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Gale A. Brewer, Borough President

June 29, 2017

Marissa Lago, Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Re: Application No. N 170282 ZRM - East River Fifties/Sutton Place Text Amendment

Dear Chair Lago:

I write in regard to the application by East River Fifties Alliance, Inc., of which I am a co-applicant along with New York City Council Members Ben Kallos and Daniel R. Garodnick and New York State Senator Liz Krueger (“the applicant”).

The proposed text amendment involves a series of land use actions that would modify the existing R10 zoning district bulk and use regulations to create a contextual zoning framework for a defined “East River Fifties Area.” The proposed project area consists of all or portions of 11 blocks, approximately bound by the East River / FDR Drive to the east, East 59th Street to the north, 100 feet east of First Avenue to the west, and mid-block between East 51st Street and East 52nd Street to the south. The affected lots are entirely R10 Districts or spit between R10 and R8B; however, the application only affects the R10 portion of the project area. The proposal would also create a new modified Inclusionary Housing Designated Area (IHDA) to overlap with the proposed East River Fifties Area that incentives affordable housing as well as community facility use. The applicant’s objectives include the protection of neighborhood context and character within a residential neighborhood and setting a higher required minimum of affordable housing units than required under the existing 1987 R10 Inclusionary Housing Program.

Based on information provided by the applicant, the East River Fifties area is the only residentially zoned neighborhood in the City still subject to an R10 zoning designation without contextual protections. As described in more detail within the footnotes of the application on page 2 of the Project Description, while the lack of limitations that exist in the project area also exist on some partial blocks in Manhattan, according to the applicant virtually all other residential R10 Districts have been modified to require height limits or are subject to the more strenuous standards of historic districts and tower-on-a-base regulations.

At its June full board meeting on Wednesday, June 14, 2017, Manhattan Community Board 6 (CB6) held a public hearing on the proposed text amendment. In total 13 people registered to

speak, all of whom spoke in support of the ERFA application. All speakers agreed that the current zoning in this area was flawed and they believed the proposal made positive strides to correct for that error. The speakers are residents in the community who feel that it was wrong that their neighborhood was the only residential neighborhood not limited by height limits or contextual protections. They believe that the current zoning allows for out-of-scale development, and pointed to the current filing for an 856' as-of-right development at 430 East 58th Street as an example of what they believe will continue to be allowed if no action is taken.

On Wednesday, June 21, 2017, CB6 held a joint public hearing with the Office of the Manhattan Borough President to receive testimony from the public regarding the applicant's proposal. In total 8 people registered to speak, one in opposition and seven in support. A representative of the Real Estate Board of New York (REBNY) testified in opposition to the proposal stating it would negatively affect new housing production, both affordable and/or market rate, and bad precedent to creating new inclusionary housing areas. The representative also expressed concern about the ability of existing buildings in the project area to obtain insurance coverage and financing once they find themselves noncompliant (i.e. overbuilt) with the new zoning text. We also received written testimony from Kramer Levin Naftalis & Frankel LLP on behalf of their client Gamma Real Estate, owner of the aforementioned development at 430 East 58th Street, that shared many of REBNY's comments, but went further to challenge the proposal as a spot zoning, questioning the soft site analysis and citing the failure to prepare an EIS as a violation of State Environmental Quality Review Act (SEQR) and City Environmental Quality Review (CEQR)

Those who testified in support echoed the decisions at the CB6 full board meeting on June 14, 2017. The speakers questioned whether those who spoke in opposition were supportive of community-driven planning, appreciated the proposed design standards to reflect existing buildings, and highlighted the fact that the application called for more required affordable housing in exchange for a density bonus. A representative of the applicant provided testimony about the scale of support for the application. He stated that the proposal is supported by 2,164 residents from 343 buildings in and outside the proposed project area and that 45 buildings are members of The East River 50s Alliance (ERFA), a nonprofit 501(c)(4) corporation founded in 2015 to support the applicant's efforts. A representative from the Municipal Arts Society also spoke in support of the application but encouraged the applicant and the City to find a way to require more units to be 60 percent AMI or lower.

At its full board meeting on June 27, 2017, Manhattan Community Board 6 (CB6) voted to approve the text amendment with 33 in support, 0 in opposition and 0 abstentions.

As one of the five sponsors of this application, I am writing to urge the City Planning Commission (CPC) to support and approve this text amendment. I believe this application is a comprehensive, practical and smart community-driven plan to preserve the character of this residential neighborhood and to encourage more community facility space in an area that would be a natural extension to clusters of similar uses both north and south of the site. Additionally I am supportive of the façade articulation requirements and higher affordable housing requirements for density, two issues I have been advocating for before the CPC and the Department of City Planning (DCP) for years.

