

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

NEW YORK COUNTY

Dated as of April __, 2025

Block 2013, Lot 29

RECORD AND RETURN TO:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Attention: Paul D. Selver, Esq.

Modified by City Council as of [_____, 2025]

Matter double-underlined is new, added by the City Council

Matter ~~double-struck-out~~ is old, deleted by the City Council

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT (“**Declaration**”), made as of the ____ day of April, 2025, by **ONE45 LENOX LLC**, a limited liability company established pursuant to the laws of the State of New York, having an address at 85 Delancey Street, New York, New York 10002 (“**Declarant**”).

W I T N E S S E T H:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, identified on the Tax Map of the City of New York, County of New York (“**Tax Map**”) as Block 2013, Lot 29, which real property is more particularly described in Exhibit A annexed hereto and made a part hereof (the “**Subject Property**”); and

WHEREAS, the Declarant desires to improve the Subject Property as a "large-scale general development" meeting the requirements of the definition of “large-scale general development” set forth in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended to date and as same may hereafter be amended (the “**Zoning Resolution**” or “**ZR**”) (such proposed improvement of the Subject Property, the “**Proposed Development**”); and

WHEREAS, in connection with the Proposed Development, Declarant has filed new applications with the New York City Department of City Planning (hereinafter “**DCP**”) for approval by the New York City Planning Commission (the “**Commission**”) of: (i) a Zoning Map Amendment to change the Subject Property from an C8-3 and R7-2/C1-4 zoning districts to a C4-6 zoning district (C 250115 ZMM) (the “**Zoning Map Amendment**”); (ii) a Zoning Text Amendment to modify Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Areas (N 250116 ZRM) (the “**Zoning Text Amendment**”); (iii) a Special Permit, pursuant to ZR Section 74-743, to modify the height and setback regulations of ZR Section 35-64(b)(3) (C 250117 ZSM) (the “**Large-Scale Bulk Special Permit**”); and (iv) a Certification by the Commission pursuant to ZR Section 26-15 to allow additional curb cuts (N 250119 ZCM) (the “**Additional Curb Cut Certification**”); (collectively, the “**Land Use Applications**”); and

WHEREAS, in connection with an earlier version of the Proposed Development (hereinafter the “**Original Development Proposal**”), Declarant had filed applications with the New York City Department of City Planning (hereinafter “**DCP**”) for approval by the New York City Planning Commission (the “**Commission**”) of: (i) a Zoning Map Amendment to change the Subject Property from an C8-3 and R7-2/C1-4 zoning districts to a C4-6 zoning district (C 220134 ZMM) (the “**Zoning Map Amendment**”); (ii) a Zoning Text Amendment to modify ZR 74-744(b) and to modify Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Areas (N 220135 ZRM) (the “**Zoning Text Amendment**”);

(iii) a Special Permit, pursuant to ZR Section 74-743, to modify the height and setback regulations of ZR Section 35-64(b)(3) (C 220136 ZSM) (the “**Large-Scale Bulk Special Permit**”); (iv) a Special Permit, pursuant to ZR Section 74-744(b) to modify the supplementary use regulations of ZR Sections 32-422 and 32-423 and ZR 74-744(c) to modify the sign regulations of ZR Sections 32-64 and 32-65 (C 220137(A) ZSM) (the “**Large-Scale Use Special Permit**”, together with the Large-Scale Bulk Special Permit the “**Large-Scale Special Permits**”); (v) a Special Permit, pursuant to ZR Section 74-532, to modify the residential parking regulations of ZR Sections 36-33 and 25-33 (C 220142 ZSM) (the “**Parking Special Permit**”); (vi) a Certification by the Commission, pursuant to ZR Section 32-435(c), to waive certain retail continuity requirements (N 220143 ZCM) (the “**Retail Continuity Certification**”); (vii) a Certification by the Commission pursuant to ZR Section 26-15 to allow additional curb cuts (N 220138 ZCM) (the “**Additional Curb Cut Certification**”); and (viii) a Certification by the Commission pursuant to ZR Section 26-17 to allow a curb cut on a wide street (N 220139 ZCM) (the “**Curb Cut Location Certification**,” together with the Retail Continuity Certification and the Additional Curb Cut Certification, the “**Certifications**”) (collectively, the “**Original Land Use Applications**”); and

WHEREAS, the Commission approved the Original Land Use Applications on April 27, 2022 but the Declarants subsequently withdrew the Original Land Use Applications on May 31, 2022; and

WHEREAS, the Commission acted as lead agency and conducted an environmental review of the Original Land Use Applications pursuant to City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. (“**CEQR**”)(Application No. 21DCP167M and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“**SEQRA**”), and issued a Notice of Completion for the Final Environmental Impact Statement (the “**FEIS**”) dated April 14, 2022; and

WHEREAS, the Commission acting as CEQR lead agency assessed the Proposed Development in a Technical Memorandum dated November 27, 2024 (CEQR No. 21DCP167M) (the “**Technical Memorandum 002**”) and determined that the Proposed Development would not change the conclusions of the environmental analysis as provided in the EIS;

WHEREAS, Section 74-743(b)(10) of the Zoning Resolution requires that a declaration with regard to ownership requirements in paragraph (b) of the large scale general development definition in Section 12-10 be filed with the Commission; and

WHEREAS, all parties in interest (as such term is defined in the definition of “zoning lot” in ZR Section 12-10) to the Subject Property as shown on the Certification of Parties in Interest prepared by Riverside Abstract, LLC, dated February 2, 2025, and attached hereto as Exhibit C,

have joined in this Declaration or have waived their respective rights to execute this Declaration by written instrument annexed hereto as Exhibit C-1 (which instruments are intended to be recorded in the Register's Office simultaneously with the recordation of this Declaration), or have previously waived their right to do so; and

WHEREAS, the Declarant desires to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated in the future, and intends these restrictions to benefit all the land on the Subject Property;

NOW, THEREFORE, the Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on the Declarant, its successors and assigns as follows:

1. Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in **Section 11** hereof), the Subject Property, if developed pursuant to the Large Scale Special Permit, shall be treated and developed as a "large-scale general development", as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a single unit.

