**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**QUEENS COUNTY**

Dated as of September 21, 2022 [          ]

Block 641, Lots 1, 4, 9, 51, 52, and 56

Block 668, Lot 5

Block 669, Lots 13, 16, and 36

Block 670, Lots 4, 8, 20, 27, 30 and 47

Block 671, Lots 1, 8, 12, 20 and 23

**RECORD AND RETURN TO:**Fox Rothschild LLP
101 Park Avenue, Floor 17
New York, NY 10178

Attention: Jesse Masyr, Esq.

**Matter double struck out is old, deleted by the City Council;**

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

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT** (“**Declaration**”), made as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022, by Kaufman Bedrock Astoria I LLC (“**Kaufman BedRock**”), having an address at at c/o Kaufman Astoria Studios Executive Offices 34-12 36th Street, Astoria, New York 11106 and Silverstein Astoria LLC (“**Silverstein**”), having an address at 250 Greenwich Street, New York, NY 10007 (Kaufman Bedrock and Silverstein collectively referred to herein as the “**Applicant** **Declarant**”), Queensboro Farm Products, Inc., having an address 51-20 59th Street, Woodside NY, 11377 (“**Queensboro**”), Wilbee Corporation, having an address at 44-30 Purves Street, Long Island City, NY 11101 (“**Wilbee**”), Mayer Malbin Realty I, L.L.C., having an address at 41-01 36th Avenue, Long Island City, NY 11101 (“**Mayer**”), Cartergavin37 LLC, having an address at 101 84 Andover Coach Circle, Apt. 1H, Wellington, FL 33440 (“**Cartergavin**”), Jolivia Realty LLC, having an address at 15 Glen Street, Suite 301, Glen Cove, NY 11542 (“**Jolivia**”), Sultan Bacchus and Bibi R. Bacchus, each having an address at 36-25 37th Street, Astoria, NY 11101 (“**Bacchus**”), Bigfoot Realty, LLC, having an address at 37-09 36th Avenue, Long Island City, New York 11101 (“**Bigfoot**”), 35-18 Steinway Street, LLC, having an address at 185 Central Avenue, Bethpage, NY 11714 (“**35-18**”), 42-11 Northern LLC, having an address at c/o Abraham Jacobi, 150 East 58th Street, New York, NY 10055 (“**42-11**”) and Alfess Realty, L.L.C., having an address at c/o Joseph Klyde, 1512 Palisade Avenue, Apt. 9H, Fort Lee, NJ 07024 (“**Alfess**”, together with Queensboro, Wilbee, Mayer, Cartergavin, Jolivia, Bacchus, Bigfoot, 42-11, 35-18 and Alfess, collectively referred to herein as the “**Non-Applicant Declarant**”; and, together with the Applicant Declarant, collectively referred to as “**Declarant**”).

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

**WHEREAS**, the Applicant Declarant is (or will be) a joint venture of Kaufman BedRock and Silverstein, individually or collectively, or through one or more of its affiliates, and is the fee owner(s) of certain real property already acquired by the Applicant Declarant and/or is the contract vendee(s) of certain real property owned by the Non-Applicant Declarant, whereby all such real property is located in the Borough and County of Queens, City and State of New York, identified on the Tax Map of the City of New York, County of Queens ("**Tax Map**") as Block 641, Lots 1, 4, 9, 51, 52, and 56 (“Zoning Lot A”); Block 668, Lot 5 (“Zoning Lot B”); Block 669, Lots 13, 16, and 36 (“Zoning Lot C”); Block 670, Lots 4, 8, 20, 27, 30 and 47 (“Zoning Lot D”); and Block 671, Lots 1, 8, 12, 20 and 23 (“Zoning Lot E”), which real property is more particularly described in Exhibit A annexed hereto and made a part hereof (such zoning lots, collectively, the “**Subject Property**”); and

**WHEREAS**, upon final approval of the Land Use Applications (hereinafter defined), the Applicant Declarant intends to purchase all of the real property of the Non-Applicant Declarant such that the Applicant Declarant, or one or more of its affiliates, would be the owner of the Subject Property; however, as of the date of this Declaration, Applicant Declarant has not yet been conveyed all real property parcels owned by Non-Applicant Declarant and therefore, both Applicant Declarant and Non-Applicant Declarant, together as Declarant, are party to this Declaration; 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 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 M1-1 and C4-2A districts to a Special Mixed Use District (MX-24) consisting of M1-4/R7-3, M1-4/R7X, M1-4/R9 and M1-5/R9-1 districts (C 220364 ZMQ) (the “**Zoning Map Amendment**”); (ii) Zoning Text Amendments to (a) ZR 74-745(b) to make the reduction in loading berths permitted under the Special Permit ZR 74-745(b), (b) ZR 123-00 to create a new MX District, and (c) to Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Area (N 220367 ZRQ) (collectively the “**Zoning Text Amendment**”); (iii) a Special Permit, pursuant to ZR Section 74-743, to modify certain bulk regulations applicable to the development of the Subject Property (C 220366 ZSQ) (the “**Large-Scale Bulk Special Permit**”); (iv) a Special Permit, pursuant to ZR 74-744(c) to modify accessory sign regulations on certain portions of the Subject Property (C 220368 ZSQ) (the “**Large-Scale Sign Special Permit**”); (v) a Special Permit, pursuant to ZR 74-745(a) to locate required and permitted accessory parking spaces throughout the Subject Property (C 220365 ZSQ) (the “**Large-Scale Parking Distribution Special Permit**”); (vi) a Special Permit, pursuant to ZR 74-745(b) to reduce required loading berths on certain zoning lots within the Subject Property (C 220369 ZSQ) (the “**Large-Scale Loading Special Permit**”); and (vii) Special Permits, pursuant to ZR 74-922 to permit certain retail uses greater than 10,000 square feet of floor area on the zoning lots within the Subject Property (C 220371 ZSQ; C 220373 ZSQ; and C 220374 ZSQ) (the “**Large-Scale Retail Special Permits**”); together with the Large-Scale Bulk Special Permit, Large-Scale Sign Special Permit, Large-Scale Parking Distribution Special Permit, Large-Scale Loading Special Permit and Large-Scale Retail Special Permits, the “**Large-Scale Special Permits**”; and collectively with the Zoning Map Amendment and Zoning Text Amendment, the "**Land Use Applications**"); and

**WHEREAS** to insure that the development of the Subject Property is consistent with the analyses set forth in Final Environmental Impact Statement for City Environmental Quality Review Application No. 21DCP180Q (the “**FEIS**”), pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. (“**CEQR**”) 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 incorporates certain requirements for mitigation of significant adverse environmental impacts (“**Mitigation Measures**”), certain restrictions to the development, operation, use and maintenance of the Subject Property shall be set forth in this Declaration; 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**, 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 Royal Abstract of New York LLC, dated March 8, 2022, and attached hereto as Exhibit B, have joined in this Declaration or have waived their respective rights to execute this Declaration by written instrument (which such instruments are intended to be recorded in the Register’s Office simultaneously with the recordation of this Declaration, a form of which is attached hereto as Exhibit B-1), 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 6** hereof), the Subject Property, if developed pursuant to the Large Scale Special Permits, 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 Permits, Declarant covenants and agrees that the Proposed Development on the Subject Property shall be constructed substantially in accordance with the following plans prepared by ODA New York, and annexed hereto as Exhibit C and made a part hereof (collectively, the “**Plans**”):

|  |  |  |
| --- | --- | --- |
| **Drawing No.** | **Title** | **Date** |
| U.002  | LSGD Zoning Analysis | 9/19/22 11/21/2022 |
| U.003 | LSGD Site Plan | 9/19/22 11/21/2022 |
| U.005  | LSGD Cellar Plan | 9/19/22 11/21/2022 |
| U.100 | Zoning Lot Site Plan  | 9/19/22 11/21/2022 |
| U.101  | Lot Portion Analysis And Base Plane Calculations | 9/19/22 |
| U.102 | Ground Floor Plan  | 9/19/22 11/21/2022 |
| U.104  | Waiver Plan  | 9/19/22 11/21/2022 |
| U.105 | Waiver Section | 4/21/22 |
| U.106 | Waiver Section | 9/19/22 |
| U.107 | Waiver Section | 9/19/22 |
| U.200 | Zoning Lot Site Plan  | 9/19/22 11/21/2022 |
| U.201 | Lot Portion Analysis And Base Plane Calculations | 9/19/22 |
| U.202 | Ground Floor Plan | 9/19/22 11/21/2022 |
| U.204 | Waiver Plan  | 9/19/22 11/21/2022 |
| U.205 | Waiver Section | 9/19/22 |
| U.206 | Waiver Section | 9/19/22 |
| U.207 | Waiver Section | 9/19/22 |
| U.300 | Zoning Lot Site Plan | 9/19/22 11/21/2022 |
| U.301 | Lot Portion Analysis And Base Plane Calculations | 4/21/22 |
| U.302 | Ground Floor Plan | 9/19/22 11/21/2022 |
| U.304 | Waiver Plan | 9/19/22 11/21/2022 |
| U.305 | Waiver Section | 9/19/22 |
| U.306 | Waiver Section | 4/21/22 |
| U.400 | Zoning Lot Site Plan  | 9/19/22 11/21/2022 |
| U.401 | Lot Portion Analysis And Base Plane Calculations | 4/21/22 |
| U.402 | Ground Floor Plan | 9/19/22 11/21/2022 |
| U.404 | Waiver Plan | 9/19/22 11/21/2022 |
| U.405 | Waiver Section | 9/19/22 |
| U.406 | Waiver Section  | 9/19/22 |
| U.407 | Waiver Section | 9/19/22 |
| U.411 | Signage Waiver | 9/19/22 |
| U.500 | Zoning Lot Site Plan  | 9/19/22 11/21/2022 |
| U.501 | Lot Portion Analysis And Base Plane Calculations | 4/21/22 |
| U.502 | Ground Floor Plan | 4/21/22 11/21/2022 |
| U.504 | Waiver Plan | 9/19/22 11/21/2022 |
| U.505 | Waiver Section | 9/19/22 |
| U.506 | Waiver Section | 9/19/22 |
| U.507 | Waiver Section | 9/19/22 |
| L.002 | Overall Site Plan | 4/21/22 11/21/2022 |
| L.100 | Zoning Lot A Site Plan  | 4/21/22 11/21/2022 |
| L.110 | PAA A1 Layout Plan | 4/21/22 |
| L.111 | PAA A1 Materials, Furnishings & Design Grades | 4/21/22 |
| L.112.1 | PAA A1 Hardscape & Furnishings Details | 4/21/22 |
| L.112.2 | PAA A1 Hardscape & Furnishings Details | 4/21/22 |
| L.113 | PAA A1 Planting Plan | 4/21/22 |
| L.114 | PAA A1 Planting Detail  | 4/21/22 |
| L.115 | PAA A1 Lighting Plan | 4/21/22 |
| L.116 | PAA A1 Lighting Detail  | 4/21/22 |
| L.117 | PAA A1 Section | 4/21/22 |
| L.130 | PAA A2 Layout Plan  | 9/19/22 |
| L.131 | PAA A2 Materials, Furnishings & Design Grades | 9/19/22 |
| L.132.1 | PAA A2 Hardscape & Furnishings Details | 9/19/22 |
| L.132.2 | PAA A2 Hardscape & Furnishings Details | 9/19/22 |
| L.133 | PAA A2 Planting Plan | 9/19/22 |
| L.134 | PAA A2 Planting Details | 9/19/22 |
| L.135 | PAA A2 Lighting Plan  | 9/19/22 |
| L.136 | PAA A2 Lighting Details | 9/19/22 |
| L.137 | PAA A2 Section  | 9/19/22 |
| L.200 | Zoning Lot B Site Plan | 4/21/22 11/21/2022 |
| L.220 | PAA B1 Layout Plan  | 4/21/22 |
| L.221 | PAA B1 Materials, Furnishings & Design Grades | 4/21/22 |
| L.222.1 | PAA B1 Hardscape & Furnishings Details  | 4/21/22 |
| L.222.2 | PAA B1 Hardscape & Furnishings Details  | 4/21/22 |
| L.223 | PAA B1 Planting Plan  | 4/21/22 |
| L.224 | PAA B1 Planting Detail  | 4/21/22 |
| L.225 | PAA B1 Lighting Plan  | 4/21/22 |
| L.226 | PAA B1 Lighting Detail  | 4/21/22 |
| L.227.1 | PAA B1 Longitudinal Section | 4/21/22 |
| L.227.2 | PAA B1 Cross Section  | 4/21/22 |
| L.300 | Zoning Lot C Site Plan | 4/21/22 11/21/2022 |
| L.310 | PAA C1 Layout Plan | 4/21/22 |
| L.311 | PAA C1 Materials, Furnishings & Design Grades | 4/21/22 |
| L.312.1 | PAA C1 Hardscape & Furnishings Details | 4/21/22 |
| L.312.2 | PAA C1 Hardscape & Furnishings Details  | 4/21/22 |
| L.313 | PAA C1 Planting Plan | 4/21/22 |
| L.314 | PAA C1 Planting Detail | 4/21/22 |
| L.315 | PAA C1 Lighting Plan | 4/21/22 |
| L.316 | PAA C1 Lighting Detail | 4/21/22 |
| L.317 | PAA C1 Section  | 4/21/22 |
| L.400 | Zoning Lot D Site Plan | 4/21/22 11/21/2022 |
| L.410 | PAA D1 Layout Plan | 4/21/22 |
| L.411 | PAA D1 Materials, Furnishings & Design Grades | 4/21/22 11/21/2022 |
| L.412.1 | PAA D1 Hardscape & Furnishings Details | 4/21/22 |
| L.412.2 | PAA D1 Hardscape & Furnishings Details | 4/21/22 |
| L.413 | PAA D1 Planting Plan | 4/21/22 11/21/2022 |
| L.414 | PAA D1 Planting Detail | 4/21/22 |
| L.415 | PAA D1 Lighting Plan | 4/21/22 11/21/2022 |
| L.416 | PAA D1 Lighting Detail | 4/21/22 |
| L.417 | PAA D1 Section  | 9/19/22 |
| L.500 | Zoning Lot E Site Plan | 4/21/22 11/21/2022 |
| L.510 | PAA E1 Layout Plan  | 4/21/22 11/21/2022 |
| L.511 | PAA E1 Materials, Furnishings & Design Grades | 4/21/22 11/21/2022 |
| L.512.1 | PAA E1 Hardscape & Furnishings Details  | 4/21/22 |
| L.512.2 | PAA E1 Hardscape & Furnishings Details  | 4/21/22 |
| L.513 | PAA E1 Planting Plan | 4/21/22 11/21/2022 |
| L.514 | PAA E1 Planting Detail | 4/21/22 |
| L.515 | PAA E1 Lighting Plan | 4/21/22 11/21/2022 |
| L.516 | PAA E1 Lighting Detail | 4/21/22 |
| L.517 | PAA E1 Section  | 4/21/22 |

