**RESTRICTIVE DECLARATION**

**Made by:**

**MASPETH MANAGER LLC**

**and**

**[NEIGHBORHOOD WOMEN HOUSING DEVELOPMENT FUND COMPANY, INC.][[1]](#footnote-1)**

**Dated:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_**

**County: Kings**

**Block: 2885**

**Lots: 1, 20, 23, 28, and 32**

**RECORD AND RETURN TO:**

Bryan Cave Leighton Paisner LLP

1290 Avenue of the Americas

New York, New York 10104

Attention: Judith Gallent, Esq.

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**SCHEDULE OF EXHIBITS**

|  |  |
| --- | --- |
| EXHIBIT A  | Description of **Subject Property** |
| EXHIBIT B-1  | Certification of **Parties-In-Interest** |
| EXHIBIT B-2 | Waiver and Subordination Agreement(s) |
| EXHIBIT C | **Site Plans** |

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

THIS **DECLARATION**, made as of this [\_\_\_\_\_\_\_\_] of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], 202\_\_ (the “**Declaration**”), by **MASPETH MANAGER LLC**, a New York limited liability company, having a principal office at c/o The Hudson Companies Inc., 826 Broadway, 11th Floor, New York, New York, 10003 (“**Declarant MM**”), and [**NEIGHBORHOOD WOMEN HOUSING DEVELOPMENT FUND COMPANY, INC.**, c/o St. Nicks Alliance Corp., 2 Kingsland Avenue, Brooklyn, New York 11211][[2]](#footnote-2) (“**Declarant NWHDFC**,” together with Declarant MM are sometimes collectively referred to herein as “**Declarant**”).

**W I T N E S S E T H**:

WHEREAS, the **Declarant MM** is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, designated for real property tax purposes as Block 2885, Lot 1, which real property is more particularly described in **Exhibit A-1** annexed hereto (the “**MM Property**”), and the **Declarant NWHDFC** is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, designated for real property tax purposes as Block 2885, Lots 20, 23, 28, and 32, which real property is more particularly described in **Exhibit A-2** annexed hereto (the “**NWHDFC Property**,” together with the **MM Property** are sometimes collectively referred to as the “**Subject Property**”); and

WHEREAS, **Declarant MM** desires to improve the **Subject Property** as a “large-scale general development” pursuant to the requirements of Section 12-10 of the New York City Zoning Resolution definition of “large-scale general development” (such proposed improvement of the **Subject Property** hereinafter referred to as the “**Large-Scale Development Project**”); and

WHEREAS, the **NWHDFC Property** is comprised of four tax lots, each containing a four story building used for affordable housing that will remain largely unchanged by the **Large-Scale Development Project**; and

WHEREAS, a single property on Block 2885, Lot 10, is excluded from the **Large-Scale Development Project**, but is included in the Map Amendment (as described below), the Map Amendment area comprises all of Block 2885; and

WHEREAS, the **Large-Scale Development Project**, primarily comprised of the **MM Property**, will be developed in four phases, the **Phase 1 Development**, **Phase 2 Development**, **Phase 3 Development**, and **Phase 4 Development**. The “**Phase 1 Development**” is comprised of **Building 1** and the portion of the **Publicly Accessible Area** located in the **Phase 1 Development** area. The “**Phase 2 Development**” is comprised of **Building 2** and the portion of the **Publicly Accessible Area** located in the **Phase 2 Development** area. The “**Phase 3 Development**” is comprised of **Building 3** and the portion of the **Publicly Accessible Area** located in the **Phase 3 Development** area. The “**Phase 4 Development**” is comprised of **Building 4** and the portion of the **Publicly Accessible Area** located in the **Phase 4 Development** area. (the **Phase 1 Development**, **Phase 2 Development**, **Phase 3 Development**, and the **Phase 4 Development** collectively comprise the “**Phasing Plan**”); and

WHEREAS, in connection with the **Large-Scale Development Project**, **Declarant** has filed an application with the New York City Department of City Planning (“**DCP**”) for approval by New York City Planning Commission (the “**Commission**” or “**CPC**”) of: (1) a Map Amendment to Zoning Maps 13a and 13b to change the zoning on Block 2885 from an R6 zoning district to an R7-2 zoning district with a C2-4 overlay mapped parallel to and within 150 feet north of Maspeth Avenue, under Application No. C 210480 ZMK; (2) a Text Amendment to Appendix F of the Zoning Resolution to create a Mandatory Inclusionary Housing district applicable to Block 2885 under Application No. N 210482 ZRK; and (3) a Special Permit, pursuant to Zoning Resolution Section 74-743, to permit modification of the height and setback regulations and minimum distance between buildings applicable to the **Subject Property** under Application No. C 210481 ZSK (the “**Large-Scale Special Permit**”) (collectively, the “**Land Use Application**”); and

WHEREAS, the site plan for the **Large-Scale Development Project**, attached hereto as Exhibit C, designates a **Publicly Accessible Area** that is to be constructed and maintained by **Declarant** and accessible to the public as set forth in this **Declaration** (referred to herein as the “**Publicly Accessible Area or PAA**”); and

WHEREAS, in connection with the Land Use Applications, an Environmental Assessment Statement (the “**EAS**”) was completed as part of City Environmental Quality Review (“**CEQR**”) Application No. 20HPD007K; that the EAS was performed pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et seq. 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**”); that the EAS determined the Land Use Applications would have no significant adverse impact on any CEQR technical area; and

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 of the Zoning Resolution be filed with the Commission; and

WHEREAS, Regal Abstract Corp. (the “**Title Company**”) has certified in the certification (the “Certification”) attached hereto as **Exhibit B-1** and made a part hereof, that as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **Declarant** and [Mortgagee(s)] are the sole parties-in-interest (the “Parties-in-Interest”) in the **Subject Property**, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution; and

WHEREAS, all parties-in-interest to the **Subject Property** have either executed this **Declaration** or waived their right to execute and subordinated their interest in the **Subject Property** to this **Declaration** by written instrument annexed hereto as **Exhibit B-2** and made a part hereof, which instrument is intended to be recorded simultaneously with this **Declaration**; and

WHEREAS, **Declarant** desires to restrict the manner in which the **Subject Property** is developed in the future, and intends these restrictions to benefit all the land, including land owned by the **City**, lying within a one-half-mile radius of the **Subject Property**.