2. Development and Use of the Subject Property.

(a) **Plans.** If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permit, Declarant covenants and agrees that the Proposed Development on the Subject Property shall be constructed substantially in accordance with the following plans prepared by ShoP Architects LLP, and annexed hereto as Exhibit D and made a part hereof (collectively, the "**Plans**"):

Drawing No.	Title	Date
Z-002	ZONING ANALYSIS TABLE	03/10/2025 [____, 2025]
Z-003	ZONING LOT SITE PLAN	03/10/2025 [____, 2025]
Z-007	WAIVER SITE PLAN	03/10/2025 [____, 2025]
Z-008	WAIVER SECTIONS	03/10/2025 [____, 2025]
Z-010	AXONOMETRICS	03/10/2025 [____, 2025]

(b) **Representation.** Declarant hereby represents and warrants that as of the Effective Date there will be no restriction of record on the development, enlargement, or use of the Subject Property, nor any then-existing estate or interest in the Subject Property, nor any lien,

obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a large-scale general development as set forth herein.

3. **Additional Restrictions.** Declarant agrees that it shall not apply for or accept a liquor license for the Use Group VIII banquet hall space delineated on the Plans unless such license incorporates a capacity limitation for such Use Group VIII (banquet, function or reception halls) banquet hall space of two hundred (200) occupants.

4. **Project Components Related to the Environment for Construction.** Declarant shall implement and incorporate as part of its construction of the Proposed Development, as appropriate, the following PCRE's related to construction prior to the issuance of the first permit from DOB permitting the demolition, excavation or construction of foundations for the Proposed Development ("**Construction Commencement**") on the Subject Property, as the context may require:

(a) **Construction Air Emissions Reduction Measures.** Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Proposed Development:

(i) To the extent practicable, all non-road, diesel-powered construction equipment with engine power output rating of 50 horsepower or greater and controlled truck fleets (i.e. truck fleets under long term contract with Declarant, such as concrete mixing and pumping trucks), shall utilize the best available tailpipe technology for reducing diesel particulate emissions (currently, diesel particulate filters). Construction contracts shall specify that diesel engines rated at 50 hp or greater shall utilize diesel particulate filters (either original equipment manufacturer or retrofit technology). Retrofitted diesel particulate filters must be verified under either the EPA or California Air Resources Board ("**CARB**") verification programs. Active diesel particulate filters or other technologies proven to achieve an equivalent reduction may also be used.

(ii) To the extent practicable, all on-road diesel-powered construction equipment with a power rating of 50 horsepower (hp) or greater shall meet or achieve at least the equivalent of the United States Environmental Protection Agency ("**EPA**") Tier 3 emission standard.

(iii) All on-site diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

(iv) Idling of all on-site vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property for all equipment and

vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or unless otherwise required for the proper operation of the engine.

(v) Electrically powered equipment shall be preferred over diesel-powered and gasoline-powered versions of that equipment, to the extent practicable.

(vi) Declarant shall include, or cause to be included, enforceable contractual requirements with contractors and subcontractors to implement the provisions of this **Section 4(a)**, with respect to applicable work at the Subject Property.

(b) **Fugitive Dust Control Plan.** Prior to Construction Commencement Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities during the development of the Proposed Development (the “**Fugitive Dust Control Plan**”), which Fugitive Dust Control Plan shall contain the following measures:

(i) Water sprays shall be used for all demolition, excavation, and transfer of soils to ensure materials will be dampened as necessary to avoid the suspension of dust into the air.

(ii) All trucks hauling loose material shall be equipped with tight fitting tailgates and their loads securely covered prior to leaving the Proposed Development Site.

(iii) Stockpiled soils or debris shall be watered, stabilized with a chemical suppressing agent, or covered.

(iv) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this **Section 4(b)** with respect to applicable work at the Subject Property.

(c) **Construction Noise Reduction Measures.** Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Proposed Development:

(i) Declarant shall develop and implement a plan for minimization of construction noise (the “**Noise Reduction Plan**”). The Noise Reduction Plan shall contain both path control and source control measures, including the following:

a. **Path Control Measures**

- i. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations.
- ii. Noise barriers constructed from plywood or other materials, consistent with the noise barrier requirements set forth in the New York City Department of Environmental Protection (DEP)'s "Rules for Citywide Construction Noise Mitigation," shall be utilized to provide shielding (generally, the construction site would have a minimum 8-foot tall barrier around the perimeter).
- iii. Concrete trucks shall be required to be located inside site-perimeter noise barriers while pouring or being washed out.
- iv. Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) to the extent feasible and practical, as necessary to meet the noise emission levels shown in Table 18-11 in Chapter 18, "Construction."

b. Source Control Measures

- i. Equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code shall be utilized from the start of construction. Table 18-11 in Chapter 18, "Construction," of the 2022 FEIS shows the noise levels for typical construction equipment and the mandated noise levels for the equipment that would be used for construction of the Proposed Development. During construction, tower cranes shall not exceed an L_{max} noise level limit of 80 dBA at 50 feet, generators shall not exceed L_{max} noise level limit of 72 dBA at 50 feet, and excavators shall not exceed an L_{max} noise level limit of 80 dBA at 50 feet as set forth in Table 18-11 of the 2022 FEIS.
- ii. As early in the construction period as logistics would allow, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable. Where electrical equipment cannot be used, diesel or gas-powered generators and pumps

would be located within buildings to the extent feasible and practicable.