(b) **Development**. If Declarant seeks to develop the Subject Property other than pursuant to the Large-Scale Special Permits, such Large-Scale Special Permits shall be deemed surrendered and Declarant may not develop the Subject Property except as permitted by the applicable zoning district.

**(c) 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.** **Publicly Accessible Areas**. Declarant shall construct and complete the publicly accessible area delineated on the Plans (the “**Publicly Accessible Areas**” or “PAAs”, individually, “Publicly Accessible Area” or “PAA”)) in substantial accordance with the Plans.

(a) **Modification of Publicly Accessible Areas**. Any modification to the design of the Publicly Accessible Areas that is not substantially in accordance with the Plans, and that is not proposed as part of a modification to the Large Scale Special Permits, shall be made only upon application to and written approval of the Chair, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Completion of the Publicly Accessible Areas**.

(i) Substantial Completion. Declarant shall not accept a Temporary Certificate of Occupancy from DOB, for one or more buildings (each building hereinafter a “TCO Building”) within the Proposed Development, until the Chair, has determined and notified Declarant and DOB that the adjacent portion of the Publicly Accessible Areas (each an “Adjacent PAA”) contiguous to such TCO Building(s) is Substantially Complete (defined herein), as more particularly described in the following table and of which such Adjacent PAAs and TCO Buildings are correspondingly identified on the Plans:

|  |  |  |
| --- | --- | --- |
| Zoning Lot | Adjacent PAA | TCO Building(s) |
| A | PAA A1 - Courtyard | Building A-1; Building A-2 |
| A | PAA A2 – Active OS | Building A-3 |
| B | PAA B1 | Building B-1; Building B-2 |
| C | PAA C1 | Building C-1; Building C-2 |
| D | PAA D1 | Building D-1; Building D-2 |
| E | PAA E1 | Building E-1; Building E-2; Building E-3 |

Subject to the provisions of this Declaration, Declarant may, at its election, construct any Adjacent PAA identified in the above table in accordance with the Plans in any such sequence as Declarant shall determine, in its sole and absolute discretion.

a. *Notification*. Declarant shall notify the Chair at such time as it believes that one or more Adjacent PAA’s are Substantially Complete and shall request that the Chair issue a certification, in the form of Exhibit D annexed hereto (the "**Notice of Substantial Completion**"), to Declarant and DOB certifying the Substantial Completion of such Adjacent PAA(s) in substantial accordance with the Plans.

b. *Initial Review*. Not later than twenty (20) business days of its receipt of the notification set forth in **Section 3(b)(i)(a)** herein (the “**Substantial Completion** **Initial** **Review Period**”), the Chair shall either (A) issue the Notice of Substantial Completion, or (B) deliver to Declarant written notice setting forth in detail the reasons why the subject Adjacent PAA is not Substantially Complete and the items which need to be completed in order to determine that the subject Adjacent PAA is Substantially Complete. If the Chair notifies the Declarant that the subject Adjacent PAA is not Substantially Complete in substantial accordance with the Plans, such notice shall contain a detailed statement of the reasons for withholding the Notice of Substantial Completion in the form of a “punch list” of items remaining to be completed or to be satisfactorily performed (the “**Punch List**”). The Punch List shall not include items which, pursuant to the definition of Substantial Completion herein, are not required to be completed to achieve Substantial Completion.

c. *Subsequent Review*. Upon performing the work specified in the Punch List for the subject Adjacent PAA, Declarant shall notify the Chair of such completion. Not later than ten (10) business days following receipt of such notice (the “**Substantial Completion** **Subsequent** **Review Period**”) the Chair shall either (A) issue the Notice of Substantial Completion, or (B) notify Declarant in writing of any Punch List items for the subject Adjacent PAA that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued the Notice of Substantial Completion.

d. Notwithstanding anything to the contrary set forth in **Section 3** hereof, if, within the Substantial Completion Initial Review Period, or the Substantial Completion Subsequent Review Period, as applicable, the Chair fails to provide the Notice of Substantial Completion for such Adjacent PAA, or fails to notify the Declarant in writing of any Punch List items for such Adjacent PAA which have not been completed or satisfactorily performed, then the Chair shall be deemed to have issued the Notice of Substantial Completion, and Declarant may accept a Temporary Certificate of Occupancy from DOB for the subject TCO Buildings as identified in the table in **Section 3(b)(i)**.

e. Substantial Completion, or Substantially Complete, with respect to an Adjacent PAA, shall mean that the Adjacent PAA has been constructed substantially in accordance with the Plans, as the same may be amended from time to time in accordance herewith, and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An Adjacent PAA shall be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed, or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

f. In the event that Declarant is unable to Substantially Complete an Adjacent PAA by the time a subject TCO Building is ready to accept a temporary certificate of occupancy, as a result of a Force Majeure Event (hereinafter defined), then Declarant shall 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 Chair shall, within ten (10) business days of its receipt of the Delay Notice, either: (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 Chair 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 Chair shall grant Declarant appropriate relief for such delay, including certifying in writing to the DOB that the Chair has no objection to the issuance of a temporary certificate of occupancy for all or part of the building(s) in the Proposed Development. 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. As a condition of granting such relief, the Chair 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 Publicly Accessible Areas are Substantially Completed. Such security shall be in a sum equal to 150% of the cost of the remaining work in order to Finally Complete such Publicly Accessible Areas. 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; 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, as the case may be.

g. A “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; (xiv) pandemic or epidemic, and any state of emergency (whether federal, state or municipal) declared as a result of such pandemic or epidemic; or (xv) any other condition similar to the foregoing which are beyond Declarant’s control.

(ii) Final Completion. Declarant shall not accept a Permanent Certificate of Occupancy from DOB, for one or more buildings within the Proposed Development, until the Chair has determined and notified Declarant and DOB that the Adjacent PAA contiguous to such TCO Building(s) is Finally Complete (defined herein), as more particularly described and in accordance with the table in **Section 3(b)(i).** Subject to the provisions of this Declaration, Declarant may, at its election, construct any Adjacent PAA identified in the above table in accordance with the Plans in any such sequence as Declarant shall determine, in its sole and absolute discretion.

a. *Notification*. Declarant shall notify the Chair at such time as it believes that one of more Adjacent PAA’s are Finally Complete and shall request that the Chair issue a certification, in the form of Exhibit E annexed hereto (the "**Notice of Final Completion**"), to Declarant and DOB certifying the Final Completion of such Adjacent PAA in accordance with the Plans.

b. *Initial Review*. Not later than twenty (20) business days of its receipt of the notification set forth in **Section 3(b)(ii)(a)** herein (the “**Final Completion** **Initial** **Review Period**”), the Chair shall either (A) issue the Notice of Final Completion, or (B) or deliver to Declarant written notice setting forth in detail the reasons why the subject Adjacent PAA is not Finally Complete and the items which need to be completed in order to determine that the subject Adjacent PAA is Finally Complete. If the Chair notifies the Declarant that the subject Adjacent PAA is not Finally Complete in accordance with the Plans, such notice shall contain a detailed statement of the reasons for withholding the Notice of Final Completion in the form of a Punch List.

c. *Subsequent Review*. Upon performing the work specified in the Punch List for the subject Adjacent PAA, Declarant shall notify the Chair of such completion. Not later than ten (10) business days following receipt of such notice (the “**Final** **Completion** **Subsequent** **Review Period**”) the Chair shall either (A) issue the Notice of Final Completion, or (B) notify Declarant in writing of any Punch List items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued the Notice of Final Completion.

d. Notwithstanding anything to the contrary set forth in **Section 3** hereof, if, within the Final Completion Initial Review Period, or the Final Completion Subsequent Review Period, as applicable, the Chair fails to provide the Notice of Final Completion for the subject Adjacent PAA, or fails to notify the Declarant in writing of any Punch List items which have not been completed or satisfactorily performed, then the Chair shall be deemed to have issued the Notice of Final Completion, and Declarant may accept a Permanent Certificate of Occupancy from DOB for the subject PCO Buildings as identified in the table in **Section 3(b)(ii)**.

e. “Final Completion” or “Finally Complete” shall mean the completion of all relevant items of work, including any Punch List or other items that remained to be completed after Substantial Completion

 (c) **Publicly Accessible Easement and Hours of Access**

(i) Declarant covenants that, immediately upon the issuance of the Notice of Substantial Completion for an Adjacent PAA, it (as the burdened party) shall grant, convey and transfer to the City and the general public (as the benefited party) a permanent, perpetual, non-exclusive public access easement over and encompassing the subject Adjacent PAA, unobstructed from the surface thereof to the sky (unless as shown otherwise on the Plans including Zoning Lot D or any subsequent amendment or modification thereto approved in accordance with this Declaration) (the “**Publicly Accessible Easement**”), for the purpose of (i) recreational use by the general public and (ii) access for fire, police and other emergency services. Such easement (i) shall be effectuated without the necessity for recording a separate instrument and (ii) upon such issuance of the Notice of Substantial Completion for an Adjacent PAA, shall be prior in interest to any property interest on the property where the applicable subject TCO Building(s) are located, or any portion thereof (as more specifically identified in the table in **Section 3(b)(i))** that is recorded after the date of this Declaration. The Publicly Accessible Easement shall be subject to the following conditions:

(ii) Declarant shall ensure that no member of the general public use any portion of the Publicly Accessible Areas for any activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to the Subject Property or any person.