The primary source of harm to neighborhood character and context the applicant seeks to prevent through this text amendment is the increase in as-of-right development of super tall buildings, especially concentrated in Manhattan, within high-density non-contextual districts. Advances in concrete and steel strength, pumping technology, and more resilient formwork and structural systems have propelled building heights upward¹. These scientific achievements have made possible extraordinary building heights not previously considered under the 1961 Zoning Resolution. In an article from *Curbed New York* dated February 1, 2017, the reporter profiled 24 skyline-defining developments ranging from completed to the proposal phase. Of the group, 23 were in Manhattan². In November 2015, National Geographic developed an interactive map that documented the increasing uptick in super tall development. Their analysis concluded that before 2004, Manhattan was home to 28 skyscrapers 700 feet and taller; however between 2005 and 2015, 13 new skyscrapers were built, 15 were under construction, and 19 were proposed—47 more in all; a number that jumped by 62 percent within just a decade³.

While this degree of density may be appropriate for central business districts and specific mixed-use areas, the existing building typology of the proposed project area disqualifies it as an appropriate place for excessively tall building forms typically associated with an R10 district. Within the proposed project area, the Environmental Assessment Statement (EAS) states that 74 percent of the buildings are at or below the maximum height permitted by Quality Housing regulations and 86 percent have heights below the proposed maximum height of 260 feet.

According to the EAS, the suggested changes would leave 8 building, or 14 percent, noncompliant with the proposed text amendment. This level of noncompliance is common for neighborhood rezoning proposals and even greater degrees of noncompliance have been allowed by the Commission when approving previous applications. For example, a memo prepared for CB6 by their planning consultant explains in greater depth that the introduction of R8B contextual rezoning in the mid-1980s and tower-on-base rules post-1994 left significant areas of the City non-compliant.

In fact, conflicting with the zoning resolution seems to be standard for a borough with building stock as old as ours according to a May 20, 2016 article from the *New York Times*. The reporters explain that whole swaths of our City are overbuilt due to height limits, commercial density or lot coverage. In Manhattan alone, roughly two out of every five buildings, or 40 percent, are taller, bulkier, bigger or more crowded than current zoning allows.⁴ Those buildings have adapted to this status and continue to be able to operate and obtain the insurance and financing

¹ Ali, Mir M. "Evolution of Concrete Skyscrapers: from Ingalls to Jin mao" *Electronic Journal of Structural Engineering*, Vol. 1, No.1 (2001) p 2-14 Retrieved from <http://www.ejse.org/Archives/Fulltext/200101/01/20010101.htm>

² NYC's supertall skyscraper boom, mapped. *Curbed NY*. 1971, March 18 Retrieved from <https://ny.curbed.com/maps/new-york-skyscraper-construction-supertalls>

³ The New New York Skyline. *National Geographic*. 2015, March 1 Retrieved from <http://www.nationalgeographic.com/new-york-city-skyline-tallest-midtown-manhattan/>

⁴ Bui, Quoc Trung, Chaban, Matt A.V., and White, Jeremy "40 Percent of the Buildings in Manhattan Could Not Be Built Today." *NYTimes*. 2016, May 20 Retrieved from <https://www.nytimes.com/interactive/2016/05/18/upshot/which-buildings-in-manhattan-couldnt-be-built-again-today.html>

they need; protected by grandfather provisions that allow them to continue their current use and operations.

DCP has stated in both its technical memos and in public comments made at the time of certification that the agency believes limiting heights in this area would dampen new development interest and that its proximity to Midtown East makes it an appropriate location for taller buildings. I have not seen any detailed real estate data to suggest that this area would not see development if limited to more reasonable heights. The application does not change the amount of density, just the building form. If there is a market analysis that would support this position, I believe it would be valuable to continuing talks with the applicant about what is the appropriate height.

The agency also stated that its proximity to Midtown East and its access to mass transit justified larger building forms. That said, if you review Zoning Sectional Map 8d, there are numerous areas, midblock portions in particular, that are R8B districts with a maximum building height of 75 feet. The in the area directly adjacent to the Special Midtown District and closest to the proposed project area, East 48th Street and East 59th Street between 3rd Avenue and 1st Avenue at least all or part of 15 out of 24 blocks are mapped as an R8B district along their midblock. This area benefits from a zoning designation that discourages taller buildings despite being closer to both the central business district and to mass transportation than the proposed project area. It is important to note that the limitations imposed by this text amendment are limited to the midblock and Sutton Place and would not affect First Avenue, consistent with the City's longstanding planning practice under this and prior administrations of allowing more bulk and height on wide avenues with commercial overlays.

The other major aspect of the proposal is the change to the existing 1987 R10 Inclusionary Housing Program (R10 Program) and the creation of a new Inclusionary Housing Designated Area (IHDA). As a Council Member and as Manhattan Borough President I have been consistent in my advocacy for better versions of both the R10 Program and IHDA. I have written several letters on this topic going back to October 2014 and received a commitment from DCP and HPD in conjunction with my support of the Mandatory Inclusionary Housing Program to begin work on such improvements, but to date we have not seen any action on this problem. Specifically regarding the R10 Program, I have supported as a short-term solution remapping all R10 districts as IHDA programs so that the public receives a greater number of affordable housing by requiring more units.