- iii. Where feasible and practicable, the construction site shall be configured to minimize back- up alarm noise.
- iv. Construction vehicles shall not idle more than three minutes in accordance with New York City Administrative Code §24-163, except for equipment and vehicles using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.
- v. Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this **Section 4(c)** with respect to applicable work at the Subject Property.

a. Construction Rodent Control Plan.

- i. Prior to Construction Commencement Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control rodents (i.e., mouse and rats, etc.), in accordance with requirements of the Buildings Department, throughout the construction of the Proposed Development. Prior to Construction Commencement, Declarant shall cause its contractor to bait appropriate areas of the Subject Property, using only United States Environmental Protection Agency (“**USEPA**”) and New York State Department of Environmental Conservation (“**DEC**”)-registered rodenticide.
- ii. Declarant shall include enforceable contractual requirements in the contracts of all relevant contractors and subcontractors to implement the provisions of this **Section 4(c)(ii)(a)** with respect to applicable work at the Subject Property.

b. Maintenance and Protection of Traffic Plan.

- i. Prior to Construction Commencement, Declarant shall prepare a plan which provides diagrams of proposed

temporary lane sidewalk and lane narrowing and/or closures to ensure the safety of the construction workers and the public passing through the area during construction (the “**Maintenance and Protection of Traffic Plan**” or “**MPT**”). Declarant shall submit the MPT to the New York City Department of Transportation (DOT)’s Office of Construction Mitigation and Coordination (OCMC) for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

- ii. Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

5. Environmental Mitigation. Declarants shall, in accordance with the FEIS, undertake the mitigation measures set forth in **Sections 5(a)** through **7(b)** below in connection with the Proposed Development on the Subject Property:

(a) **Construction Noise.** At those building façades where significant adverse construction noise impacts are predicted to occur, as set forth in Figure 18-9 of the FEIS and described in **Section 5(a)(i)(a)–(h)** below, Declarant shall, prior to Construction Commencement, offer to make available at no cost for purchase and installation (1) storm windows for impacted residential or community facility façades that do not already have insulated glass windows and/or (2) one window air conditioner per living room and bedroom on impacted façades at residences or one window air conditioner per sensitive space at impacted facades of community facility buildings that do not already have alternative means of ventilation.

(i) Impacted façades:

- a. All façades of 109 through 117 West 144th Street;
- b. North, east and west façades of 121 through 137 West 144th Street and north and east façades of 141 West 144th Street;
- c. South façades of residences at 133-163 West 145th Street;
- d. West facade and westernmost column of windows on the south facade of the south residential building at 700 Esplanade Gardens Plaza.
- e. North façades of residences at 104-152 West 144th Street,

- f. East façades of 104 and 144 West 144th Street;
- g. West façade of 112 West 144th Street (eight buildings in total) and
- h. North façade of the New Mt. Calvary Baptist Church at 102 West 144th Street.

(b) **Open Space.**

(i) The FEIS has identified a potential significant adverse impact to open space that may occur when 249 or more residential units are occupied in the Proposed Development and further sets forth that, in order to partially mitigate such impact, the Developer shall reconstruct the playground within Brigadier General Charles Young Playground, located between West 143rd Street, Lenox Avenue/Malcolm X Boulevard, the 145th Street Bridge, and Harlem River Drive in Manhattan, as set forth below in **Section 5(b)(xi)** (together, the “**Playground Capital Improvements**”), in consultation with the New York City Department of Parks and Recreation (“**DPR**”).

(ii) Declarant shall, in coordination with DPR (a) conduct a community input meeting to obtain feedback from the community on the Playground Capital Improvements prior to directing its consultants to prepare preliminary design plans for the Playground Capital Improvements and (b) present the preliminary design plan of the playground to Manhattan Community Board 10 after receiving DPR’s approval of the preliminary design plan and before submitting the preliminary design plans to the New York City Public Design Commission (“**PDC**”). Declarant shall make a good faith effort to incorporate Community Board 10 comments into the preliminary design plans for the Playground Capital Improvements upon consultation with DPR.

(iii) Declarant shall engage a landscape architect familiar with DPR standards and procedures to prepare the preliminary and final plans for the Playground Capital Improvements. Declarant shall submit to DPR for review preliminary design plans for the Playground Capital Improvements that substantially comply with **Section 5(b)(xi)** below. Within thirty (30) days of such review, DPR shall either (A) approve the preliminary design plans or (B) notify Declarant in writing of any deficiency, in which case Declarant shall submit revised plans that address such defects. Within twenty (20) days of such revised submission, DPR will either (A) approve the preliminary design plans or (B) notify Declarant in writing of any deficiency with the preliminary design plans, in which case Declarant shall submit revised plans that address such defects. If DPR has not reasonably approved the preliminary design plans after the second round of review, this process shall repeat with twenty (20) -day review periods until DPR has approved the preliminary design plans. Upon issuance of DPR’s approval of the preliminary design plans, the plans shall be deemed design plans to be developed into a final design for the Playground Capital

Improvements. Notwithstanding the foregoing, in the event that DPR has failed to respond in writing to Declarant within thirty (30) days of receipt of the initial submission of the preliminary design plans or within twenty (20) days of receipt of revised preliminary design plans incorporating DPR's comments, as applicable, Declarant shall send a reminder notice to DPR.