(iii) The Publicly Accessible Areas shall be open to the public between the hours of 6 A.M. to 10 P.M. daily, except for PAA C1 on Zoning Lot C, which shall be open 24 hours per day.

(iv) Declarant shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the Publicly Accessible Areas. Declarant shall operate the Publicly Accessible Areas in substantial conformity with the Department of Parks and Recreation (DPR) Rules and Regulations (56 RCNY §1-01 et seq.) unless and until it establishes rules and regulations of its own for use of the Publicly Accessible Areas at which time it shall notify DCP (and DPR if the rules and regulations affect PAA-A2) of the same. Prior to implementation of Declarant’s proposed rules and regulations, DCP (and DPR if the rules and regulations affect PAA-A2) shall have fifteen (15) business days from receipt of such notice to review and confirm whether the proposed rules and regulations are consistent with those of other similar privately-owned publicly accessible spaces in the City. If DCP and DPR, as applicable, does not respond within this timeframe, Declarant may proceed with its proposed rules and regulations.

(v) With the approval of the Chair in consultation with DPR, Declarant may close one or more of the Publicly Accessible Areas or portions thereof for periods as may be reasonably necessary: (i) to accomplish maintenance and repairs or replacements, (ii) during construction of maintenance of buildings surrounding one or more Adjacent PAA’s (as the case may be) for the purposes of safety and security, logistics and public safety, and (iii) to make emergency repairs to mitigate hazardous conditions; (iv) to address other emergency conditions and (iv) in accordance with **Section 3(d)** of this Declaration. For reasons (c)(v)(i) and (ii) above the Declarant shall notify the Chairperson of such closure no less than seven (7) business 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. For reasons (c)(v)(iii) and (iv) above 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 (c)(v)(iii) and (iv) 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.

(vi) Notwithstanding the foregoing, Declarant may close the Publicly Accessible Areas one day in each calendar year, other than a Saturday, Sunday, or legal holiday, to avoid public dedication, provided, however, such closure pursuant to this section shall not be a Closure Event (as hereinafter defined) and not count towards the permitted number of Calendar Days (as hereinafter defined) for which a Publicly Accessible Area may be closed in accordance with **Section 3(d)** of this Declaration.

(d) **Closure of Publicly Accessible Areas for Events.**

(i) During each Annual Reporting Period (as defined below), Declarant may close any Publicly Accessible Area for up to six (6) Calendar Days per calendar year, (each “**Calendar Day**” defined as the time between 12:00 A.M and 11:59 P.M.) for special public, invitation-only or ticketed events (a “**Closure Event**”); provided, however, that PAA – C1 may be closed up to twelve (12) Calendar Days per calendar year. Notwithstanding the foregoing, PAA – C1, may not be closed more than two Calendar Day per month, and all other PAA’s may not be closed for more than one (1) Calendar Day per month. A Closure Event shall not be permitted in PAA – A2.

(ii) At least seven (7) days prior to any Closure Event, Declarant shall (A) notify Queens Community Board 1 and DCP Queen’s Borough Office with the date and description of the Closure Event (with detail as to the event’s purpose, portion(s) of the Publicly Accessible Area(s) that would be closed, and for how many days the Publicly Accessible Area(s) will be closed). If the Closure Event is to be held by an entity other than Declarant or any of its affiliates, such notice shall include the name of the entity. At least seven (7) days prior to any Closure Event, Declarant shall post signage at the entrance to the Publicly Accessible Area space to be used for the Closure Event, of which such signage shall contain the details of the Closure Event required per this **Section 3(d)**.

(iii) Declarant shall provide Queens Community Board 1 and the DCP Queens Borough Office with an annual report setting forth a list of the Closure Events held in the Publicly Accessible Areas, along with the dates and hours of closure. Such report shall be delivered to DCP and the community board no later than January 31st of each calendar year and shall cover the previous one-year period commencing on January 1st and ending on December 31st (the “**Annual Reporting Period**”).

(iv) Declarant may in the future, at is election, seek to modify the requirements of this **Section 3(d)** with respect to Closure Events in Publicly Accessible Areas. If Declarant decides to seek a modification to such requirements, it shall notify DCP of the same. Prior to implementation of Declarant’s proposed modifications, DCP shall have fifteen (15) business days from receipt of such notice to review and confirm whether the proposed modifications are consistent with those of other similar privately-owned publicly accessible spaces in the City. If DCP does not respond within this timeframe, Declarant may proceed with its proposed rules and regulations. Upon DCP’s approval of any proposed modifications permitted in accordance with this **Section 3(d)(iv)** or after the expiration of DCP’s fifteen business-day review period contemplated herein, Declarant shall record a notice of modification to requirements for Closure Events in Publicly Accessible Areas against the Subject Property. The recordation of notice contemplated in the immediately preceding sentence shall be in lieu of any amendment or modification to this Declaration and shall not be subject to the provisions of **Section 11** of this Declaration.

(e) **Maintenance and Operation.**

 (i) Declarant shall provide or, in Declarant’s sole discretion, cause to be provided, all services required for the maintenance and repair of the Publicly Accessible Areas in accordance with standards set forth in the then current edition of the Parks Inspection Program Manual or any successor program thereto, as and when reasonably needed to preserve the Publicly Accessible Areas and the amenities contained therein neat, clean and in good working order and condition as set forth in this Section.

 (ii) Cleaning*.*

a. Trash shall be collected regularly. Litter and other obstructions shall be removed as needed.

 b. Walkways and paths shall be cleaned and cleared as needed and maintained in good condition.

 c. Appropriate measures shall be taken to control rodents and pigeons.

 d. Graffiti shall be promptly removed or painted over.

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

 f. Snow shall be promptly removed from walkways, and fallen branches and trees shall be removed promptly.

(ii) Landscape and Feature Maintenance.

 a. Appropriate maintenance for planted areas shall be undertaken, including: pruning, trimming, and weeding; removal and replacement of plants, branches and trees that are dead or blighted; wrapping of trees, shrubs, and other plants as necessary to ensure adequate winter protection, and subsequent removal come springtime; replanting, reseeding and fertilizing as needed; mowing of grass and watering of plantings as needed.

 b. Adequate lighting levels shall be maintained, and lighting equipment shall be repaired or replaced as necessary.

 (ii) Repairs and Replacements. Repairs and replacements of features in the Publicly Accessible Areas and/or any portion thereof shall occur as needed to maintain the Publicly Accessible Areas in a state of good repair. All repairs and replacements shall occur promptly and in substantial compliance with the Plans. Repairs shall include, but are not limited to, the following items:

 a. Seating: All seating shall be repaired and repainted as necessary, including replacement of any moveable seating that has been removed.

 b. Walls or Other Barriers: Any broken or cracked walls, fences or other barriers shall be repaired or replaced.

 c. Paving: All paved surfaces shall be maintained in a safe and attractive condition.

 d. Painting: All painted items shall be repainted and rust or other extraneous matter removed as needed.

 e. Signage: All signs shall be maintained in good condition and cleaned or replaced if vandalized.

 f. Construction Defects and Hazardous Conditions: The Publicly Accessible Areas shall be periodically inspected for construction defects and hazardous conditions, and any portion or feature that exhibits defects or hazardous conditions shall be promptly repaired or replaced.

(f) **Property Owner’s Association.**

 (i) Applicability. The provisions of this **Section 3(f)** shall only apply if Declarant forms an Association with respect to the Subject Property.

(ii) *Property Owners’ Association*. In order to perform Declarant’s maintenance obligations with respect to the Publicly Accessible Areas, and to ensure ongoing public access to the Publicly Accessible Areas in accordance with the provisions hereof, Declarant shall cause to be organized a property owners’ association (the “**Association**”) upon the earlier of the following occurrences: (i) the issuance of a Temporary Certificate of Occupancy for any portion of the Proposed Development (A) governed by a condominium regime, (B) conveyed to a housing corporation to be governed by a cooperative regime, (C) governed by such other legal regime which shall require the organization of a not-for-profit membership organization comprising homeowners, (D) held in any other form of multiple ownership of fee title and/or leasehold of all or substantially all of the Subject Property or portion thereof where the entities owning the same are not under common ownership or control, and (ii) the date of Substantial Completion of the first Adjacent PAA in accordance with the table in **Section 3(b)(i)**.

(iii) The obligations of the Association under this Declaration shall commence the date of its organization (the “**Association Obligation Date**”), whether required to be formed as set forth above or otherwise, upon which time the provisions of this Section shall be operative.

(iv) *Filing Requirements*. The Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. Declarant shall certify in writing to the Chair and the Commissioner, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York Secretary of State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fail to comply with the provisions of this Section, the City may proceed with any available enforcement measures.

(v) *Obligations*. The Association shall be established to, among other things, assume Declarant’s maintenance obligations of the Publicly Accessible Areas as set forth in this Declaration.

(vi) *Members*. The members of the Association (the “**Association Members**”) shall consist of (A) one or more homeowner’s association or property owner’s association affecting one or more buildings (or portions thereof) or one or more zoning lots (or portions thereof) within the Subject Property, as may be determined and/or arranged by Declarant, in its sole discretion, or any of Declarant’s successors or assigns (B) any ground-lessee of any portion of the Subject Property and (C) the fee owners of any portion of the Proposed Development other than the City and other than a Unit Interested Party (a “**Unit Interested Party**” shall mean any and all of the following: all owners (other than a fee owner), space-lessees (excluding ground tenants and ground-lessees), 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). Notwithstanding the foregoing, Declarant and/or the Association shall have the right to admit new Association Members to the Association from time to time in accordance with the construction timeline of the Proposed Development on the various zoning lots (or portions thereof) comprising the Subject Property, and the rights and obligations of such new Association Members with respect to the Association and this Declaration shall attach to those new Association Members depending on whether such new Association Members are in receipt of one or more temporary or permanent certificates of occupancy (as the case may be) with respect to the building(s) under such new Association Member’s control.

(vii) *Powers*. To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

a. impose fees or assessments against the Association Members, for the purpose of collecting funds reasonably necessary to satisfy the obligations of the Association pursuant to this Declaration;

b. collect, receive, administer, protect, invest and dispose of funds;

c. bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Declaration;

d. cause to be provided, all services required for the maintenance and repair of the Publicly Accessible Areas, and any paving, landscaping, equipment or furniture provided therein, as and when reasonably needed to preserve the Publicly Accessible Areas and the amenities contained therein neat, clean and in good working order and condition;

e. to the extent permitted by law, impose liens, fines or assessments against individual lot or unit owners for the purpose of collecting funds reasonably necessary and sufficient to fund the obligations of the Association pursuant to this Declaration; and

f. exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association’s purposes pursuant to the New York Not-for-Profit Corporation Law.

