).
3. FSM entered into a Purchase and Sale Agreement with Con Edison dated as of November 15, 2000, as amended by that certain First Amendment also dated as of November 15, 2000 and by certain letter agreements dated January 12, 2001, January 29, 2001 and February 26, 2001 (said agreement, as same has been amended, the "Agreement") to acquire (the "Transaction"), pursuant to the terms of the Agreement, certain parcels of real property owned by Con Edison known as 708 First Avenue, 700 First Avenue (a/k/a Waterside), 685 First Avenue (a portion of said parcel) and 616 First Avenue, New York, New York (collectively, the "Properties" and ,individually, a "Property").

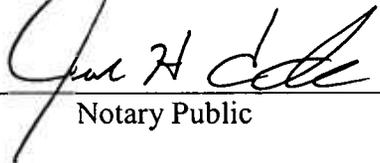
4. FSM is a New York limited liability company, whose sole members are Fisher East River Associates LLC, a Delaware limited liability company ("Fisher") and East River Realty Development LLC, a Delaware limited liability company ("East River"). Fisher and East River are Delaware limited liability companies. The beneficial owners of Fisher are the principals of Fisher Brothers and their associates, as managing members, as well as trusts for the benefit of Getty family members and Morgan Stanley Real Estate Fund IV, L.P. or its affiliates. Fisher Brothers is a major New York developer that has been in business for over fifty (50) years; Fisher Brothers has developed over ten million square feet of office space, including, among other buildings, the buildings known as 1345 Avenue of the Americas and Park Avenue Plaza. The beneficial owner of East River is Sheldon Solow. Sheldon Solow is a major New York developer who has been in business for approximately fifty (50) years. Sheldon H. Solow, through Solow Realty & Development Company, L.L.C., has developed, among other buildings, the building known as 9 West Fifty Seventh Street.
5. As indicated in the Joint Petition, pursuant to the requirements of the Agreement, FSM has delivered deposits to Con Edison in the aggregate amount of \$70 million (\$50 million in the form of a cash deposit and \$20 million in the form of letters of credit) and is further required to deliver an additional letter of credit in the amount of \$30 million upon the earlier of (i) certification of the ULURP (Uniform Land Use Review Procedure) application to be filed with the New York City Planning Commission in connection with a proposed rezoning of the Properties contemplated by the Agreement and (ii) September 30, 2001. FSM is further required to deliver an additional letter of credit in the amount of \$50 million if all of the Properties have not been deeded to FSM by May 15, 2004, unless FSM has delivered a letter of credit in the amount of the FSM Call Price (as defined in the Joint Petition in Section 28) applicable to any Property that has not been deeded to FSM by such date.
6. FSM intends to take advantage of the unique location of the Properties by developing a new, planned mixed-use community that will extend existing neighborhoods to the east and provide new places to live, work and relax. FSM believes this new community will link the existing neighborhoods directly to the waterfront and will help New York City realize its long-standing objective of giving more people access to the waterfront.
7. The participation by FSM in the Joint Petition is solely for purpose of (a) requesting from the New York State Public Service Commission the authorization for the Transaction required under Section 70 of the Public Service Law and (b) confirming (i) the terms of the Agreement as set forth in the Joint Petition and (ii) the participation by FSM in the auction

process, provided, however, with respect to the auction process, FSM can only affirm the information in the Joint Petition and ancillary affidavits relating to FSM's participation in the auction process and cannot affirm any information regarding the participants or the procedures used by Con Edison in making its decisions with respect to such participants. FSM cannot be deemed to have affirmed, either directly or by implication, any other information, as that information is within the knowledge and possession of Con Edison.

Dated: March 16, 2001


Marilyn B. Selig

Sworn to before me this
16th day of March, 2001


Notary Public

JEREMIAH H. CANDREVA
Notary Public, State of New York
No. 02CA5074087
Qualified in Westchester County
My Commission Expires 3/10/2003