(iv) Declarant understands that all designs, plans, and drawings for the Playground Capital Improvements shall be subject to DPR's then-current review process and that DPR may request designs, plans, drawings, and additional information on the Playground Capital Improvements, including but not limited to costs, maintenance, and specifications. DPR anticipates that the design of the Playground Capital Improvements will require submission, review, and approval, of a conceptual plan, 30% construction drawings, 50% construction drawings, 80% construction drawings, and 100% construction drawings. Declarant will not be permitted to begin any work in Brigadier General Charles Young Playground to implement the Playground Capital Improvements until DPR has approved all requested designs and drawings pertaining to the Playground Capital Improvements.

(v) Declarant shall manage and coordinate the review of the Playground Capital Improvements design submissions to PDC; and manage and coordinate any review of the Playground Capital Improvements that may be required by any agencies and utilities of the City of New York, including but not limited to the New York City Department of Environmental Protection, the New York City Department of Transportation, the Metropolitan Transportation Authority, and Con Edison.

(vi) Except as otherwise provided in this **Section 5(b)**, Declarant shall not accept and DOB shall not issue a Temporary Certificate of Occupancy ("**TCO**") for the Proposed Development that would result in occupancy of 249 or more new residential units, until DPR has certified to DOB that the Playground Capital Improvements have been substantially completed (hereinafter, a "**Certificate of Substantial Completion**"). "Substantial completion" or "substantially complete" shall mean completion of construction substantially in accordance with the final design plans, in the reasonable determination of DPR, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

(vii) Declarant shall not accept and DOB shall not issue a Permanent Certificate of Occupancy ("**PCO**") for the Proposed Development that would result in occupancy of 249 or more new residential units, until DPR has certified to DOB that the Playground Capital Improvements have been finally completed (hereinafter, a "**Certificate of Final Completion**").

(viii) Declarant shall coordinate with DPR, as necessary, regarding the Playground Capital Improvements. DPR shall (i) consult with Declarant on the community input meeting and presentation of the preliminary design of the Playground Capital Improvements to Manhattan Community Board 10 and (ii) cooperate with Declarant to diligently review and approve all drawings and specifications submitted by Declarant that are required to obtain all necessary approvals to implement the Playground Capital Improvements in a timely manner.

(ix) After Declarant has received approval for its design from DPR, PDC, and any other necessary agencies and utilities, Declarant must begin construction on the Playground Capital Improvements within one year. Before performing any work on DPR property, including but not limited to exploratory work, staging, storage of materials, excavation, demotion, or construction, Declarant must apply for and receive a DPR Construction Permit.

(x) Notwithstanding anything provided in this **Section 5(b)**, if the Chair of DCP (the “**Chair**”), in consultation with DPR reasonably determines that, due to any Uncontrollable Circumstance, Declarant is unable to implement Playground Capital Improvements, the Chair shall grant Declarant appropriate relief, which may include notifying DOB that a TCO or PCO may be issued for the Proposed Development, or portions thereof, as reasonably determined by the Chair, and Declarant may be entitled to obtain such TCO or PCO notwithstanding that the Playground Capital Improvements have not obtained a Certificate of Substantial Completion or Certificate of Final Completion, as the case may be. In the event an Uncontrollable Circumstance has occurred and Declarant proceeds under the preceding sentence, the Chair may require that Declarant post a reasonable bond, letter of credit, or other reasonable security in a form reasonably acceptable to the City in order to ensure that (i) the Playground Capital Improvements will be completed in accordance with the provisions of this Declaration, and (ii) upon cessation of the Uncontrollable Circumstance(s), Declarant shall recommence work on the Playground Capital Improvements in accordance with the provisions of this Declaration.

(xi) The Playground Capital Improvements include redesigning and rebuilding the 29,000 sf playground, which includes the adult fitness area, at the Brigadier General Charles Young Playground (collectively, the “**Play Area**”). The elements and design of the rebuilt Play Area will include new play equipment, spray showers and adult fitness equipment unless DPR approves a design with alternative elements due to community input. The Playground Capital Improvements include, but are not limited to:

- a. Remove existing pavement, fencing, play equipment, spray shower, safety surface, fitness equipment, benches, lighting within the Play Area.

- b. Install new pavement, safety surface, play equipment, and adult fitness equipment within the Play Area.
- c. Lower perimeter fence around the Play Area.
- d. Install drinking fountains within the Play Area.
- e. Replace benches, light posts, sprinklers, and other equipment within the Play Area. Where possible and reasonable, and as deemed acceptable by DPR, existing items, such as light poles, benches, trash bins, and equipment that are in good condition will be reused.
- f. Install local plantings and prune trees within the Play Area.
- g. Provide electrical connections, as needed, for spray shower and lighting within the Play Area.
- h. Install a property line box, if one does not exist, and related electrical lines within the Play Area as directed by DOT's Lighting Division.
- i. Install plumbing branchwork for fresh water connection to new fountains and/or sprinklers in the Play Area and install a backflow preventer, as needed.
- j. Install basic drainage within the Play Area including new drainage lines and catch basins.
- k. Provide hard or soft scape for the playground and adult fitness area within the Play Area.
- l. Although the intent is to preserve trees, remove any trees determined to be in poor health by DPR's Forestry Division.
- m. Repair any sidewalk adjacent to the Play Area that has been disturbed by the playground reconstruction or is in poor condition.