NOW, THEREFORE, **Declarant** hereby declares covenants and agrees as follows:

**ARTICLE I**

# **CERTAIN DEFINITIONS**

For purposes of this **Declaration**, the following terms shall have the following meanings.

### “**AG**” shall mean the Attorney General of the State of New York.

“**Application**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Approvals**” shall mean all approvals or consents required of any Governmental Authority with respect to the **Large-Scale Development Project**.

 “**Board**” shall have the meaning set forth in Section 9.1 of this **Declaration**.

“**Building 1**” shall mean the 200-bed Kleiman Residence homeless shelter located in an existing structure to be the enlarged and renovated, and located at the northwest corner of the intersection of Maspeth Avenue and Debevoise Avenue.

“**Building 2**” shall mean the mixed building containing 311-units of affordable housing (plus one superintendent dedicated unit), and commercial and community facility uses on the ground floor in a newly constructed building located on the north side of Maspeth Avenue midway between Debevoise and Kingsland Avenues.

“**Building 3**” shall mean the 108-unit affordable independent residence for seniors (plus one superintendent dedicated unit) in a renovated and enlarged existing structure (the former Greenpoint Hospital), located along the formerly mapped Skillman Avenue midway between Debevoise and Kingsland Avenues

“**Building 4**” shall mean the mixed building containing 147-units of affordable housing (plus one superintendent dedicated unit) and community facility use on the ground floor in a newly constructed building located on the south side of Jackson Street midway between Debevoise and Kingsland Avenues.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

“**Chairperson**” shall mean the then **Chairperson** of the New York City Planning Commission.

“**City**” shall mean the City of New York.

“**CPC**” shall mean the New York City Planning Commission or any successor to its jurisdiction.

“**Condo Declaration**” shall mean that certain declaration of condominium that may be entered into with regard to the ownership of **Building 1**, **Building 2**, **Building 3** or **Building 4**, and as further described in Section 9.1 hereof.

“**Coop/Condominium**” shall have the meaning set out in Section 9.1 of this **Declaration**.

 “**DCP**” shall mean the New York City Department of City Planning or any successor to its jurisdiction.

“**Declarant**” shall mean the named **Declarant** and the heirs, successors and assigns of the named **Declarant** except that (i) **Declarant** shall not include the holder of a mortgage or deed of trust on all or any portion of the **Subject Property** unless and until it succeeds to the interest or obligation of **Declarant** by purchase, assignment, foreclosure or otherwise, and (ii) **Declarant** shall include the **Condominium** only from and after the **Condominium Obligation Date** and only as set forth in such **Condo Declaration**.

“**Delay Notice**” shall have the meaning set forth in Section 6.4 hereof.

“**Declaration**” shall have the meaning given in the Preamble to this **Declaration**.

“**Development**” shall mean the construction of the **Large-Scale Development Project**.

“**Development Phase**” shall mean any of **Phase 1 Development**, **Phase 2 Development**, **Phase 3 Development**, or **Phase 4 Development** (each as defined below).

“**Development Phasing Plans**” shall have the meaning set forth in the Recitals to this **Declaration** and shall be as shown on the Phasing Plan that included in the Site Plans.

“**DOB**” shall mean the New York City Department of Buildings or any successor to its jurisdiction.

“**DOT**” shall mean the New York City Department of Transportation or any successor to its jurisdiction.

“**Effective Date**” shall mean the date on which this **Declaration** is recorded in the Register’s Office following New York City Council adoption of the Application.

“**Entity**” means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.

“**Final Completion**” or “**Finally Complete**” shall mean the portion of the constructed **Publicly Accessible Area** appurtenant to the respective phase of the Phasing Plan fully complies with all aspects of the **Site Plans** and that all items specified by the **Chairperson**, as incomplete, during the **Substantial Completion** review process were completed, notwithstanding that landscaping, planting of vegetation, or other tasks which must occur seasonally have not been completed, provided that **Declarant** supplies assurances in a manner reasonably acceptable to the **Chairperson** that such seasonal task will be completed as soon as is practicable.

“**Force Majeure**” shall mean that the **Chairperson** has made the determination required in Section 6.4 hereof.

“**Force Majeure Event**” shall include, but not be limited to, (i) governmental restrictions, regulations or controls; (ii) enemy or hostile government action, civil commotion, insurrection, revolution, terrorism or sabotage; (iii) fire or other casualty; (iv) inclement weather substantially delaying construction of any relevant portion of the **Subject Property**; (v) failure or inability of a public utility to provide power, heat or light or any other utility service; (vi) strikes, lockouts or labor disputes; (vii) inability to obtain labor or materials or reasonable substitutes therefor (unless due to any act or omission of **Declarant**); (viii) acts of God; (ix) a taking of the whole or a portion of the **Subject Property** by condemnation or eminent domain; (x) denial to **Declarant** by any party of a right of access to any adjoining real property which right is vested in **Declarant** by contract or pursuant to applicable law, if such access is required to accomplish the obligations of **Declarant** pursuant to this **Declaration**; (xi) any undue material delay in the issuance of approvals by any department or agency of the **City**, the State of New York or the United States that is not caused by any act or omission of **Declarant**; (xii) underground or soil conditions that were not and could not reasonably have been foreseen by **Declarant** prior to their discovery or occurrence; (xiii) the  pendency of any litigation relating to the Application or to the underlying sections of the Zoning Resolution; or (xiv) any other condition similar to the foregoing which are beyond **Declarant’s** control, inclusive of any delays relating to any temporary and/or emergency regulations, health or otherwise, imposed at the City, State or Federal level that have the effect of restricting access and/or construction related activity at the **Subject Property**.