(viii) *Successors.* Every deed conveying title to, or a partial interest in, the Subject Property, other than a deed to an Affordable Housing Unit (“**Affordable Housing Unit**”), shall mean (i) a residential unit consisting solely of Affordable Housing as such term is defined in Section 23-911 of the Zoning Resolution, or (ii) a Superintendent Unit; provided, however, that there shall not be more than one (1) Superintendent Unit in each building located in the Proposed Development), every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every ground-lease of any portion of the Subject Property, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that (a) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association’s obligations under this Declaration, and (b) maintenance of the Publicly Accessible Areas, and the cost of maintenance of the Publicly Accessible Areas, and all other obligations of the Association under this Declaration, are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

(ix) *Assessments*.

a. The Association shall assess all real property within the Subject Property, other than the Affordable Housing Units, (the “**Assessment Property**”) in order to obtain funds for the Publicly Accessible Areas obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members that are residential condominiums, commercial condominiums or cooperative corporations, a reasonable basis for such proration shall be conclusively established if the Attorney General of the State of New York accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration. Notwithstanding the foregoing, the Association shall have the right to assess new Association Members at different rates from time to time in accordance with the construction timeline of the Proposed Development on the various zoning lots (or portions thereof) comprising the Subject Property, and the rights and obligations of such new Association Members with respect the real property assessments contemplated in this Section shall attach to those new Association Members depending on whether such new Association Members are in receipt of one or more temporary or permanent certificates of occupancy (as the case may be) with respect to the building(s) under such new Association Member’s control.

b. Each periodic assessment by the Association, together with such interest, costs and reasonable attorney’s fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney’s fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

 c. The periodic assessments shall be a charge on the land and a continuing lien upon the property owned and/or ground leased by the Association Member against which each such assessment is made. The periodic assessments charged to an Association Member that is a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association’s lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys’ fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section. Any Unit Interested Party may eliminate the Association’s lien described above on his or her unit by payment to the Association of such Unit Interested Party’s prorated share of the periodic assessment by the Association to the condominium in which such unit is located. No Association Member or Unit Interested Party may waive or otherwise escape liability for the assessments provided for herein by non-use of the Publicly Accessible Areas or abandonment of the Association’s property, or by renunciation of membership in the Association, provided, however, that a Unit Interested Party’s liability with respect to future assessments ends upon the valid sale or transfer of such Unit Interested Party’s interest in the Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

d. Notwithstanding any contrary term set forth in this Declaration, the Association Members that may be assessed for the operation and maintenance of the Publicly Accessible Areas shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Assessment Property or any portion thereof, or (ii) the lessee’s estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any parcel or portion thereof, or (iii) any single building built or to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee’s estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a “**Possessory Interest**”) by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements (“**Legal Requirements**” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any federal, state, city or municipal entity, agency, public benefit corporation, public authority, quasi-public agency or authority (each a “**Governmental Authority**”) having jurisdiction over the Subject Property) from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article until the mortgagee or lien holder succeeds to such Possessory Interest.

**4. Environmental Protection Measures.** Declarant shall implement the following Mitigation Measures and Project Components Related to the Environment (“**PCREs**”) as the same may be modified as set forth herein, in connection with development facilitated by any of the Land Use Applications, in accordance with the FEIS and as further set forth in this Section; such Mitigation Measures and PCREs may be modified in accordance with the provisions of Section 4(h).

(a) **Environmental Mitigation Related to Community Facilities.**

(i) Early Childhood Programs: The FEIS identified that with the proposed Land Use Applications, publicly financed early childhood programs in the study area are predicted to operate over capacity, and the FEIS proposed mitigation measures for such impact. While, at the time of execution of this Declaration, it is not possible to know which mitigation would be most appropriate for this impact, the Declarant shall contact NYC Department of Education (DOE) as soon as is practicable and not later than 6 months prior to obtaining a building permit to construct the building that would result in the 53rd affordable unit (including any affordable units developed within the Additional Affected Areas, as defined in the FEIS) (the “53rd Unit”) in the Proposed Development to identify one or more of the following measures for implementation by the Declarant: the provision of suitable space on-site for a child care center within the Proposed Development, the provision of a suitable location off-site and within a reasonable distance (at a rate affordable to DOE providers), funding or making program or physical improvements to support adding capacity to existing facilities if determined feasible through consultation with DOE’s Division of Early Childhood Education, and the provision of new early childhood programs within or near the Proposed Development. The Declarant shall reach agreement with DOE with respect to implementation of the identified measure(s) and provide DCP with evidence of such agreement (DOE’s review and negotiation of such agreement not to be unreasonably withheld, conditioned or delayed). Within thirty (30) business days of receipt of a copy of such agreement, DCP will certify proof of such agreement to the DOB prior to the Declarant’s acceptance and DOB’s issuance of a new buildng permit for a building that includes the 53rd Unit. The Declarant shall not accept a TCO for any units beyond the 53rd Unit unless and until the DCP has certified to DOB that the Declarant has implemented the agreed upon mitigation pursuant to its agreement with DOE; provided, however, that if DCP does not certify such agreement within thirty (30) business days after receipt thereof, such agreement shall be deemed automatically certified. As the Proposed Development may include senior housing units, the determination of mitigation will only consider the need generated by affordable units that would be expected to generate children eligible for publicly financed early childhood programs. The unit threshold for the completion of the required mitigation may be increased at the discretion of DOE and such modification shall be reported to DCP by the Declarant.

(ii) Libraries: The FEIS identified that with the proposed Land Use Applications, an increase in usage of the Broadway Branch and Long Island City Branch of the Queens Public Library (QPL) could result in an impact on library services, and the FEIS proposed mitigation measures for such impact. Declarant shall contact QPL at least 6 months prior to obtaining a building permit for the final building within the Proposed Development to identify one of, or some combination of, the following mitigation measures: funding or provision of improvements and maintenance to the QPL Broadway branch facility that would support the branch’s programming and services year-round, such as improvements to the branch’s garden to provide space for public gatherings and community enjoyment; provision of space within the Proposed Development for the library, the size and location of which would be determined in coordination with QPL; and support for QPL for the continued operation of a space for the QPL within the Proposed Development. The Declarant shall reach agreement with QPL with respect to implementation of the identified measure(s) and provide DCP with evidence of such agreement. Within thirty (30) business days of receipt of a copy of such agreement, DCP will certify proof of such agreement to the DOB prior to Declarant’s acceptance and DOB’s issuance of a new building permit for the final building within the Proposed Development. The Declarant shall not accept any TCO for the final building within the Proposed Development unless and until DCP has certified to DOB that the Declarant has implemented the agreed upon mitigation pursuant to its agreement with QPL; provided, however, that if DCP does not certify such agreement within thirty (30) business days after receipt thereof, such agreement shall be deemed automatically certified

(b) **Environmental Mitigation Related to Active Open Space.** The FEIS identified that with the proposed Land Use Applications, there would be a decrease in the active open space ratio above 1 percent in an area lacking in open space, which is above the CEQR Technical Manual guidance threshold. As a Mitigation Measure, the Declarant shall provide additional space in the form of PAA A2 (Active Open Space), as identified on the Plans and referenced in **Section 3(b)(i)**, which shall contain active uses, the specific active amenities to be provided determined in consultation with DPR. PAA A2 would have an area of approximately 22,000 square feet (0.50 acres), be designed in substantial accordance with the Plans, and provide amenities for active uses in substantial accordance with the Plans.

Declarant shall not accept and DOB shall not issue a TCO for building A3 until DPR has certified to DOB that the PAA-A2 active open space has been substantially completed. “Substantial completion” or “substantially complete” shall mean completion of construction substantially in accordance with drawings L-130 to L-137 (see Section 2(a)), in the reasonable determination of DCP, in consultation with DPR, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

(c) **Environmental Mitigation Related to Transportation.** The FEIS identified that with the proposed Land Use Applications, there would be traffic impacts at 23 intersections within the study area and identified mitigation measures (the “Traffic and Pedestrian Mitigation Measures”). To determine which of the Traffic and Pedestrian Mitigation Measures would be warranted, Declarant, in consultation with DOT and DCP, shall undertake an interim and final transportation monitoring program (TMP) as set forth herein.

(i) Intial TMP: The Declarant shall not apply for and shall not accept a TCO for the last building to be constructed on the first two zoning lots to be developed in the Proposed Development (whether or not such zoning lots include Zoning Lots C and D) until (A) Declarant has, no later than 180 days prior to accepting such TCO for such last building from the Buildings Department, submitted to DCP and DOT for DOT's approval, in consultation with DCP, a scope of work for the interim year TMP, and (B) such scope of work has been approved in writing by DOT. Such scope of work may include but not be limited to: trip generation, modal split and origin/destination surveys of residents and other uses in the Proposed Development, traffic and pedestrian data collection and LOS analyses. DOT shall make reasonable efforts to approve the scope of work for the interim year TMP within 90 days of receipt of such scope of work. Declarant shall notify DOT upon the completion and occupancy of the first building located on Block C or D but before commencing the interim year TMP and, on a date or at another appropriate milestone specified by DOT, Declarant shall proceed with the interim year TMP. The findings of the interim year TMP will be used by DOT as the basis for directing Declarant’s implementation of or payment for some or all of the Traffic and Pedestrian Mitigation Measures, as may also be adjusted by DOT to more adequately address the transportation conditions.

 (ii) Final TMP. The Declarant shall not apply for and shall not accept a TCO or PCO for the final building to be constructed in the Proposed Development until (A) Declarant has, no later than 180 days prior to seeking such TCO from the Buildings Department, submitted to DCP and DOT for DOT's approval, in consultation with DCP, a scope of work for a revised and final TMP, and (B) such scope of work has been approved by DOT in writing. DOT shall make reasonable efforts to approve the scope of work for the final TMP within 90 days of receipt of such scope of work. Declarant shall notify DOT upon the completion of the final building to be constructed in the Proposed Development but before commencing the final TMP and, on a date or at another appropriate milestone specified by DOT, Declarant shall proceed with the final TMP. The findings of the final TMP will be used by DOT as the basis for directing Declarant’s implementation of or payment for some or all of the remaining Traffic and Pedestrian Mitigation Measures, as may also be adjusted by DOT to more adequately address the transportation conditions.

(iii) The Declarant shall be responsible for costs associated with both the interim and final TMP, including any subsequent design and implementation of reduced mitigation measures determined in either TMP.

(d) **Environmental Mitigation Related to Construction Noise.** The FEIS identified that with the proposed Land Use Applications, there would be temporary impacts related to construction noise at various locations near the Proposed Development. The Declarant shall take the following actions as Mitigation Measures:at existing building façades “where significant adverse construction noise impacts are predicted to occur, as set forth in Table 20-20 of the FEIS,” other than Projected Development Sites A, B, C, D, E, F, I, and J, the Declarant would offer to make available at no cost the installation of storm windows for façades that do not already have insulated glass windows and/or one window air conditioner per living room, bedroom, classroom, office space, or other noise-sensitive space on impacted façades that do not already have alternative means of ventilation. The Declarant shall not accept and DOB shall not issue any building permit associated with the construction of a new building in the Proposed Development until the Monitor, defined herein, certifies to the Chair in writing, within thirty (30) business days after receipt of a request for such certification, that the Declarant has offered the applicable mitigation measures identified in this paragraph to the affected parties in applicable impacted locations, as set forth FEIS Table 20-20, and the affected parties have either (1) rejected the offer, or (2) have accepted the offer of the mitigation measures, as the case may be, and such mitigation measure has been implemented. The offer of the mitigation measures shall be made on a yearly basis to all the occupants of the affected units. In the event that the Chair does not issue such certification within thirty (30) business days of the request from Declarant, such certification shall be deemed automatically given.