(xii) All work to implement the Playground Capital Improvements shall comply with the New York City Unified Storm Water Rule set forth in Title 15, chapters 19.1 and 31 of the Rules of the City of New York ("**RCNY**"), where applicable.

(xiii) Declarant shall undertake and complete, or cause to be undertaken and completed, the performance of the Playground Capital Improvements in a good and worker-like manner and in accordance with applicable laws, statutes, ordinances, and all orders, rules, regulations, interpretations, directives and requirements of any Governmental Authority. "**Governmental Authority**" shall mean any Federal, State, City or County governmental authority or quasi-governmental authority of any political subdivision thereof, or any agency, department, commission, board or instrumentality of any thereof)

(xiv) **Alternative Open Space Mitigation.** If, at any time before Declarant begins initial schematic or other drawings of its design for the Playground Capital Improvements, DPR provides notice that the Playground Capital Improvements should not be implemented because they would conflict with other design or construction plans actively in progress for Brigadier General Charles Young Playground, then within twenty (20) business days of such notice DCP and DPR shall in writing (1) propose alternative open space mitigation measures to be constructed at another park or public open space within the FEIS study area; (2) provide a detailed scope of work for such alternative open space mitigation measures (“**Alternative Open Space Mitigation Scope**”) and (3) provide cost estimates prepared by DPR confirming that the estimated cost of the Alternative Open Space Mitigation Scope is consistent with, and does not exceed, in aggregate the total cost estimate of the Playground Capital Improvements. The total cost estimate of the Playground Capital Improvements is \$8,800,000 Million Dollars, as adjusted by the Consumer Price Index (CPI) from 2025.

- a. Declarant shall provide Parks with 90 days’ written notice before it begins the preliminary design as set forth in Section (5)(b)(iii) of the Playground Capital Improvements, and ask DPR whether it will request an Alternative Open Space Mitigation Scope or any changes to the Playground Capital Improvements.
- b. Within thirty (30) days of receiving an Alternative Open Space Mitigation Scope or significant changes to the Playground Capital Improvements listed in Section 5(b)(xi) above, if Declarant determines that such Alternative Open Space Scope or significant changes to the Playground Capital Improvements would increase DPR’s cost estimate for all open space mitigation work to more than \$8,800,000.00 as adjusted by CPI from 2025 (the “**Cap**”), then Declarant may notify DPR and DCP, and DPR and Declarant shall work in good faith to resolve the discrepancy so that such Alternative Open Space Mitigation Scope or changes to the Playground Capital Improvements does not exceed the Cap.
- c. If Declarant and DPR cannot agree on changes to Playground Capital Improvements or an Alternative Open Space Mitigation Scope and Declarant chooses not to implement such Playground Capital Improvements or an Alternative Open Space Mitigation Scope Declarant shall make a payment to DPR of \$8.8M, as adjusted by CPI from 2025 to the time of payment. After such payment has been made to DPR, Declarant shall have no further payment obligation and DPR shall notify DOB that Declarant has satisfied the open space mitigation requirements in full and such requirements shall not be an impediment to the issuance of a TCO or PCO for the Proposed Development.

(xv) Declarant shall not be responsible for the maintenance, repair or capital replacement of the Playground Capital Improvements or Alternative Open Space Mitigation Scope, as applicable.

6. Inconsistencies with the FEIS. If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FEIS as a PCRE or Mitigation Measure to be implemented by Declarant, such PCRE or Mitigation Measure shall be deemed incorporated in this Declaration by reference. If there is any inconsistency between a PCRE or Mitigation Measure as set forth in the FEIS and as incorporated in this Declaration as a PCRE or Mitigation Measure, the PCRE or Mitigation Measure as set forth in the FEIS and Technical Memorandum shall be applicable.

7. Innovation and Alternatives: Modifications Based on Further Assessments.

(a) **Innovation and Alternatives.** In complying with Sections 4(a) through 5(b) of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, which Declarant demonstrates to the satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Declaration.

(b) **Process for Innovations, Alternatives and Modifications Pursuant to Section 5.** Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to Section 7 hereof (the “**Section 7 Request**”), Declarant shall meet with DCP to respond to any questions or comments on such request and accompanying materials, and shall provide additional information as may reasonably be requested by DCP in writing in order to allow DCP to determine whether to grant the Section 7 Request, acting in consultation with City agency personnel as necessary in relation to the subject matter of the Section 7 Request.

(c) **Modifications Based on Further Assessments.** In the event that Declarant believes, based on changed conditions, that a PCRE or Mitigation Measure required under Sections 4(a) through 5(b) could be eliminated, reduced or modified without diminishment of the environmental standards that would be achieved by implementation of the PCRE or Mitigation Measure, it shall set forth the basis for such belief in an analysis submitted to DCP, and other relevant City agencies such as DOT and DEP (the “**Modification Request**”). Following the delivery of the Modification Request, Declarant shall meet with DCP and the relevant City agencies to respond to any questions or comments on such request and accompanying materials and shall provide additional information as may be reasonably requested by DCP. Upon reviewing the Modification Request and any other materials submitted, DCP shall issue a written determination within ten (10) business days after receipt of the request. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified, Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination,

provided that Declarant records a notice of such change, as approved by DCP Counsel's Office, against the Subject Property in the office of the City Register.