 “**Governmental Authority**” shall mean any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

 “**HPD**” shall mean the New York City Department of Housing Preservation and Development, or any successor to its jurisdiction.

“**Land Use Application**” shall have the meaning set forth in the Recitals.

“**Large-Scale Development Project**” shall have the meaning set forth in the Recitals.

“**Large-Scale Special Permit**”shall have the meaning set forth in the Recitals.

“**Legal Requirements**” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the **Large-Scale Development Project**.

“**Maintenance and Repair Obligations**” shall have the meaning set forth in Section 3.4 **Declaration**.

“**Mortgage**” shall mean a mortgage given as security for a loan in respect of all or any portion of the **Phase 1 Development**, **Phase 2 Development**, **Phase 3 Development**, or **Phase 4 Development** other than a mortgage secured by any condominium unit or other individual residential unit located within the **Phase 1 Development**, **Phase 2 Development**, **Phase 3 Development**, or **Phase 4 Development**.

“**Mortgagee**” shall mean the holder of a Mortgage.

“**Notice**” shall have the meaning set forth in Section 8.8 of this **Declaration**.

“**Notice of Final Completion**” shall have the meaning set forth in Section 6.5 of this **Declaration**.

“**Notice of Substantial Completion**” shall have the meaning set forth in Section 6.2 of this **Declaration**.

“**Party-in-Interest**” shall have the meaning set forth in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution.

“**PCO**” shall mean a Permanent Certificate of Occupancy issued by **DOB**.

“**Person**” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

“**Phase 1 Development**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Phase 2 Development**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Phase 3 Development**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Phase 4 Development**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Phasing Plan**” shall have the meaning set forth in the Recitals to this **Declaration**.

“**Publicly Accessible Area**”or“**PAA**” shall have the meaning set forth in the Recitals and in the **Site Plans**.

“**Public Access Easement**”shall have the meaning set forth in Section 3.2 of this **Declaration**.

“**Register’s Office**” shall mean the Register’s Office of the City of New York, Kings County.

**“Site Plans”** shall mean the plans set forth in Exhibit C and referred to in Section 2.2of this **Declaration**.

“**State**” shall mean the State of New York, its agencies and instrumentalities.

“**Substantial Completion**” or “**Substantially Complete**” shall mean that the portion of the **Publicly Accessible Area** appurtenant to the respective phase of the **Phasing Plan** has been constructed substantially in accordance with the **Site Plans** and the **Phasing Plan**, and that each portion has been completed to such an extent that the **Publicly Accessible Area** in accordance with the **Phasing Plan** and Article VI hereof may be operated and made available for public use, in the reasonable determination of the **Chairperson**, notwithstanding that (i) landscaping, planting of vegetation, or other tasks which must occur seasonally have not been completed, or (ii) certain landscaping located beneath or immediately adjacent to any temporary construction protection installations (*e.g.*, scaffolding or bridging) have not been completed (*e.g.*, certain limited **PAA** located beneath or immediately abutting certain construction protection measures as required on the **Phase 3 Development** in connection with the construction of the adjacent **Phase 4 Development** need not be completed in the **Phase 3 Development** until such protection measures are removed from the **Phase 4 Development**, the forgoing example shall not limit the applicability of this exception to the **Substantial Completion** of other **PAA** in the **Subject Property**).

“**TCO**” shall mean a Temporary Certificate of Occupancy issued by **DOB**.

“**Unit Interested Party**” shall mean any and all of the following: all owners, lessees, and occupants of any individual residential or commercial condominium unit, and all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit.

**ARTICLE** **II**

**DEVELOPMENT AND USE OF THE SUBJECT PROPERTY**

2.1 Designation of Large-Scale General Development. **Declarant** hereby declares and agrees that, following the Effective Date as herein defined, the **Subject Property**, if developed pursuant to the **Large-Scale Special Permit**, shall be treated as a large-scale general development site and shall be developed and enlarged as a single unit pursuant to the New York City Zoning Resolution.

2.2. Development of Large-Scale Development Site.If the **Subject Property** is developed in whole or part in accordance with the **Large-Scale Special Permit**, **Declarant** covenants that the **Subject Property** shall be developed in substantial conformity with the following plans prepared by Magnusson Architecture & Planning PC, approved as part of the **Large-Scale Special Permit** and annexed hereto in **Exhibit “C”** and made a part hereof **Site Plans** (19 sheets):

|  |  |  |
| --- | --- | --- |
| **Drawing No.** | **Title** | **Date** |
| Z-002.00 | Zoning Analysis, Base Plane Calculation | 06/07/202111/10/2021 |
| Z-010.00 | Zoning Lot Site Plan | 06/07/202111/10/21 |
| Z-030.00 | Waiver Plan | 06/07/202111/10/2021 |
| Z-040.00 | West-East Section 1 | 06/07/2021 |
| Z-041.00 | West-East Section 2 | 06/07/2021 |
| Z-042.00 | West-East Section 3 | 06/07/2021 |
| Z-043.00 | North-South Section 1 | 06/07/2021 |
| Z-044.00 | North-South Section 2 | 06/07/2021 |
| Z-045.00 | North-South Section 3 | 06/07/2021 |
| Z-054.00 | Illustrative Axonometrics | 04/30/2021 |
| P-001.00 | PAA Phasing Plan | 06/07/202111/10/2021 |
| P-002.00 | Publicly Accessible Area Plan | 06/07/202111/10/2021 |
| L-001.00 | Site Plan | 06/07/202111/10/2021 |
| L-101.00 | Open Area Plan | 06/07/202111/10/2021 |
| L-201.00 | Layout and Grading Plan | 06/07/202111/10/2021 |
| L-301.00 | Planting Plan | 06/07/202111/10/2021 |
| L-401.00 | Furniture and Fencing Plan | 06/07/202111/10/2021 |
| L-501.00 | Fence and Furnishing Details | 06/07/2021 |
| L-502.00 | Planting Details | 06/07/2021 |