(e) **PCRE for Construction Noise.** To avoid or minimize noise in relation to construction of the Proposed Development, the Declarant shall enter into construction contracts that provide for the implementation of the following PCREs related to noise and implement such PCREs, as indicated:

Source Controls:

i. Use equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code from the start of construction.

ii. As early in the construction period as logistics 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 shall be located within buildings to the extent feasible and practicable.

iii. Where feasible and practicable, construction sites shall be configured to minimize back-up alarm noise.

iv. All trucks shall not be allowed to idle more than 3 minutes at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code.

v. Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.

Path Controls:

vi. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations.

vii. Noise barriers constructed from plywood or other materials shall be utilized to provide shielding (e.g., the construction sites shall have a minimum 8-foot-tall barrier around the perimeter).

viii. Concrete trucks shall be required to be located inside site-perimeter noise barriers while pouring or being washed out.

ix. Additional path noise control measures (e.g., portable noise barriers, panels, enclosures, and acoustical tents) to the extent feasible and practical shall be used as necessary to comply with the emission levels in Table 19-21 of the FEIS.

The Declarant shall not accept and DOB shall not issue any building permit associated with the construction of a new building in the Proposed Development until the Monitor, defined herein, certifies to the Chair in writing, within thirty business (30) days after receipt of a request for such certification, that the construction contracts and subcontracts, as applicable, specify provisions for the implementation of these measures.

(f) **PCRE for Air Quality - Construction**. To avoid or minimize pollutant emissions in relation to construction of the Proposed Development, the Declarant shall enter into construction contracts that provide for the implementation of the following PCREs related to air quality and implement such PCREs, as indicated:

(i) *Clean Fuel*. Ultra-low sulfur diesel (ULSD) fuel shall be used exclusively for all diesel engines throughout the Subject Property.

(ii) *Dust Control.* To minimize dust emissions from construction activities, Declarant shall develop a dust control plan including a robust watering program. Such plan shall require trucks hauling loose material to be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Proposed Development; water sprays shall be used for all demolition, excavation, and transfer of soils so that materials shall be dampened as necessary to avoid the suspension of dust into the air. Stockpiled soils or debris would be watered, stabilized with a chemical suppressing agent, or covered. All measures required by DEP’s *Construction Dust* *Rules* regulating construction-related dust emissions shall be required in the plan and implemented.

(iii) *Idling Restriction.* In addition to adhering to the local law restricting unnecessary idling on roadways, on-site vehicle idle time shall be restricted to three minutes 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 are otherwise required for the proper operation of the engine.

(iv) *Diesel Equipment Reduction*. In accordance with the New York City Noise Control Code electrically powered equipment shall be used over diesel-powered and gasoline-powered versions of that equipment to the extent practicable. Equipment that would use grid power in lieu of diesel engines includes, but may not be limited to, hoists and small equipment (such as welders).

In addition, the following measures shall be implemented to further reduce air pollutant emissions during construction of the Proposed Development:

(v) *Utilization of Newer Equipment.* EPA’s Tier 1 through 4 standards for non-road diesel engines regulate the emission of criteria pollutants from new engines, including PM, CO, NOx, and hydrocarbons. To the extent practicable, all diesel-powered non-road construction equipment 50 horsepower (hp) or greater shall meet at least the Tier 31 emissions standard.

(vi) *Best Available Tailpipe Reduction Technologies*. Non-road diesel engines with a power rating of 50 hp or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks shall utilize the best available tailpipe (BAT) technology for reducing diesel particulate matter (DPM) emissions. Diesel particulate filters (DPFs) have been identified as being the tailpipe technology currently proven to have the highest reduction capability. Construction contracts shall specify that all diesel non-road engines rated at 50 hp or greater shall utilize DPFs, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used. The use of DPFs for diesel engines meeting the Tier 3 emissions standard achieves similar emission reductions as the newer Tier 4 particulate matter emission standard.

The Declarant shall not accept and DOB shall not issue any building permit associated with the construction of a new building in the Proposed Development until the Monitor, defined herein, certifies to the Chair in writing, within thirty business (30) days after receipt of a request for such certification, that the construction contracts and subcontracts, as applicable, specify provisions for the implementation of these measures.

(g) **Force Majeure Involving a Mitigation Measure or PCRE**. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a Mitigation Measure or PCRE required by the FEIS by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in **Section 3(b)(i)(f**), then Declarant shall not be excused from performing such Mitigation Measure or PCRE that is affected by Force Majeure Event unless and until the Chair has made a determination in his or her reasonable discretion that the failure to implement the mitigation measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

(h) **Incorporation of FEIS Mitigation or PCRE Measures**. If this Declaration inadvertently fails to incorporate a Mitigation Measure or PCRE set forth in the FEIS, such Mitigation Measure shall be deemed incorporated herein by reference. If there is any inconsistency between a PCRE or Mitigation Measure set forth in the FEIS and in this Declaration, the PCRE or Mitigation Measure set forth in the FEIS shall be applicable.

(i) **Innovation; Alternatives; Modifications Based on Further Assessments.**

(i) In complying with any PCRE or Mitigation Measure set forth in this Section, or in the FEIS, Declarant may, at its election, implement innovations, technologies, or alternatives that are or hereafter become available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Subject Property, which Declarant demonstrates to the reasonable 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 (the “**Alternative Mitigation or PCRE Measures**”).

(ii) Where Declarant believes, in good faith, based on changed conditions, that a PCRE or Mitigation Measure required under this Declaration should not apply or be modified without diminishment of the environmental standards that would be achieved by implementation of the PCRE or Mitigation Measure (“**Modification of Mitigation or PCRE Measure**”), it shall set forth the basis for such belief in an analysis submitted to DCP (the “**Section 4(i)(ii) Request**”). Following delivery of a Section 4(i)(ii) 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 DCPin writing in order to allow DCP to determine, acting in consultation with City agency personnel as necessary in relation to the subject matter of the Section 4(i)(ii) Request. In the event that 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 against the Subject Property. Following the delivery of a notice to DCP requesting an Alternative Mitigation or PCRE Measure or a Modification of a Mitigation or PCRE Measure pursuant to this Section (a “**Modification 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, acting in consultation with City agency personnel as necessary in relation to the subject matter of the Section 4(i)(ii) Request.

## (j) Appointment and Role of Independent Monitor.

### Declarant shall, with the consent of DCP, retain an independent third party (the “**Monitor**”) reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the PCREs and Mitigation Measures required under **Section 4** of this Declaration (the “**Construction Monitoring Measures**” or “**CMMs**”). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. DCP shall advise Declarant of its approval or rejection of the Monitor, as proposed, within fifteen (15) business days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.

### The “Scope of Services” described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the “**Monitor Agreement**”) shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such Monitor Agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor’s responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement, following a fifteen (15)-day notice period by DCP to Declarant and the failure of Monitor to correct or remedy the unsatisfactory activity; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within twenty (30) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property until issuance of the first TCO for any portion of the Subject Property, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this **Section 4(j)**. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

### The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement; (ii) provide reports of Declarant’s compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the CMMs. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. If the Monitor has provided DCP with such notice of a determination and supporting documentation that a CMM has not been implemented, the Monitor shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law 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; (y) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to both the CMM alleged not to have been implemented and the applicable portion of the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant’s implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant’s construction activities and use of the Subject Property by the occupants of and visitors; and (r) conducted in a manner that will minimize any interference with the Subject Property. The Monitor Agreement shall provide that Declarant shall have the right to require the Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities. Nothing in this Declaration, including without limitation the provisions of this **Section 4(j)**, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

### 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 Subject Property. 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).

### Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged in accordance with the terms of the Monitoring Agreement.

### If DCP determines, based on information provided by the Monitor 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 8**. Notwithstanding any provisions to the contrary contained in 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 the Monitor and 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, the Monitor 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 this Declaration. 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.

**5. 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.

**6. 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 (herinafter defined) becomes effective.

 (ii) “**Final Approval**” shall mean approval of the Land Use Applications 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.

**7. 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 Proposed 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 (as hereafter defined), and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed 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 reasonable 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, but subject to the first sentence of this **Section 7(a)(i)**, 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 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 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 Declaration (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 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 gross negligence of Declarant, 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 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.

**8. 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:

1. if to Declarant:

Kaufman BedRock Astoria I LLC

c/o Kaufman Astoria Studios Executive Offices

34-12 36th Street

Astoria, New York 11106

Silverstein Member LLC

250 Greenwich Street

New York, NY 10007

with a copy to:

Fox Rothschild LLP

101 Park Avenue, Floor 17

New York, New York 10178

Attn: Jesse Masyr

1. if to the Commission:

New York City Planning Commission

120 Broadway, 31st Floor

New York, New York 10271

Attention: Chair

with a copy to:

The general counsel of Commission at the same address

(c) If to the Department of Parks and Recreation

Deputy Commissioner for Environment and Planning

Department of Parks & Recreation

The Arsenal, Central Park

830 Fifth Avenue

New York, New York 10065

1. if to a Party-in-Interest other than Declarant:

at the address provided in writing to Commission in accordance with this **Section 8**.

1. 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 8**.

Declarant, Commission, any Party-in-Interest, and any Mortgagee may, by notice provided in accordance with this **Section 8**, 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: (i) 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; (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. All Notices from the Commission to a Declarant shall also be sent to every Mortgagee of whom the 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 the Commission has notice.

**9. 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 in a material way 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 the 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 Proposed Development on the Subject Property subject to the Large-Scale Special Permits.

(b) **Denial of Public Access**. If the City has reason to believe that the use and enjoyment of the Publicly Accessible Areas by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the Publicly Accessible Easement is in violation of the provisions of this Declaration, the City shall have the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space.

(c) Public Access Maintenance and Access Security. To secure Declarant’s obligation to maintain the Public Access Areas and to cover any civil penalties imposed by the ECB pursuant to Section 9(b) hereof, as a condition precedent to the issuance or acceptance of a TCO for any TCO Building on the Subject Property, Declarant shall either (i) post or cause the posting with DPR of a performance bond for the benefit of the City, in a form reasonably satisfactory to the DPR and issued by a surety company licensed to do business in the State of New York, (ii) deposit with DPR one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (iii) deliver to DPR other security reasonably acceptable to the City (any such security being hereinafter referred to as the “PAA Maintenance and Access Security”). The PAA Maintenance and Access Security shall be calculated by multiplying the number of square feet in the Adjacent PAA contiguous with the relevant TCO Building(s) as shown in **Section 3(b)(i)** by $3.02, adjusted to reflect changes in the CPI from the date of this Agreement to July 1 for the current fiscal year (the “Annual PAA Maintenance Calculation”), plus $10,000 to cover damages in the event that civil penalties are imposed by the ECB pursuant to Section 9(b) hereof with respect to a finding of access denial (the “Access Cost”). The PAA Maintenance and Access Security shall be required for an Adjacent PAA when its contiguous TCO Building(s) seek issuance or acceptance of a TCO in accordance with the table shown in **Section 3(b)(i)**. The PAA Maintenance and Access Security shall be for a five (5) year term and shall be renewed prior to the expiration thereof. If the PAA Maintenance and Access Security is not renewed at least thirty (30) calendar days prior to the expiration date of such PAA Maintenance and Access Security, or if the City is informed in any way that the instrument of the PAA Maintenance and Access Security will be cancelled or will not be renewed, the City shall be entitled to draw down on the full amount of the PAA Maintenance and Access Security for the purpose of maintaining the Public Access Areas, or to cover any civil penalties imposed by the ECB, in accordance with this Agreement. Declarant shall promptly replenish any sums drawn down and used by the City for the maintenance of the Public Access Area so that the available PAA Maintenance and Access Security remains at the amount set by the Commissioner pursuant to the provisions of this Section.