8. Implementation of PCREs

(a) Declarant agrees that prior to Construction Commencement, Declarant shall provide an affirmation by an authorized representative in writing to DCP and the Department of Buildings that all applicable contracts and/or subcontracts, as applicable for such construction activity, specify provisions for the implementation of the construction period PCREs required under **Section 4** of this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**").

(b) Subject to compliance with all generally applicable site safety requirements or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to the Subject Property, and (ii) conducted in a manner that will minimize any interference with, delay construction of, or create any safety hazard at, the Proposed Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency). Notwithstanding the foregoing, Declarant shall not be obligated to provide DCP or any other City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarant (such as individual condominium units).

(c) If DCP determines, based on information provided by DOB and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a CMM, DCP may thereupon give Declarant written notice of such alleged violation (each, a "**CMM Default Notice**"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in **Section 13**. Notwithstanding any provisions to the contrary contained in **Section 14** of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within fifteen (15) business days; (ii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice that a cure period greater than fifteen (15) business days would not be harmful to the environment or that the required cure cannot be accomplished within fifteen (15) business days (such longer cure period, a "**Proposed Cure Period**"). If DCP accepts within two (2) business days of receipt of a writing from Declarant that

the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the “**New Cure Period**”), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the fifteen (15) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP’s satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP’s request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with DCP representatives. If, subsequent to such meetings, Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant’s performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation, subject to the cure provisions of **Section 14(d)** hereof (as modified for the cure periods set forth in this **Section 6(f)** and the limitations of **Sections 10, 12(a), 14(c) and 15** hereof. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

9. Uncontrollable Circumstance Involving a PCRE or Mitigation Measure.

Notwithstanding any provision of **Section 15)** to the contrary, where the obligation as to which an Uncontrollable Circumstance applies is a PCRE or Mitigation Measure set forth in **Sections 4 or 5** of the Declaration, Declarant may not be excused from performing such PCRE or Mitigation Measure that is affected by the Uncontrollable Circumstance (x) unless such PCRE or Mitigation Measure cannot be reasonably implemented during the Uncontrollable Circumstance or (y) unless and until the Chair has made a determination in his or her reasonable discretion that not implementing the PCRE or Mitigation Measure during the period of the Uncontrollable Circumstance, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

10. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant, or Declarant's successor or assign thereof, and any party acquiring an interest in any portion of the Subject Property (which party shall become a Declarant); provided that the Declaration shall be binding on any Declarant, or Declarant's successor or assign thereof, only for the period during which such Declarant, or Declarant's successor or assign thereof, is the holder of an interest in the Subject Property and only

to the extent of such Declarant's, or Declarant's successor or assign thereof, interest in the Subject Property. At such time as a Declarant, or Declarant's successor or assign thereof, no longer holds an interest in the Subject Property, such Declarant's, or Declarant's successor or assign thereof, obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant, or Declarant's successor or assign thereof, shall assume the obligations and liability of Declarant, or Declarant's successor or assign thereof, pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

11. Recordation.

(a) **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date (defined hereinafter), provided, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of the Large Scale Special Permits, the approval of any of the Land Use Applications, the conveyance of any portion of the Subject Property to the Declarant or any action undertaken in connection with or related thereto, then the Effective Date shall be deferred to the date of final resolution of such action or proceeding, including any appeals, upholding in all respects the validity of the Large Scale Special Permits, the approval of the Land Use Applications, the conveyance of any portion of the Subject Property, or such related action(s), as the case may be.

(i) **“Effective Date”** shall mean the date upon which the Final Approval (hereinafter defined) becomes effective.

(ii) **“Final Approval”** shall mean approval of the Land Use Applications (with the exception of the Certifications) by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council’s period of review has expired, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Land Use Applications and takes final action pursuant to New York City Charter Section 197-d approving the Land Use Applications, in which event “Final Approval” shall mean such approval of the Land Use Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor’s disapproval, in which event “Final Approval” shall mean the Office of the Mayor’s written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, “Final Approval” shall not be deemed to have occurred for any purpose of this

Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Applications.

(b) **Recordation.** Within ten (10) business days of the date hereof, Declarant shall endeavor to file and record this Declaration (together with all of the exhibits hereto) in the Office of the City Register of the City of New York (the "**Register's Office**"), indexing this Declaration against the Subject Property. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register, promptly upon receipt of such documents from the register. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant, or by the City (as permitted in accordance with this paragraph), shall be borne by Declarant.

12. Limitation of Liability and Indemnification.

(a) Limitation of Liability.

(i) The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant or its successors and assigns, and no other property of Declarant or its principals, partners, shareholders, directors, members, officers or employees or successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. In the event that any building in the Projected Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Projected Development and not against selected individual units only. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any Mortgage, the lien of any real property taxes, and the lien of the board of managers of any such condominium

for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of this Declaration. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing in this Section shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

(ii) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such successor-in-interest is the holder of a fee interest in, or is a Party in Interest of, the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in interest's interest.