**ARTICLE III**

**PUBLICLY ACCESSIBLE AREA**

3.1 Construction of the **Publicly Accessible Area**.

 (a) **Declarant** shall construct the **Publicly Accessible Area** substantially in accordance with the specifications in Drawing Nos. P-001.00, P-002.00, ­L-001.00, ­L-101.00, L-201.00, ­L-301.00, ­L-401.00, ­L-501.00, and ­L-502.00 of the **Site Plans**, attached hereto in Exhibit C.

 (b) **Declarant**, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State, and Federal permits and approvals necessary to **Substantially Complete** the **Publicly Accessible Area** located within each **Development Phase** and in accordance with Article VI of this **Declaration**.

3.2 Public Access Easement.

(a) Immediately upon the certification of **Substantial Completion**, **Declarant** grants the **City** and the general public a permanent, perpetual access easement over the entirety of the **Publicly Accessible Area**, unobstructed from the surface of the **Publicly Accessible Area** to the sky, for the purposes of (i) passive recreational use by the general public and (ii) pedestrian access (the “**Public Access Easement**”).

(b) All liens, including but not limited to judgment liens, mortgage liens, mechanics’ liens and vendees’ liens, and all burdens, covenants, encumbrances, leases, licensees, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and easements, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the **Public Access Easement** as herein defined in Section 3.2(a).

3.3 Hours of Access.

1. The **Publicly Accessible Area** shall be open and accessible to the public each day during the hours of 6:00 a.m. to 1:00 a.m. all year, except that, during the hours of 1:00 a.m. to 6:00 a.m., the PAA shall remain accessible to the public from all the entrances for the sole purpose of pedestrian access to the surrounding streets, which are Maspeth Avenue, Debevoise Avenue, Jackson Street, and Kingsland Avenue.
2. **Declarant** may only close the **Publicly Accessible Area**, in a manner that ensures that the area and timing of such closure shall be the least extent practicably possible, in order to: (a) perform required maintenance, repairs, or replacements of the **Publicly Accessible Area**, or portions thereof, and shall notify the **Chairperson** of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the **Publicly Accessible Area**; or (b) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under a the **Publicly Accessible Area** and shall notify the **Chairperson** of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the **Publicly Accessible Area**; or (c) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in Section 3.3(c).
3. In the event that the closure of the **Publicly Accessible Area** is required due to an emergency condition specified herein, **Declarant** shall notify the **Chairperson** of such closing and its expected duration as soon as practicable but in no event more than two (2) business days after such closure. The notice to the **Chairperson** shall further specify which portion has been closed and describe the nature of the emergency or hazardous condition causing the closure. Emergency conditions for which the **Publicly Accessible Area** may be closed, pursuant to Section 3.3(c), shall be limited to actual or imminent emergency situations, including security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without **Declarant** having consulted with **DOB** or other agency and such agency confirming the continued closure of the **Publicly Accessible Area** is required.
4. In the event of a closure pursuant to Section 3.3(b), **Declarant** will close only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform the needed work in such a manner that the public will continue to have access to the **Publicly Accessible Area**.
	1. Maintenance and Repair. **Declarant** shall be responsible for the maintenance and repair of the **Publicly Accessible Area** in accordance with the standards set forth herein (the “**Maintenance and Repair Obligations**”). All such maintenance shall be performed in a good and worker-like manner.

### Cleaning.

#### Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the **Publicly Accessible Area** in clean, neat, and good condition.

#### All walkways, lighting and all other improvements and facilities installed in the **Publicly Accessible Area** shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.

#### Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

#### Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

#### Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed.

#### Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

### Landscape Maintenance. A maintenance program for the planted portions of the **Publicly Accessible Area** shall be established, consisting of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season.”

###  (i) Spring Start-Up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

### (aa) Remove any winter protectives from trees, shrubs and other planting materials;

### Remove all landscaping debris including leaves and dead branches;

### Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;

### Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;

### Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;

### Remove any sand deposited as a result of winter sandings;

### Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;

### Reseed grassed areas as needed.

###  (ii) Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

### Rake and collect leaves;

### Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;

### Apply commercially available nitrogen rich fertilizer to all lawn areas;

### Reseed grassed areas as needed.

###  (iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

### Inspect trees on a regular basis and spray when necessary;

### Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to City or State regulations governing water usage.

### Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.

### Weed as needed, no less than on a bi-weekly basis.

### Repairs and Replacements. **Declarant** shall perform repairs and replacements as needed to maintain the **Publicly Accessible Area** in state of good repair and in compliance with the specifications set forth in the **Site Plans**. **Declarant** shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the specifications set forth in the **Site Plans** and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

#### Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;

#### Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;

#### Paving: All paved surfaces shall be maintained so as to be safe and attractive;

#### Signage: All signs and graphics shall be maintained in good condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

#### Painting: All items with painted surfaces shall be painted on an “as needed “basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;

#### Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and

#### Construction Defects and Hazardous Conditions: **Declarant** shall periodically inspect the **Publicly Accessible Area** for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

* 1. Signage. Pursuant to Local Law 116 of 2018, the **Publicly Accessible Area** qualifies as a Privately Owned Public Space (“POPS”), and **Declarant** shall comply with any signage regulations therein promulgated by **DCP** regarding POPS.