(d) Right of Access

. The City, acting through DPR, in addition to any rights or remedies contained in this Declaration, shall have a right of access to the PAAs at all times the PAAs are open and at other times upon reasonable notice, for the purpose of inspecting the PAAs and determining Declarant’s compliance or noncompliance with the terms of this Declaration or for any lawful purpose. As part of the training of any private security personnel employed by Declarant, such personnel shall be informed of the City’s right of access to the PAAs pursuant to this **Section 9**, and such personnel shall be trained not to obstruct or interfere with the right of the general public to use and enjoy the PAAs in accordance with the terms and conditions of this Declaration.

(e) Right of Access for Repairs. Declarant hereby grants the City, its agents, or its contractors, the right, after prior written notice of such intention to enter, to enter upon the PAA upon a Maintenance Default (hereinafter defined) to perform Declarant’s maintenance obligation set forth in the Declaration until such time as Declarant resumes the performance of such obligations. A “Maintenance Default” shall occur if Declarant has failed to perform any of its maintenance obligations under the Declaration after notice is given in accordance with this Declaration and neither Declarant nor any Mortgagee has commenced and diligently prosecuted efforts to effect a cure as provided in **Section 9(g)** during any applicable cure periods. The provisions of this **Section 9(e)** shall not be deemed to limit the access granted to the City to the PAA pursuant to **Section 9(d)** hereof.

(f) **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 occupany 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 Large-Scale 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 mortgages secured by any condominium unit or other individual residential or commercial 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.

(g) **Notice and Cure.**

(i) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged material violation hereof, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) business days written notice of such alleged material violation, during which period the Declarant, any Party-in-Interest and any Mortgagee shall have the opportunity to effect a cure of such alleged material violation or to demonstrate to City why the alleged material 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) business-day period (or if cure is not capable of being commenced within such thirty (30) business-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) business-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 comrpising 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 9** 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) business days’ written notice of such alleged material 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) business-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 (or, if applicable, Mortgagee or a Party-in-Interest) shall fail to cure the alleged material 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 9(h)** hereof. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances (as hereafter defined) pursuant to the provisions of this Declaration.

(iv) Notwithstanding the foregoing, in the event of a denial of public access pursuant to **Section 9(b)**, the City may immediately exercise any and all of its rights hereunder, including but not limited to the issuance of violations; in such an event, the notice and cure provisions of this **Section 9(g)** shall not apply.

(h) **Uncontrollable Circumstances**.

(i) In the event that, as the result of an Uncontrollable Circumstance, Declarant (or, if applicable, Mortgagee or a Party-in-Interest) is unable to perform or complete any obligation (including but not limited to Substantially Complete or Finally Complete the an Adjacent PAA) (A) at the time or times required by this Declaration; (B) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (C) prior to submitting an application for a building permit or other permit or certificate of occupancy which is conditioned on the completion of such requirement, where applicable, Declarant (or, if applicable, Mortgagee or a Party-in-Interest) may, upon notice to the Chair within 48 hours (a “**Delay Notice**”) after the occurrence of such Uncontrollable Circumstance becomes apparent, request that the Chair, certify the existence of such Uncontrollable Circumstance. Any Delay Notice shall include a description of the Uncontrollable Circumstance and its probable duration and impact on the work in question (as reasonably determined by Declarant (or, if applicable, Mortgagee or a Party-in-Interest)). In the exercise of his or her reasonable judgment, the Chair shall thereafter, within ten (10) business days of its receipt of the Delay Notice, (x) certify in writing that the Uncontrollable Circumstance has occurred, or (y) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstance has occurred, and set forth with reasonable specificity the reasons therefor. Failure to respond within such ten (10) business day period shall be deemed to be a determination by the Chair that an Uncontrollable Circumstance has occurred. If the Chair certifies that an Uncontrollable Circumstance exists, the Chair shall grant Declarant (or, if applicable, Mortgagee or a Party-in-Interest) 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 within the Subject Property. Upon cessation of the Uncontrollable Circumstance, Declarant (or, if applicable, Mortgagee or a Party-in-Interest) shall promptly recommence its obligations under this Declaration subject to the Uncontrollable Circumstance. As a condition to granting relief as aforesaid, the Chair may require that Declarant (or, if applicable, Mortgagee or a Party-in-Interest) post a letter of credit or other security, in a form reasonably acceptable to the Chair and naming the City as beneficiary, to secure Declarant’s (or, if applicable, Mortgagee’s or a Party-in-Interest’s) obligation to Finally Complete the subject Adjacent PAA upon the cessation of the Uncontrollable Circumstance. Such security shall be in a sum equal to 175% of the estimated cost of the remaining work required to Finally Complete such Adjacent PAA, as certified by Declarant’s (or, if applicable, Mortgagee’s or a Party-in-Interest’s) architect or landscape architect. Declarant (or, if applicable, Mortgagee or a Party-in-Interest) shall be obligated to re-commence construction of such Adjacent PAA to Substantially Complete or Finally Complete same at the end of the Uncontrollable Circumstance specified in the Delay Notice, or such lesser period of time as the Chair reasonably determines the Uncontrollable Circumstances shall continue; provided, however, any delay arising by reason of a Uncontrollable Circumstance shall be deemed to continue so long as the Uncontrollable Circumstance continues. If Declarant (or, if applicable, Mortgagee or a Party-in-Interest) fails to resume performance of the subject Adjacent PAA work 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 on the subject Adjacent PAA only, and draw upon the aforesaid security, to the extent required to complete the work on the subject Adjacent PAA only. Upon Final Completion of the subject Adjacent PAA (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant (or, if applicable, Mortgagee or a Party-in-Interest). Declarant (or, if applicable, Mortgagee or a Party-in-Interest) hereby grants the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Section. The City hereby agrees to indemnify, defend and hold each Indemnified Party (as hereinafter defined) harmless from and against any claims arising by reason of its exercise of the self-help rights set forth in this Article, except to the extent such claim is caused by or contributed by the gross negligence, recklessness or willful acts of the Indemnified Parties.

(ii) “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) any state of emergency (whether federal, state or municipal) declared as a result of such pandemic or epidemic; (viii) fire or other casualty; (ix) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (x) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (xi) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xii) 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 Declarations; or Legal Requirements, (xiii) failure or inability of a public utility to provide adequate power, heat, water, sewer, gas or light or any other utility service; 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.

**10. 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 this **Section 10** 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 10(b)** shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

**11. 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.

(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. Further, notwithstanding anything to the contrary contained in this Declaration, in the event of the Large Scale Special Permits’ lapse as a matter of law in accordance with the provisions of the Zoning Resolution, 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 the Commission so certified by the Register’s Office. If one or more 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 11**.

(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.

**12. 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.

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

**14.** **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.

**15. Approvals**. Wherever in this Declaration the certification, consent or approval of Declarant, the Chair, Commissioner, or any other City agency or public entity is required or permitted to be given, it is understood that and such certification, consent or approval will not be unreasonably withheld, conditioned or delayed.

**16.** **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.

**17.** **Estoppel Certificates**. Whenever requested by a party, the other party shall within ten (10) business 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.

**18.** **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.

**19. 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.

KAUFMAN BEDROCK ASTORIA I LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

 ) SS.:

COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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

SILVERSTEIN ASTORIA LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Queensboro Farm Products Inc.

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Wilbee Corporation

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Mayer Malbin Realty I, L.L.C.

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Cartergavin37 LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Jolivia Realty LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Sultan Bacchus

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bibi R. Bacchus

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STATE OF )

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 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

Bigfoot Realty, LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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.

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Notary Public

35-18 Steinway Street, LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

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COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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

42-11 Northern LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

 ) SS.:

COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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

Alfess Realty, L.L.C.

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:
 Title:

STATE OF )

 ) SS.:

COUNTY OF )

 On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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**

**SUBJECT PROPERTY DESCRIPTION**

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

**BLOCK 669 LOT 16**

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

PARCEL 1

BEGINNING at a point on the southeasterly side of Steinway Street (formerly Steinway Avenue) distant 100 feet southerly from the corner formed by the intersection of the southeasterly side of Steinway Street with the southwesterly side of 35th Avenue (formerly known as Pierce Avenue);

RUNNING THENCE southeasterly parallel with 35th Avenue, 100 feet;

THENCE southwesterly parallel with Steinway Street, 100 feet;

THENCE northwesterly again parallel with 35th Avenue, 100 feet to the southeasterly side of Steinway Street;

THENCE northeasterly along the southeasterly side of Steinway Street, 100 feet to the point or place of BEGINNING.

PARCEL 2

BEGINNING at the corner formed by the intersection of the northwesterly side of 41st Street (formerly known as Eleventh Avenue) with the southwesterly side of 35th Avenue (formerly known as Pierce Avenue);

RUNNING THENCE southwesterly along the northwesterly side of 41st Street, 100 feet;

THENCE northwesterly parallel with 35th Avenue, 90 feet;

THENCE northeasterly parallel with 41st Street, 100 feet to the southeasterly side of 35th Avenue;

THENCE southeasterly along the southwesterly side of 35th Avenue, 90 feet to the point or place of BEGINNING.

PARCEL 3

BEGINNING at a point on the northwesterly side of 41st Street (formerly known as Eleventh Avenue), distant 100 feet southwesterly from the corner formed by the intersection of the southwesterly side of 35th Avenue (formerly known as Pierce Avenue) with the northwesterly side of 41st Street;

RUNNING THENCE northwesterly parallel with 35th Avenue, 90 feet;

THENCE southwesterly parallel with 41st Street, 100 feet;

THENCE southeasterly parallel with 35th Avenue, 90 feet to the northwesterly side of 41st Street;

THENCE northeasterly along the northwesterly side of 41st Street, 100 feet to the point or place of BEGINNING.

PARCEL 4

BEGINNING at a point on the south side of 35th Avenue (formerly Pierce Avenue), distant 90 feet from the corner formed by the intersection of the south side of 35th Avenue (formerly Piece Avenue) and the westerly side of 41st Street (formerly 11th Avenue);

RUNNING THENCE southerly and parallel with 41st Street, 100 feet;

THENCE westerly and parallel with 35th Avenue, 5 feet;

THENCE northerly and parallel with 41st Street, 100 feet to the south side of 35th Avenue;

THENCE easterly along the southerly side of 35th Avenue, 5 feet to the point or place of BEGINNING.

**BLOCK 669 LOT 13**

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

BEGINNING at a point on the southeasterly side of Steinway Street, distant 200 feet southwesterly from the corner formed by the intersection of the southeasterly side of Steinway Street with the southwesterly side of 35th Avenue;

RUNNING THENCE southwesterly along the southeasterly side of Steinway Street, 91 feet 6-1/4 inches;

THENCE southeasterly parallel with 35th Avenue, which course forms an interior angle with the southeasterly side of Steinway Street of 89 degrees 56 minutes, a distance of 190 feet to the northwesterly side of 41st Street (11th Avenue);

THENCE northeasterly along the northwesterly side of 41st Street, 91 feet 6-1/4 inches;

THENCE northwesterly and parallel with 35th Avenue, 190 feet to the southeasterly side of Steinway Street, at the point or place of BEGINNING.