(b) **Indemnification.**

(i) If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable and actual third party legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration, provided, however, that nothing in this Section shall impose on the Association any indemnification obligations other than the reasonable and actual third party legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from

and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

(ii) Declarant shall indemnify and hold harmless the City and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Declarant's default under this Agreement (including, without limitation, if Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of Declarant, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(iii) The City shall indemnify and hold harmless Declarant and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's default under this Declaration (provided that the City is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of the City, its agents, servants or employees in undertaking its obligations under this Declaration unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Declarant, its agents or their employees.

13. Notice. All notices, demands, requests, consents, approvals, and other communications (each, a "**Notice**") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(a) if to Declarant:

One45 Lenox LLC
85 Delancey Street
New York, New York 10002

with a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attn: Paul D. Selver

- (b) if to the Commission:

New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attention: Chairperson

with a copy to:

The general counsel of Commission at the same address

- (c) if to a Party-in-Interest other than Declarant:

at the address provided in writing to Commission in accordance with this **Section 13**.

- (d) if to a mortgagee of all or any portion of the Subject Property (a “**Mortgagee**”):

at the address provided in writing to Commission in accordance with this **Section 13**.

Declarant, Commission, any Party-in-Interest, and any Mortgagee may, by notice provided in accordance with this **Section 13**, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered (x) in at least one of the following manners: (i) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (ii) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (iii) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received, and (y) with a courtesy copy delivered via electronic mail. All Notices from Commission to a Declarant shall also be sent to every Mortgagee of whom Commission has notice, and no Notice shall be deemed properly given to a Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom Commission has notice.

14. Enforcement, Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If a Declarant fails to perform any of a Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party-in-Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement under this Declaration shall be subject to the cure provisions and periods set forth in this Declaration. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject Property subject to the Large-Scale Special Permits.

(b) **[INTENTIONALLY OMITTED]**

(c) **No Enforcement by Third Parties.** Notwithstanding any provision of this Declaration to the contrary, only Declarant, Declarant's successors and assigns, and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Large-Scale Special Permits. In any proceedings brought by the City against Declarant seeking to deny or revoke building permits or certificates of occupancy with respect to the Proposed Development on the Subject Property, or to revoke any Large-Scale Special Permits approved by the Land Use Applications, or to impose a lien, fine or other penalty, or to pursue any other remedy available to the City, if the event or occurrence which is the basis of an allegation of a failure to comply by a Declarant is associated with a particular lot or portion(s) of lots developed as part of the Proposed Development on the Subject Property, then the City shall only deny or seek the revocation of building permits or certificates of occupancy for such lot(s) or portion(s) of lots, and only seek to impose a fine, lien or other penalty on such lot(s) or portion(s) of a lot, and any such event or occurrence shall not provide the basis for denial or revocation of the Special Permits approved by the Land Use Applications or building permits or certificates of occupancy, or the imposition of any fine, lien or other penalty, with respect to other lot(s) or portion(s) of a lot comprising a portion of the Proposed Development for which no such failure to comply has occurred. No Person other than Declarant, any Mortgagee, all holders of all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property and, from and after the Association

Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

(d) **Notice and Cure.**

(i) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) business days written notice of such alleged violation, during which period the Declarant, any Party-in-Interest and any Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure a Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended or shortened in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure, as reasonably determined by the City. In the event ownership of any of the lots constituting the Subject Property is held by multiple Declarants, notice as to those lots shall be provided to all Declarants of such lots from whom the City has received notice in accordance with **Section 13** hereof.

(ii) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant fails to observe any of the terms or conditions of this Declaration, and Declarant fails to cure such violation within the applicable grace period provided in herein, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarant, every Mortgagee and Party in Interest shall be given thirty (30) days written notice of such alleged violation by the City, during which period each Mortgagee and Party in Interest shall have the opportunity to effect such cure. If any Mortgagee or Party in Interest commences to effect a cure during such thirty (30) day period and thereafter proceeds diligently to complete the effectuation of such cure, such cure

period shall be extended for so long as any Mortgagee or Party in Interest continues to proceed diligently toward such cure. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant.

(iii) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party-in-Interest shall fail to cure the alleged breach or other violation under this Declaration within the applicable grace period provided herein, the City may exercise any and all of its rights, including without limitation those delineated herein, and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that a Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by a Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to **Section 15** hereof. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to the provisions of this Declaration.

15. Delay by Reason of Uncontrollable Circumstances. In the event that Declarant is unable to comply with any requirements of this Declaration (“**Obligations**”) as a result of an Uncontrollable Circumstance, then Declarant may, upon written notice to the Chair (the “**Delay Notice**”), request that the Chair, certify the existence of such Uncontrollable Circumstance. Such Delay Notice shall be requested within five (5) days after the occurrence of such Uncontrollable Circumstances becomes apparent and include a description of the Uncontrollable Circumstance, and, if known to such Declarant, its cause and probable duration and the impact it is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. In the exercise of its reasonable judgment the Chair shall, within ten (10) days of its receipt of the Delay Notice, certify in writing whether an Uncontrollable Circumstance has occurred. If the Chair certifies that an Uncontrollable Circumstance does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies an Uncontrollable Circumstance exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying DOB that a Building Permit, TCO, or a PCO, as applicable, may be issued for any buildings, or portions thereof, located on the Subject Property. Failure to respond within such ten (10) day period shall be deemed to be a certification by the City that Uncontrollable Circumstances have occurred. Any delay arising by reason of an Uncontrollable Circumstance shall be deemed to continue only as long as the Uncontrollable Circumstance continues. Upon a certification or deemed certification that Uncontrollable Circumstance has occurred, the City may grant such Declarant appropriate relief. As a condition of granting such relief, the City may require that such Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City and naming the City as beneficiary in