**ARTICLE IV**

**INTENTIONALLY OMITTED**

**ARTICLE V**

**INTENTIONALLY OMITTED**

**ARTICLE VI**

**CERTIFICATES OF OCCUPANCY**

## Temporary Certificates of Occupancy.

### **Declarant** shall not apply, upon the completion of any inspections, for the issuance of a **TCO** for **Building 2**, **Building 3**, or **Building 4** until the following conditions have been met:

#### **DCP** has issued a **Notice of Substantial Completion** for the portion of the **Publicly Accessible Area** located in the **Development Phase** that the building is within, except for **TCOs** relating to **Building 1** and **Building 2**. For **Building 1**, no **Notice of Substantial Completion** for the portion of the **Publicly Accessible Area** located in the **Phase 1 Development** shall be required to apply for a **TCO**. For **Building 2**, a **Notice of Substantial Completion** for the portion of the **Publicly Accessible Area** located in **Phase 1 Development** in addition to **Phase 2 Development** shall be required to apply for a **TCO**.

### The **TCO** shall include an appropriate description of the portion of the **PAA** that is appurtenant to the portion of the **Phasing Plan** for which the **TCO** is being sought.

# **Notice of Substantial Completion**.

1. *Notification*. **Declarant** shall notify the **Chairperson** at such time as it believes that the **Publicly Accessible Area** within the **Development Phase** that the building, for which **Declarant** is seeking a **TCO**, is **Substantially Complete** and shall request that the **Chairperson** issue a certification to **Declarant** and **DOB** certifying the **Substantial Completion** of the portion of the **Publicly Accessible Area** within such **Development Phase**.
2. *Initial Review*. No later than twenty (20) days after the receipt of the notification set forth in Section 6.2(a)herein, the **Chairperson** shall either: (A) issue a **Notice of Substantial Completion**; or (B) deliver to **Declarant** written notice setting forth the reasons why the **Publicly Accessible Area** for the **Phase 2 Development**, **Phase 3 Development**, or the **Phase 4 Development**, as applicable, is not **Substantially Complete** and the items that need to be completed in order to determine that the **Publicly Accessible Area** within any such Development Phase is **Substantially Complete** (the “**Notice of Incompletion (substantial)**”). The failure by the **Chairperson** to deliver the **Notice of Substantial Completion** or a **Notice of Incompletion (substantial)** within twenty (20) days after receipt of the notification set forth in Section 6.2(a)herein shall be deemed an issuance by the **Chairperson** of the **Notice of Substantial Completion**.
3. *Subsequent Review*. Upon completing the outstanding work specified by the **Chairperson** to achieve **Substantial Completion**, **Declarant** shall notify the **Chairperson** of such completion. No later than ten (10) calendar days of the receipt of such notice, the **Chairperson** shall either: (A) issue a **Notice of Substantial Completion**; or (B) notify **Declarant** in writing of items that have not been completed or satisfactorily performed. This process shall continue until the **Chairperson** has issued a **Notice of Substantial Completion** (the “**Subsequent Notice of Incompletion (substantial)**”). The failure by the **Chairperson** to deliver the **Notice of Substantial Completion** or a **Subsequent Notice of Incompletion (substantial)** within ten (10) days after receipt of the notification set forth in this Section 6.2(c) shall be deemed an issuance by the **Chairperson** of the **Notice of Substantial Completion**.

## Intentionally omitted.

## Force Majeure. In the event that **Declarant** is unable to **Substantially Complete** construction of any portion of the **Publicly Accessible Area** appurtenant to the **Phase 2 Development**, **Phase 3 Development**, or the **Phase 4 Development** by the time the associated portion of the **Large-Scale Development Project** is ready for a **TCO**, as a result of a **Force Majeure Event**, then **Declarant** shall so notify **DCP** as soon as **Declarant** learns of such circumstances. **Declarant’s** written notice (the “**Delay Notice**”) shall include a description of the condition or event, its cause and probable duration (if known to **Declarant**), and in **Declarant’s** reasonable judgment, the impact it is reasonably anticipated to have on the completion of the item of work. The **Chairperson** shall, within ten (10) calendar days of its receipt of the **Delay Notice**, (i) certify in writing that a **Force Majeure Event** has occurred, or (ii) notify **Declarant** that it does not reasonably believe a **Force Majeure Event** has occurred, in which case the **Chairperson** shall state with particularity the reasons it believes Force Majeure has not occurred. Such certification or notice shall constitute a final determination. Upon a determination that a **Force Majeure Event** has occurred, the **Chairperson** shall grant **Declarant** appropriate relief for such delay, including certifying in writing to the **DOB** that the Commissioner has no objection to the issuance of a **TCO** for all or part of the building(s) in the **Large-Scale Development Project**. Any delay caused as the result of a **Force Majeure Event** shall be deemed to continue only as long as the **Force Majeure Event** is continuing. Upon cessation of the events causing such delay, the **Declarant** shall promptly recommence the **PAA Work**. As a condition of granting such relief, **DCP** may require that **Declarant** post a bond or other security in a form and amount reasonably acceptable to **DCP** in order to ensure that the **PAA** Work is **Substantially Completed** and that all other requirements of Section 6.1 or 6.5, as applicable, are satisfied. Such security shall be in a sum equal to 125% of the cost of the remaining work in order to **Finally Complete** such **Publicly Accessible Area**. Such estimated cost is subject to the reasonable approval of **DCP**. **Declarant** shall be obligated to **Substantially Complete** or **Finally Complete** construction within the period of time specified in the **Delay Notice**, or such lesser period of time as **DCP** reasonably determined in the **Delay Notice**; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the **Delay Notice** or as reasonably determined by **DCP**, **DCP** may grant additional time for **Substantial Completion** or **Final Completion** of such portion of the **Large-Scale Development Project** as the case may be.