**BLOCK 669 LOT 36**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, known and designated as and by the Lot Nos. 13 to 18, both inclusive, in Block No. 178 on a certain map entitled “Map of Property in the First Ward, Borough of Queens, N.Y.C., belonging to Randolph Thompson realty Co., 43 Jackson Avenue, L.I.C., survey 3/12/1906 by P.G. Van Alst, C.S.” and filed in the Office of the Clerk, now Register of the County of Queens on 3/28/1906 under File No. 206, New No. 304, which said lots when take together as one parcel are bounded and described as follows:

BEGINNING at a point on the westerly side of 41st Street (11th Avenue), distant 150 feet northerly from the corner formed by the intersection of the westerly side of 41st Street with the northerly side of 36th Avenue (Washington Avenue);

RUNNING THENCE westerly parallel with 36th Avenue, 95 feet;

THENCE northerly parallel with 41st Street, 138.98 feet;

THENCE easterly on a line forming an interior angle of 89 degrees 51 minutes with the westerly side of 41st Street, 95 feet to a point in said side of 41st Street, distant 139.12 feet northerly from the point of beginning;

THENCE southerly along the westerly side of 41st Street, 139.12 feet to the point or place of BEGINNING.

**BLOCK 641 LOT 1**

PARCEL I

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

BEGINNING at the corner formed by the intersection of the northeasterly side of Washington Avenue with the southeasterly side of 8th Avenue;

RUNNING THENCE northeasterly along the said southeasterly side of 8th Avenue, 169.17 feet to the division line between the premises hereby conveyed and land formerly of Woodbury Lowery, deceased;

THENCE southerly along said division line about 133 feet to the northerly line of Lot No. 1 on a certain map entitled “Partition Map of Woodland situate in the 4th Ward of Long Island City, Queens County, N.Y. belonging to George H. and Jacob B. Hunter” surveyed December 1874 by P.G. VanAlst and filed in the Office of the Clerk of Queens County January 9, 1875;

THENCE westerly along said northerly side of Lot #1 on said map, 108 feet 6-1/4 inches to the northeasterly side of Washington Avenue;

THENCE northwesterly along the northeasterly side of Washington Avenue, 36.33 feet to the point or place of BEGINNING.

PARCEL II

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, formerly Long Island City, designated on a certain map on file in the Office of the Clerk of the County of Queens entitled “Partition Map of Woodland, situated in the 4th Ward of Long Island City, Queens, N.Y. belonging to George H. and Jacob B. Hunter” made by P.G. Van Alst, C.S., December 1875 as part of Plot No.1, bounded and described as follows:

BEGINNING at a point on the northerly side of Washington Avenue, 82 feet 2-3/8 inches easterly from the corner formed by the intersection of the said northerly side of Washington Avenue with the easterly side of 8th Avenue, which point of beginning is also 85 feet 7-7/8 inches westerly from the northwesterly corner of Washington Avenue and Harold Avenue as laid down on said map;

RUNNING THENCE westerly along the northerly side of Washington Avenue, 45 feet 9-3/4 inches to land now or formerly of the Estate of Isaac Van Alst;

THENCE northeasterly forming an interior angle with Washington Avenue of 51 degrees 31 minutes 50 seconds and along land of said Estate of Isaac Van Alst, 73 feet 7-1/2 inches;

THENCE southerly in a straight line, 57 feet 7-7/8 inches, more or less, to the northerly side of Washington Avenue, at the point or place of BEGINNING.

**BLOCK 641 LOTS 4, 9 AND 51**

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

BEGINNING at the corner formed by the intersection of the northwesterly side of 38th Street (formerly 9th Avenue) and the southwesterly side of 35th Avenue (formerly Pierce Avenue);

RUNNING THENCE northwesterly along southwesterly side of 35th Avenue, 200.21 feet to the southeasterly side of 37th Avenue (formerly 8th Avenue);

THENCE southwesterly along the southeasterly side of 37th Street, 413.92 feet;

THENCE southerly along a line forming an interior angle of 128 degrees 59 minutes 55.7 seconds with the southeasterly side of 37th Street, a distance of 257.62 feet to the northwesterly side of 38th Street;

THENCE northeasterly along the northwesterly side of 38th Street, 576.04 feet to the corner, aforesaid, the point or place of BEGINNING.

**BLOCK 641 LOT 52**

ALL that certain plot, piece or parcel of land, situate, lying and being at Long Island City, First Ward of the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northwesterly side of 38th Street formerly known as 9th Avenue and formerly known as Kowehoven Street with the northeasterly side of 36th Avenue formerly known as Washington Avenue;

RUNNING THENCE northwesterly along the northeasterly side of 36th Avenue, 93.02 feet to the division line between the premises herein described and land now or formerly of Jacob B. Hunter;

THENCE northeasterly along said division line and parallel with 38th Street, 82.33 feet (actual) 82.27 feet (deed);

THENCE southeasterly, 119.69 feet (actual), 119.75 feet (deed) to the northwesterly side of 38th Street;

THENCE southwesterly along the northwesterly side of 38th Street, 7.01 feet (actual), 6.86 feet (deed) to the point or place of BEGINNING.

**BLOCK 641 LOT 56**

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

BEGINNING at a point on the northeasterly side of 36th Avenue (formerly known as Washington Avenue), distant 82.19 feet southeasterly from the corner formed by the intersection of the northeasterly side of 36th Avenue with the southeasterly side of 37th Street (formerly known as 8th Avenue and also Pomeroy Street);

RUNNING THENCE southeasterly along the northeasterly side of 36th Avenue, 25 feet;

THENCE northeasterly at right angles to 36th Avenue, 82.27 feet to land now or formerly of J. and A.H. Lowry;

THENCE northerly along last mentioned land, 4.26 feet to land now or formerly of Isaac Van Alst;

THENCE in a southerly direction along land now or formerly of Isaac Van Alst, 34.90 feet;

THENCE southwesterly and again at right angles to 36th Avenue, 57.66 feet to the northeasterly side of 36th Avenue, the point or place of BEGINNING.

**BLOCK 668 LOT 5**

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

BEGINNING at the corner formed by the intersection of the southwesterly side of 35th Avenue with the northwesterly side of Steinway Street;

RUNNING THENCE southwesterly along the northwesterly side of Steinway Street, 408.05 feet;

THENCE northwesterly at right angles to the northwesterly side of Steinway Street, 90 feet;

THENCE northeasterly parallel with the northwesterly side of Steinway Street, 5.23 feet;

THENCE northwesterly along a line which forms an interior angle of 90 degrees 14 minutes 24 seconds with the southeasterly side of 38th Street, 95.50 feet to the southeasterly side of 38th Street;

THENCE northeasterly along the southeasterly side of 38th Street, 402.32 feet to the corner formed by the intersection of the southwesterly side of 35th Avenue with the southeasterly side of 38th Street;

THENCE southeasterly along the southwesterly side of 35th Avenue, 185.96 feet to the corner first above mentioned, at the point or place of BEGINNING.

**BLOCK 671 LOT 1**

ALL that certain plot, piece or parcel of land, situate, lying and being in the First Ward, Borough and County of Queens, City and State of New York, known and designated as and by the Lots 1, 2, 3, 4, 5, 6, 7, 8, 29, 30, 31, 32, 33, 34, 35, 36 and 37 in Block 671 on a certain map entitled “Map of Property belonging to William G. Park and others, situate in Long

Island City, First Ward of the Borough of Queens, City of New York” and filed in the Office of the Clerk, now Register’s, of the County of Queens May 6, 1921 under File No. 3984 and which said lots when taken together as one parcel are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northwesterly side of Northern Boulevard formerly Jackson Avenue with the southeasterly side of 42nd Street formerly 12th Avenue;

RUNNING THENCE northeasterly along the northwesterly side of Northern Boulevard, 299.55 feet to the corner formed by the intersection of the northwesterly side of Northern Boulevard with the northwesterly side of 43rd Street, formerly 13th Avenue;

THENCE northeasterly along the northwesterly side of 43rd Street, 10.43 feet;

THENCE northwesterly at right angles to the northwesterly side of 43rd Street, 200 feet to the southeasterly side of 42nd Street, formerly 12th Avenue;

THENCE southwesterly along the southeasterly side of 42nd Street, 233.44 feet to the point or place of BEGINNING.

**BLOCK 671 LOT 8**

ALL those certain lots, pieces or parcels of land, situate, lying and being the First Ward, Borough and County of Queens, City and State of New York, known and designated on a certain map entitled, “Map of property belonging to the Estate of William G. Park and others situate in Long Island City, First Ward of the Borough of Queens, City of New York, surveyed by Leonard C.L. Smith, C.E.” and filed in the Office of the Clerk of the County of Queens on May 5th, 1921 under Map #3984 as and by lots numbered 9, 10, 11, 12 and 13 in Block #671 which said lots when taken together are more particularly bounded and described according to said map as follows:

BEGINNING at a point on the easterly side of 12th Avenue (now known as 42nd Street) distant 100 feet southerly from the corner formed by the intersection of the easterly side of 12th Avenue with the southerly side of Pierce Avenue (now known as 35th. Avenue);

RUNNING THENCE easterly parallel with Pierce Avenue, 100 feet;

THENCE southerly parallel with 12th Avenue, 100 feet;

THENCE westerly parallel with Pierce Avenue, 100 feet to the easterly side of 12th Avenue;

THENCE northerly along the easterly side of 12th Avenue, 100 feet to the point or place of BEGINNING.

**BLOCK 671 LOT 12**

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

BEGINNING at the corner formed by the intersection of the southwesterly side of 35th Avenue, formerly Pierce Avenue, with the southeasterly side of 42nd Street, formerly 12th Avenue;

RUNNING THENCE southeasterly along said side of 35th Avenue, 90 feet;

THENCE southwesterly parallel with 42nd Street, 100 feet;

THENCE northwesterly parallel with 35th Avenue, 90 feet to the southeasterly side of 42nd Street;

THENCE northeasterly along said side of 42nd Street, 100 feet to the corner the point or place of BEGINNING.

**BLOCK 671 LOT 20**

ALL that certain plot, piece or parcel of land, situate lying and being in the First Ward of the Borough and County of Queens, City and State of New York, known and designated on a certain map entitled “Map of Property belonging to the Estate of William G. Park and others, situated in Long Island City, 1st Ward of the Borough of Queens, City of New York” surveyed by Leonard C.L. Smith, City Surveyor, and filed in the Office of the Clerk of the County of Queens on May 6, 1921, as Map Number 3964 as and by Lots numbers twenty-four, twenty-five and twenty-six in Block number six hundred and seventy-one, which said lots when taken together as one parcel, are bounded and described according to said map as follows:

BEGINNING at a point on the northwesterly side of 43rd Street, formerly 13th Avenue, distant fifty feet and forth-three one hundreds of a foot northeasterly from the corner formed by the intersection of the northwesterly side of 43rd Street with the northerly side of Northern Boulevard formerly Jackson Avenue and from said point of beginning;

RUNNING THENCE northwesterly at right angles to said side of 43rd Street, one hundred feet;

THENCE northeasterly parallel with said side of 43rd Street, sixty feet;

THENCE southeasterly at right angles to said side of 43rd Street, one hundred feet to the northwesterly side of 43rd Street;

THENCE southwesterly along said side of 43rd Street, sixty feet to the point or place of BEGINNING.

**BLOCK 671 LOT 23**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Queens, City and State of New York, designated as Lots numbers twenty-seven (27), and twenty-eight (28) in Block six hundred and seventy-one (671) on a certain map entitled “Map of Property belonging to the Estate of William G. Park and others, situated in the First Ward of the Borough of Queens, State of New York” surveyed by Leonard C.L. Smith, City Surveyor and filed in the Office of the Clerk of the County of Queens, City and State of New York on the 6th day of May, 1921 as Map Number 3984.