order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration. Such security shall be in a sum equal to 160% of the estimated cost of the remaining work required to Finally Complete the Obligation, as certified by Declarant's licensed professional, unless the City and Declarant agree to a reduced amount. Declarant shall re-commence the Obligation at the end of the probable duration of the Uncontrollable Circumstance specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Uncontrollable Circumstance shall continue; provided, however, that if the Uncontrollable Circumstance has a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time to re-commence the Obligation. If Declarant fails to resume performance of the work or implement the measure needed to complete the Obligation within three (3) months after the cessation of the Uncontrollable Circumstance (as reasonably determined by the Chair), the City may undertake performance of the work or implement the measure needed to complete the Obligation, and draw upon the aforesaid security, to the extent required to complete the Obligation. Upon Final Completion of the PCRE or mitigation (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant.

(a) **"Uncontrollable Circumstance"** shall mean: an occurrence beyond the reasonable control of Declarant which delays the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xiii) a pandemic outbreak of communicable disease or other public health emergency resulting in construction moratoriums; or (xiv) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property.

16. Applications.

(a) Declarant and/or Declarant's successors or assigns shall include a copy of this Declaration with any application made to DOB for a foundation, new building, alteration, or other permit for any portion of the Proposed Development subject to the Land Use Applications. Nothing in this Declaration, including but not limited to the declaration and covenant made in **Section 1** hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Proposed Development, in such phase or order as the Declarant sees fit in the Declarant's sole discretion.

(b) Subject to the requirements of **Section 15** hereof, nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "**Agency**") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this **Section 14(b)** shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

17. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified upon application by Declarant and upon the express written approval of Commission or an agency succeeding to Commission's jurisdiction. No other approval by any other public body, private person, or legal entity of any kind shall be required for such modification, amendment or cancellation, except that Sections 2(a), "Plans", to the extent such application seeks to amend, cancel or modify any modification made the City Council as set forth in Resolution No. , adopted by the City Council on July , 2025; 3, "Additional Restrictions"; 5(b), "Open Space"; and 17(a), "Amendment, Modification and Cancellation", shall not be modified so as to diminish or alter the obligations of Declarant thereunder in any respect without the approval of the City Council.

(b) Notwithstanding anything to the contrary contained in this Declaration, any change to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind.

(c) Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof, (i) all Unit Interested Parties, (ii) all boards of managers of any condominium

or cooperative association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(d) Notwithstanding anything to the contrary contained in this Declaration, if the Land Use Applications, as approved or modified by the City Council, are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to Commission so certified by the Register's Office. If some of the Land Use Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration in accordance with this **Section 17**.

(e) From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under this Declaration for that portion of the Proposed Development upon that portion of the Subject Property for which the Association was formed. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change this Declaration, or make any application therefor, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

18. Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and

the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

19. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

20. Exhibits. Any and all exhibits, appendices, or attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

21. Approvals. Wherever in this Declaration the certification, consent or approval of Declarant, the Chair, or the Commissioner is required or permitted to be given, it is understood that time is of the essence and such certification, consent or approval will not be unreasonably withheld or delayed.

22. Further Assurances. Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

23. Estoppel Certificates. Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Declaration is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

24. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

25. Right to Sue. Nothing contained herein shall prevent Declarant from asserting any claim or action against the City, or any of its agencies or any of its officials, arising out of the performance by the City, or agency thereof, or failure of the City or agency thereof, to perform, any the obligations of the City, or agency thereof, under this Declaration or the exercise, by the City, or any agency thereof, of any of its rights under this Declaration. Nothing contained herein shall prevent the City of New York or any of its officials from asserting any claim or action against Declarant arising out of Declarant's performance of, or failure to perform, any of its obligations under this Declaration, or the exercise by Declarant of any of their rights under this Declaration.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

ONE45 LENOX LLC, a

New York limited liability company

By: _____
Name:
Title:

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the ____ day of April, 2025, before me, the undersigned, 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, and that his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

DESCRIPTION OF THE SUBJECT PROPERTY

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 westerly side of Lenox Avenue (AKA Malcolm X Boulevard) with the northerly side of West 144th Street;

RUNNING THENCE westerly along the northerly side of West 144th Street, 100 feet to a point;

THENCE northerly, parallel with the westerly side of Lenox Avenue, 99 feet 11 inches to a point;

THENCE westerly along the center line of block and parallel with the southerly side of West 145th Street, 489 feet to a point;

THENCE northerly, parallel with Adam Clayton Powell Boulevard (FKA Seventh Avenue), 99 feet 11 inches to a point on the southerly side of West 145th Street;

THENCE easterly along the southerly side of West 145th Street, 589 feet to the corner formed by the intersection of the southerly side of West 145th Street with the westerly side of Lenox Avenue;

THENCE southerly along the westerly side of Lenox Avenue, 199 feet 10 inches, to the point of place of BEGINNING.

EXHIBIT B

[INTENTIONALLY OMITTED]

EXHIBIT C

**CERTIFICATION OF PARTIES-IN-INTEREST
(SEPARATE ATTACHMENT)**

EXHIBIT C-1

WAIVER OF PARTY-IN-INTEREST

EXHIBIT C:1

WAIVERS AND SUBORDINATION

(SEPARATE ATTACHMENT)

EXHIBIT D

PLANS

(SEPARATE ATTACHMENT)