## Permanent Certificates of Occupancy.

## (a) **Declarant** shall not apply, upon the completion of any inspections, for the issuance of a **PCO** from **DOB** for any building on the **Subject Property**, until the **Chairperson** certifies to **Declarant** and **DOB** that the **Publicly Accessible Area** within the **Development Phase** that the building is located is **Finally Complete**, in accordance with the following provisions:

## (i) *Notification*. **Declarant** shall notify the **Chairperson** at such time as it believes that the **Publicly Accessible Area** within the **Development Phase** that the building, for which **Declarant** is seeking a **PCO**, is located is **Finally Complete** and shall request that the **Chairperson** issue a certification to **Declarant** and **DOB** certifying the **Final Completion** of the **Publicly Accessible Area** for such portion of the **Phasing Plan**.

## (ii) *Initial Review*. No later than twenty (20) days after the receipt of the notification set forth in Section 6.5(a)(i)herein, the **Chairperson** shall either: (A) issue a **Notice of Final Completion**; or (B) deliver to **Declarant** written notice setting forth the reasons why the **Publicly Accessible Area** for the applicable **Development Phase** is not **Finally Complete** and the items that need to be completed in order to determine that the **Publicly Accessible Area** for any such phase is **Finally Complete** (the “**Notice of Incompletion (final)**”). The failure by the **Chairperson** to deliver the **Notice of Final Completion** or a **Notice of Incompletion (final)** within twenty (20) days after receipt of the notification set forth in Section 6.5(a)(i)herein shall be deemed an issuance by the **Chairperson** of the **Notice of Final Completion**.

## (iii) *Subsequent Review*. Upon completing the outstanding work specified by the **Chairperson** to achieve **Final Completion**, **Declarant** shall notify the **Chairperson** of such completion. No later than ten (10) calendar days of receipt of such notice, the **Chairperson** shall either: (A) issue a **Notice of Final Completion**; or (B) notify **Declarant** in writing of items that have not been completed or satisfactorily performed (the “**Subsequent Notice of Incompletion (final)**”). This process shall continue until the **Chairperson** has issued a **Notice of Final Completion**. The failure by the **Chairperson** to deliver the **Notice of Final Completion** or a **Subsequent Notice of Incompletion (final)** within ten (10) days after receipt of the notification set forth in this Section 6.5(a)(iii)shall be deemed an issuance by the **Chairperson** of the **Notice of Final Completion**.

**ARTICLE VII**

**DEFAULTS AND REMEDIES**

7.1 **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 **Declarant** fails to perform any of **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 shall be subject to the cure provisions and periods set forth in Section 7.3 herein. **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 Permit**; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the **Subject Property** as of the date of this **Declaration**.

7.2 Notwithstanding any provision of this **Declaration**, only **Declarant**, and **Declarant’s** successors and assigns and the **City**, acting through **CPC**, 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 **Land Use Application**.

7.3 Prior to **City** instituting any proceeding to enforce the terms or conditions of this **Declaration** due to any alleged violation hereof, **City** shall give **Declarant**, every mortgagee of all or any portion of the Property set forth in a recorded mortgage agreement (a “**Mortgagee**”) and every **Party-in-Interest** thirty (30) business days written notice of such alleged violation, during which period **Declarant**, any **Party-in-Interest** and **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 **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 **CPC** 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 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. In the event that more than one **Declarant** exists at any time on the **Subject Property**, notice shall be provided to all **Declarants** from whom **City** has received notice in accordance with Section 8.7 herein, and the right to cure shall apply equally to all **Declarants**.

7.4 If, after due notice and opportunity to cure as set forth in this **Declaration**, **Declarant**, **Mortgagee** or a **Party-in-Interest** fail to cure the alleged violation, the **City** may exercise any and all of its rights, including without limitation those delineated in this Section and may disapprove any amendment, modification or cancellation of this **Declaration** on the sole ground that **Declarant** is in default of a material obligation under this **Declaration**.

7.5. Notwithstanding anything to the contrary contained in this **Declaration**:

1. The restrictions, covenants, obligations and agreements herein shall be binding on the **Declarant** or any other individual, business, organization or other entity, as the case may be, only for the period during which the **Declarant** or any such **Party-in-Interest** holds fee title to the **Subject Property** or portion thereof, and subject to the further provisions of this Section 7.5.
2. The **City** shall look solely to the interest of the **Declarant** in the **Subject Property** for the collection of any judgment recovered against the **Declarant** or the enforcement of any remedy based upon any breach by the **Declarant** under this **Declaration**, and no other property of the **Declarant** or its principals, disclosed or undisclosed, partners, shareholders, directors, officers, members or employees shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the **City** under or with respect to this **Declaration**, and no such party shall have any personal liability under this **Declaration**.
3. The **City** shall then look solely to the interest of any **Party-in-Interest** in the **Subject Property** for the collection of any deficiency not collected from **Declarant** or any judgment recovered against **Declaration** or the enforcement of any remedy based upon any breach by the **Declarant** under this **Declaration**, but only after the **City** has exhausted all legal and equitable remedies against **Declarant**. No other property of any **Party-in-Interest** or its principals, disclosed or undisclosed, partners, shareholders, directors, officers, members or employees shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the **City** under or with respect to this **Declaration** and any **Party-in-Interest**, disclosed or undisclosed, shall have no personal liability under this **Declaration**.
4. Notwithstanding anything to the contrary in this Section 7.5, nothing herein shall be deemed to preclude, qualify, limit or prevent the exercise by the **City** of any of the **City’s** governmental rights, powers or remedies under any laws, statutes, codes, or ordinances, including, without limitation, with respect to the satisfaction of the remedies of the **City** under such laws, statutes, codes, or ordinances.

**ARTICLE VIII**

**MISCELLANEOUS**

8.1 Representation. **Declarant** hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the **Subject Property**, nor any present or presently existing estate or interest in the **Subject Property**, nor any existing 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.