**BLOCK 670 LOT 4**

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Borough of Queens, County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the southeast side of 11th Avenue, now 41st Street, distant 157 feet 8 inches northeasterly from the corner formed by the intersection of the southeasterly side of 41st Street with the northeasterly side of Washington Avenue, now 36th Avenue;

RUNNING THENCE southeasterly parallel with 36th Avenue and part of the distance through a party wall, 100 feet;

THENCE northeasterly parallel with 41st Street, 100 feet 4-5/8 inches;

THENCE northwesterly again parallel with 36th Avenue, 100 feet to the southeasterly side of 41st Street;

THENCE southwesterly along the southeasterly side of 41st Street, 100 feet 4-5/8 inches to the point or place of BEGINNING.

**BLOCK 670 LOT 8**

**[Parcel 1]**

**ALL THAT CERTAIN** plot, piece or parcel of land, situate, lying and being in the First Ward of the Borough of Queens County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of 11th Avenue and the southwesterly side of Pierce Avenue;

RUNNING THENCE southeasterly along the southwesterly side of Pierce Avenue, one hundred (100) feet;

THENCE southwesterly parallel with 11th Avenue, one hundred (100) feet;

THENCE northwesterly parallel with Pierce Avenue, one hundred (100) feet, to the southeasterly side of 11th Avenue; and

THENCE northeasterly along the said side of 11th Avenue, one hundred (100) feet to the point or place of BEGINNING.

**[Parcel 2]**

**ALL THOSE CERTAIN** LOTS, pieces or parcels of land, situate, lying and being in the First Ward, in the Borough and County of Queens, as shown and designated on a certain map entitled “Map of property in the First Ward, Borough of Queens, belonging to the Randolph Thorfsck Realty Company, dated March 12th 1906, by F. G. Van Alst, C.S., filed March 20th, 1906, as Map No. 206, as and by Lots Numbers 8, 9, 10, 11, 12 and 13 in Block 195, more particularly bounded and described as follows:

BEGINNING at a point on the southeasterly side of 11th Avenue (formerly Albert Street) distant one hundred seventy five (175) feet southwesterly from the corner formed by the intersection of the southeasterly side of 11th Avenue and the southwesterly side of Pierce Avenue;

RUNNING THENCE southeasterly parallel with Pierce Avenue, one hundred (100) feet;

THENCE southwesterly, parallel with 11th Avenue one hundred fifty (150) feet;

THENCE northwesterly, parallel with Pierce Avenue one hundred (100) feet to the southeasterly side of 11th Avenue; and

THENCE northeasterly, along the said southeasterly side of 11th Avenue, one hundred fifty (150) feet to the point or place of BEGINNING.

 **[Parcel 3-(a)]**

**ALL THAT CERTAIN** plot, piece or parcel of land, situate, lying and being in the First Ward of the Borough of Queens County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Twelfth Avenue, distant one hundred (100) feet southerly from the corner formed by the intersection of the southerly side of Pierce Avenue with the westerly side of Twelfth Avenue;

RUNNING THENCE westerly parallel with Pierce Avenue and part of the distance through a party wall, one hundred (100) feet;

THENCE southerly parallel with Twelfth Avenue, seventy-five (75) feet;

THENCE easterly parallel with Pierce Avenue, one hundred (100) feet to the westerly side of Twelfth Avenue;

THENCE northerly along the westerly side of Twelfth Avenue, seventy-five (75) feet to the point or place of BEGINNING.

**[Parcel 3-(b)]**

**ALL THAT CERTAIN** plot, piece or parcel of land, situate, lying and being in the First Ward of the Borough of Queens County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southeasterly side of Eleventh Avenue, distant 100 feet southerly from the corner formed by the intersection of the southeasterly side of Eleventh Avenue and the southwesterly side of Pierce Avenue;

RUNNING THENCE southeasterly parallel with Pierce Avenue, 100 feet;

THENCE southwesterly parallel with Eleventh Avenue, 75 feet;

THENCE northwesterly parallel with Pierce Avenue, 100 feet to the southeasterly side of Eleventh Avenue; and

THENCE northeasterly along said side of Eleventh Avenue, 75 feet to the point or place of BEGINNING.

**BLOCK 670 LOT 20**

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the First Ward, Borough of Queens, City of New York, County of Queens and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the Easterly side of Pierce Avenue and the Westerly side of 12th Avenue (formerly Winans Street);

RUNNING THENCE Southerly, along the westerly side of 12th Avenue, one hundred (100) feet;

THENCE Westerly, parallel with Pierce Avenue, and part of the distance through a party wall, one hundred (100) feet;

THENCE Northerly, parallel with 12th Avenue, one hundred (100) feet to the Southerly side of Pierce Avenue; and

THENCE Easterly, along the southerly side of Pierce Avenue, one hundred (100) feet to the point or place of BEGINNING.

**BLOCK 670 LOT 27**

ALL THAT CERTAIN plot, piece or parcel of land, thereon erected, situate, lying and being in the First Ward of the Borough of Queens, County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point in the northwesterly side of 42nd Street (formerly known as 12th Avenue) distant 265 feet 6-3/4 inches northeasterly from the angle formed by the northwesterly side of 42nd Street, with the northerly side of Northern Boulevard (formerly known as Jackson Avenue) measured along the said northwesterly side of 42nd Street;

THENCE northwesterly at an angle of 89 degrees 56 minutes said line extending through the center of a party wall, 100 feet to the center line of the block between 41st Street (formerly 11th Avenue) and 42nd Street;

THENCE northeasterly along said center line of the block 60 feet;

THENCE southeasterly and parallel with the said first mentioned course and on the aforesaid angle of 89 degrees 56 minutes 100 feet to the said northwesterly side of 42nd Street and

THENCE southwesterly along said side of 42nd Street, 60 feet to the point or place of BEGINNING.

**BLOCK 670 LOT 30**

ALL THAT CERTAIN plot, piece or parcel of land, erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of 42nd Street, formerly 12th Avenue, distant 205.23 feet northeasterly from the angle formed by the intersection of said northwesterly side of 42nd Street with the northerly side of Northern Boulevard, formerly Jackson Avenue, measured along said northwesterly side of 42nd Street;

RUNNING THENCE northwesterly at an exterior angle of 89 degrees 56 minutes, said line extending through the center of a party wall 100 feet to the center line of the block between 41st Street, formerly 11th Avenue, and 42nd Street;

THENCE northeasterly along said center line of block and parallel with the said northwesterly side of 42nd Street, 60 feet;

THENCE southeasterly and parallel with said first mentioned course, said line extending through the center of a party wall, 100 feet to said northwesterly side of 42nd Street; and

THENCE southwesterly along said northwesterly side of 42nd Street, 60 feet to the point or place of BEGINNING.

**BLOCK 670 LOT 47**

ALL THAT CERTAIN plot, piece or parcel of land, erected, situate, lying and being in the First Ward of the Borough of Queens (formerly Long Island City), County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northeasterly side of Washington Avenue (now known as 36th Avenue) with the southeasterly side of 11th Avenue (now known as 41st Street);

RUNNING THENCE northeasterly along the southeasterly side of 11th Avenue, 157 feet 8 inches;

THENCE southeasterly parallel with Washington Avenue, and part of the distance through a party wall, 100 feet to the center line of the block between 11th Avenue and 12th Avenue (now known as 42nd Street);

THENCE southwesterly along the center line of the block 157 feet 8 inches to the northeasterly side of Washington Avenue;

THENCE northwesterly along the northeasterly side of Washington Avenue, 100 feet to the point or place of BEGINNING.

**EXHIBIT B**

**CERTIFICATION OF PARTIES-IN-INTEREST**

**(SEPARATE ATTACHMENT)**

**EXHIBIT B-1**

**FORM OF WAIVERS AND SUBORDINATION**

**(SEPARATE ATTACHMENT)**

**WAIVER OF EXECUTION OF LARGE-SCALE GENERAL DEVELOPMENT RESTRICTIVE DECLARATION AND SUBORDINATION OF INTEREST**

WHEREAS, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], having its principal place of business [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Party-In-Interest”), being a “party in interest” as defined in subdivision (f) of the definition of “zoning lot” as defined in Section 12-10 of the Zoning Resolution of the City of New York effective December 15, 1961, as amended (the “Zoning Resolution”) with respect to the land known as Block \_\_\_\_, Lot \_\_\_\_\_ on the Tax Map of the City of New York, County of Queens (collectively, the “Subject Property”), and as more particularly described on Schedule A annexed hereto and made a part hereof, which are known by, respectively, the street address [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Queens, New York, hereby:

1. Waives its right to execute that certain Declaration of Large-Scale General Development (the “Declaration”), dated [\_\_\_\_\_\_\_\_\_\_\_\_] between Kaufman BedRock Astoria I LLC and Silverstein Astoria LLC; and consents to the execution of the Declaration by Kaufman BedRock Astoria I LLC and Silverstein Astoria LLC;

2. Waives its right to execute any and all modifications, amendments, additions, replacements, restatements or consolidations of the Declaration (each individually, an “Amendment”, and collectively, “Amendments”), which the Party-In-Interest and its successors and assigns may now or hereafter have the right to execute;

3. Agrees that all of its right, title, and interest in the Subject Property shall, in all respects, be subject and subordinate to the Declaration and any Amendment or Amendments thereto; and

4. Without limiting the foregoing Sections 1 through 3, if requested by Kaufman BedRock Astoria I LLC and/or Silverstein Astoria LLC, or any of their heirs, legal representatives, successors or assigns (as the case may be), agrees to, within ten (10) Business Days after receiving such request from Kaufman BedRock Astoria I LLC and/or Silverstein Astoria LLC, or any of their heirs, legal representatives, successors or assigns (as the case may be) (i) execute, acknowledge and deliver one or more Amendments to the Declaration, (ii) execute, acknowledge and deliver a waiver of its right to execute one or more Amendments to the Declaration, and (iv) execute, acknowledge and deliver a consent and/or subordination to one or more Amendments to the Declaration.

This Waiver of Restrictive Declaration and Subordination of Interest shall be binding upon the Party-In-Interest and its heirs, legal representatives, successors and assigns.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed this Waiver of Restrictive Declaration and Subordination of Interest this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

 [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

STATE OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 ) ss.:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity and that by his/her/their signature(s) on the instrument, the individual, or the person upon behalf of which the individual(s) acted, executed the instrument.

 Notary Public

[Signature and Acknowledgement Page to Waiver of Restrictive Declaration and Subordination of Interest]

Schedule A

Description of the Subject Property

[to be inserted]

**EXHIBIT C**

**PLANS**

**(SEPARATE ATTACHMENT)**

**EXHIBIT D**

**FORM NOTICE OF SUBSTANTIAL COMPLETION**

[Letterhead of the Chair of the City Planning Commission]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

Re: Block \_\_\_\_\_, Lot \_\_\_\_\_, New York, New York

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

 This letter constitutes the Notice of Substantial Completion of the [particular Adjacent PAA] pursuant to Section 3 of the Restrictive Declaration made by [] dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ (the “Declaration”).

 By this notice, the undersigned, for the City Planning Commission, confirms that the [particular Adjacent PAA] (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

 Yours very truly,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]

**EXHIBIT E**

**FORM NOTICE OF FINAL COMPLETION**

[Letterhead of the Chair of the City Planning Commission]

[Date]

**NOTICE OF FINAL COMPLETION**

Re: Block \_\_\_\_\_, Lot \_\_\_\_\_, New York, New York

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

 This letter constitutes the Notice of Final Completion of [particular Adjacent PAA] pursuant to Section 3 of the Restrictive Declaration made by [] dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ (the “Declaration”).

 By this notice, the undersigned, for the City Planning Commission, confirms that the [particular Adjacent PAA] (as defined in the Declaration) has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

 Yours very truly,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]