The application proposes a modified IHDA framework designed to respond to DCP concerns discussed during the pre-certification process for this application. The modified IHDA would provide the same bonus rate as the 2005 IHDA program: 1.25 square feet of bonus residential floor area for every one square foot of affordable floor area. However, because the proposed project area would retain its current base FAR of 10 rather than be reduced to a base FAR of 9, as is the case with other 2005 IHDA areas, the eligible developer would only be required to provide 1.6 FAR or 13 percent of the floor area for affordable housing instead of the typical 2

FAR or 20 percent of the floor area for affordable housing⁵. As a further incentive, 1 FAR of community facility space would be provided for a maximum combined FAR of 13. Despite requiring lesser affordable housing area than the 2005 IHDA program, it would be a meaningful increase over the current requirement of .6 FAR or 5 percent of floor area dedicated to affordable housing. Additionally the inclusion of a community facility space would provide a positive incentive for reasons explained later in this letter.

According to the EAS, in both of the With-Action Scenarios that were explored the numbers of affordable units produced would exceed the 40 affordable units in the No-Action scenario by significant margins, 142 and 129 respectively. I was under the impression that DCP had committed to me in late 2015 to developing a new program that would require more affordable housing.⁶ If this commitment is kept I would welcome the opportunity to apply such an improved program to this as well as other districts, but I will not let inaction on city-wide improvements to the program stymie progress in a neighborhood that desires more opportunities for affordable housing development.

Also related to the modified IHDA is the inclusion of 1 FAR of community facility space to bring the maximum FAR up to 13. This is not typical for IHDA but worth considering and supporting, since there are several reasons why encouraging community facility space in this location would be positive. CB6 is an area that is experiencing a greater increase in its proportion of seniors in the last few years. According to Census data from 2000 to 2010 CD6's population over 60 grew by 16.9 percent from 27,467 to 32,132. Since 2010, this figure appears to have remained consistent, with the ACS estimating the area's population aged 60 and over to be 32,727. A report by Comptroller Stringer released in March 2017 listed CB6 among the top five out of all 59 Community Districts as recommended target areas for an expansion of age-friendly programming⁷. It would seem that encouraging more space to support senior services would reflect smart planning, and it would not be in competition with residential floor area, which commands more rent and attention from builders.

Another argument in support of incentivizing community facility space is that the proposed project area sits in the middle of an established health corridor. Manhattan's East Side Medical Corridor stretches from The Alexandria Center for Science and Technology at East River Science Park located in the East 20's and 30's up north to established medical centers such as New York Presbyterian-Cornell Medical Center, Memorial Sloan-Kettering Cancer Center, CUNY School of Public Health and Rockefeller University Hospital starting around the East 60's. In addition to providing space for supporting services in Community Board 6, it can

⁵ The applicant offered to apply the 2005 IHDA requirements in full however DCP advised they did not believe a downzoning was appropriate for this area. Without a downzoning to a base FAR of 9, the maximum possible residential floor area bonus is 2 FAR. The reason for the maximum bonus is due to the state law that caps residential floor area at 12 FAR. Due to these limitations, a reduced requirement for affordable housing floor area was deemed as the only option by the applicant to allow for as-of-right market rate housing to remain the same

⁶ December 10, 2015 letter from DCP Chair and HPD Commissioner stating as its first commitment "Begin reexamination of voluntary IH program including R10 and designated areas with look at stigmatization issues (two door) and percentage of affordable units,"

⁷ "Aging with Dignity: A Blueprint for Serving NYC's Growing Senior Population" *Office of NYC Comptroller Scott Stringer*. 2017, March 21 <https://comptroller.nyc.gov/reports/aging-with-dignity-a-blueprint-for-serving-nycs-growing-senior-population/>

complement other city policy objectives such as the NYC Economic Development Corporation's (NYCEDC) LifeSci NYC, a \$500 million initiative to create good-paying jobs for people of various levels of education attainment and establish New York City as a global leader in life sciences research and innovation. Given that the With-Action Scenario that explored a community facility incentive could add up to approximately 79,362 square feet of eligible space, matches well with the City's own efforts to use land use policies to encourage new space for life sciences companies "and unlock affordable lab space for growing companies"⁸.

Finally, I want to note that the application is stronger for including specific façade articulation requirements as outlined in a proposed text amendment to Section 23-16 of the Zoning Resolution (ZR). Our community boards ask regularly for more prescribed standards in the ZR that relate to ensuring dynamic street walls and this application provides that. The intent mirrors the City's own efforts to accommodate and encourage façade articulation as part of the regulations included in the Zoning for Quality and Affordability text amendment.

After careful review of the testimony we received my support for this application has not changed and I recommend approval of No. N 170282 ZRM. It remains unclear why DCP or the Commission would believe the current zoning, which would allow 100 story towers on midblocks in a residential neighborhood, is appropriate. Consensus on previous planning efforts throughout the city has benefited from the precedent of downzoning our midblocks and allowing for the growth through upzoning the avenue frontages where that density can be supported. I strongly urge the agency to continue its dialogue with the applicant to find an amendable compromise that would allow this proposal to move forward with the Commission's support.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer

⁸ NYC Economic Development Corporation (2016) *NYCEDC Takes First Step Toward Launching Network of Life Sciences Incubators* [Press Release]. Retrieved from <https://www.nycedc.com/press-release/nycedc-takes-first-step-toward-launching-network-life-sciences-incubators>