## Binding Nature; Successors and Assigns.

### (a) The provisions of this **Declaration** shall be covenants running with the land and shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of **Declarant** to the **Subject Property**, including **Mortgagee** (provided **Mortgagee** shall have no performance or payment obligations unless and until any such **Mortgagee** succeeds to a possessory interest, and references to **Declarant** shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the **Subject Property**, subject to the further provisions of this Section 8.2. Reference in this **Declaration** to agencies or instrumentalities of the **City** shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

### (b) Notwithstanding anything to the contrary contained in this **Declaration**, in the event that any building in the **Large-Scale Development Project** is converted to condominium or cooperative corporation forms of ownership, the **Coop/Condominium** (as hereinafter defined) and any **Unit Interested Party** (except that where the **Declarant** or any successor in interest to **Declarant** is also a **Unit Interested Party**, it shall remain obligated as **Declarant** pursuant to the provisions of this **Declaration**) shall not have any obligations under this **Declaration** to construct the **Public Access Area**.

### (c) Notwithstanding the provisions of Section 8.2(b), in the event that a **TCO** or **PCO** has been issued for any portion of the **Large-Scale Development Project** prior to the receipt of a **Notice of Substantial Completion** or **Notice Final Completion** due to a **Force Majeure Event**, the **Declarant** that developed such portion of the **Large-Scale Development Project** shall remain obligated as **Declarant** hereunder until a **Notice of Final Completion** has been issued. The foregoing provision shall not be applicable to the **TCO** or **PCO** for **Building 1**.

8.3 **Parties-in-Interest**. As of the date hereof, the Title Company has determined that there has been no change in the certification attached as **Exhibit B** and **Declarant** represents and warrants that the **Parties-in-Interest** listed in **Exhibit B** are the only known **Parties-in-Interest** in the **Subject Property** as of the date hereof.

8.4 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.

8.5 Recordation. **Declarant** shall file and record this **Declaration** in the Office of the City Register of the City of New York (the “**Register’s Office**”), indexing it against the **Subject Property** within five (5) business days of the New York City Council’s approval of the **Land Use Applications** by an affirmative vote or by operation of law as set forth in New York City Charter Section 197-d (such date hereinafter referred to as the “**Recording Date**”). **Declarant** shall promptly provide to the **Chairperson** of the **CPC** a copy of the **Declaration** as recorded, so certified by the City Register. If **Declarant** fails to so record this **Declaration** by the Recording Date, **CPC** may record a duplicate original of this **Declaration**, but all costs of recording, whether undertaken by **Declarant** or by **CPC**, shall be borne by **Declarant**.

8.6 Effective Date. This **Declaration** and the provisions and covenants hereof shall become effective as of the date of recordation of this **Declaration** in accordance with Section 8.5 above.

8.7 Notice.

 (a) All notices, demands, requests, consents, approvals, and other communications (collectively referred to as “**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:

(i) if to **Declarant**:
to the address at the commencement of this **Declaration**

Attention: Director of Development

with a copy to:

Bryan Cave Leighton Paisner LLP

1290 Avenue of the Americas

New York, New York 10104

Attention: Judith Gallent, Esq.

(ii) if to **CPC**:
New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

 Attention: **Chairperson**
with a copy to:
the General Counsel of **CPC** at the same address

(iii) if to a **Mortgagee**:

 [mortgagee]
at the address provided in writing to **CPC** in accordance with this **Declaration**

### (b) **Declarant**, **CPC**, any **Party-in-Interest**, and any **Mortgagee** may, by notice provided in accordance with this Section, change any name or address for purposes of this **Declaration**. In order to be deemed effective any **Notice** shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the **Notice** shall he deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the **Notice** shall be deemed delivered for all purposes on the date that the **Notice** was received or was refused; or (C) delivered by hand, in whichcase the **Notice** will be deemed delivered for all purposes on the date that the Notice was received. All Notices from **CPC** to **Declarant** shall also be sent to every **Mortgagee** of whom **CPC** has notice, and no Notice shall be deemed properly given to **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 **CPC** shall he provided to all **Declarant**s of whom **CPC** has notice.

8.8 Applications.

(a) **Declarant** 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 **Large Scale Development Project** subject to the **Large-Scale Special Permit**. Nothing in this **Declaration** herein shall be construed to prohibit or preclude **Declarant** from filing for, or **DOB** from issuing, any permit for all or any portion of the **Large-Scale Development Project**, in such phase or order as **Declarant** sees fit in **Declarant’s** sole discretion.

(b) 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 8.8(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other **Agency** or the **City**.

8.9 Severability. In the event that any of the provisions of the **Declaration** shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this **Declaration** shall continue to be in full force and effect.

8.10 Applicable Law. This **Declaration** shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

8.11 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.

**ARTICLE IX**

# **CONDOMINIUMS AND COOPERATIVE CORPORATIONS**

## Filing Requirements.

### (a) In the event that any part of the **Large-Scale Development Project** shall be subject to a condominium declaration, or if any part of the **Large-Scale Development Project** shall be owned or otherwise held by a cooperative corporation in accordance with the provisions of the laws of the State of New York (in either instance, referred to herein as the “**Coop/Condominium**,” and such term shall refer to either organizational form), from and after the date the declaration of condominium has been recorded in the Office of the City Register, or the date that the **Large-Scale Development Project** (or some portion thereof) shall be held by the cooperative corporation (the “**Coop/Condominium Obligation Date**”), under the directorship of a duly elected or appointed Board of Directors or Board of Managers, as the case may be (the “**Board**”), the **Coop/Condominium** shall thereafter be deemed to be a **Declarant** under this **Declaration**. The owners of the shares of stock of the cooperative corporation, the holder of a lien encumbering any such shares, the holder of a proprietary lease or of any other right to occupancy or other interest therein, the owner of any residential or commercial unit in the condominium, or the holder of a lien encumbering any such condominium unit and the holder of any lease, right of occupancy or any other interest in such condominium unit, or the holder of any Affordable Housing Unit (each of the foregoing, hereinafter, a “**Unit Interested Party**”) shall not be deemed to be a **Declarant** or a **Party-in-Interest**.

### (b) From and after the date the **Declarant** no longer holds any fee interest in the **Subject Property** or any portion thereof (other than one or more individual residential or commercial condominium units or shares in a cooperative corporation), and provided the **Coop/Condominium** shall have been organized as provided in this **Declaration**, such **Coop/Condominium** shall be deemed to be the sole **Declarant** and **Party-in-Interest** under this **Declaration**. In such event, the **Coop/Condominium** shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the **Declaration**, or make any application therefor.

### (c) Each and every **Unit Interested Party** hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this **Declaration** by the Board; (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 Board 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** and Exhibits hereto.

## 9.2 Offering Plans. Upon the marketing and sale of securities appurtenant to units in a **Coop/Condominium** constructed or otherwise included in the **Large-Scale Development Project** as is contemplated in this Article, a summary of the terms of this **Declaration** shall be included in any offering plan or “red herring” issued in connection therewith (the “**Offering Plan**”). Such Offering Plan shall clearly identify the rights and obligations of the unit owners or the owners of shares of stock in the cooperative corporation, as the case may be, under this **Declaration**. The cost of maintenance of the Public Access Area and the obligations of the **Coop/Condominium** under this **Declaration** are essential elements of the **City** actions permitting the development of the **Large-Scale Development Project** in accordance with the provisions of this **Declaration**, and in accordance with any other approvals granted by the **City**, shall be included in any Offering Plan along with a copy of the **Declaration** and **PAA** Maintenance Agreement as exhibits.

## 9.3 Common Elements. Any condominium declaration shall, upon filing, contain provisions describing the **PAA** and all areas covered in the **PAA** as “common elements,” as that term is constructed under RPL 339-I.

## Affordable Housing and Common Expenses. No Affordable Housing Unit which may be constructed in the **Large-Scale Development Project** shall have any obligation for the Maintenance Obligations, or other costs to the **Coop/Condominium** attendant to this **Declaration**, and the calculation of any rents, common charges or maintenance on an Affordable Housing Unit shall not include any *pro rata* contribution thereto.

## Estoppel. **Declarant** shall certify in writing to the **Chairperson**, or any individual succeeding to their jurisdiction, that all governing documents of the **Coop/Condominium** are in full compliance with the requirements of this **Declaration** and shall provide the **Chairperson** with copies of such governing documents within ten (10) days of the **AG** approving the **Offering Plan**. If **Declarant** fails to comply with the provisions herein, the **City** may proceed with any available enforcement measures.

**ARTICLE X**

**AMENDMENT, MODIFICATION, AND CANCELLATION**

10.1 This **Declaration** may be amended, cancelled, or modified only upon application by **Declarant** with the express written consent of **CPC** or an agency succeeding to **CPC**’s jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

* 1. Notwithstanding anything to the contrary contained in Section 10.1 hereof, the **Chairperson** may by its express written consent administratively approve modifications or amendments to this **Declaration** that, in the sole judgment of the **Chairperson**, are determined by the **Chairperson** to be a minor amendment or modification of this **Declaration**, and such minor modifications and amendments shall not require the approval of the **CPC**.
	2. In the event that any part of the **Large-Scale Development Project** shall become a **Coop/Condominium**, until the **Coop/Condominium** shall be deemed to be the sole Declarant and **Party-in-Interest** as contemplated in Section 9.1(b), any **Unit Interested Party**, any **Board** 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**.
	3. Notwithstanding any other provision herein, this **Declaration** shall automatically and without any further public or private action be canceled, and the restrictions, covenants, obligations, liens and agreements hereof shall be of no further force and effect if, prior to the issuance by the **DOB** of a building permit for the, **Declarant** delivers to the **Chairperson** and records with the **City Register’s Office**, a document duly executed and acknowledged in which the **Declarant** discharges this **Declaration** of record and surrenders its rights to develop the **Large-Scale Development Project**.
	4. **Declarant** may cancel the **Declaration**, subsequent to the issuance by the **DOB** of a building permit for the **Large-Scale Development Project**, if **Declarant** demonstrates to the **Chairperson** that no construction pursuant to the building permit has commenced. In such event, **Declarant** acknowledges that the future development of the **Subject Property** may be subject to a new **Large-Scale Special Permit** pursuant to the New York City Zoning Resolution Section 74-743.

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**IN WITNESS WHEREOF,** the undersigned has executed this **Declaration** as of the date written above.

|  |  |  |
| --- | --- | --- |
| MASPETH MANAGER LLC |  | [NEIGHBORHOOD WOMEN HOUSING DEVELOPMENT FUND COMPANY, INC.][[3]](#footnote-3) |
|  |  |  |  |  |
|  |  |  |  |  |
| By: |   |  | By: |   |
|  | Name: |  |  | Name: |
|  | Title: |  |  | Title: |
|  |  |  |  |  |
|  |  |  |  |  |

STATE OF NEW YORK )

 ) ss.:

COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_, 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

STATE OF NEW YORK )

 ) ss.:

COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_, 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-1**

Description of the **MM Property**

**Exhibit A-2**

Description of the **NWHDFC Property (Lots 20, 23, 28, and 32)**

**Lot 20**



**Lot 23**



**Exhibit A-2 (continued)**

**Lot 28**



**Lot 32**



**Exhibit B-1**

Certification of **Parties-in-Interest**

**Exhibit B-2**

Waiver and Subordination Agreement(s)

**Exhibit C**

**Site Plans**

1. Could be made to be a waiving party. [↑](#footnote-ref-1)
2. Could be made to be a waiving party. [↑](#footnote-ref-2)
3. Could be removed if deemed a waiving party. [↑](#footnote-ref-3)