

CITY COUNCIL  
LAND USE DIVISION

2018 OCT 31 A 10: 50



CITY PLANNING COMMISSION  
CITY OF NEW YORK

OFFICE OF THE CHAIR

NYC COUNCIL  
SPEAKER'S OFFICE  
RECEIVED

2018 OCT 31 A 10: 37

October 31, 2018

City Council  
City Hall  
New York, NY 10007

**Re: 69-02 Queens Boulevard Rezoning  
C 180267 ZSQ,  
C 180265 ZMQ, N 180266 ZRQ  
Borough of Queens**

Honorable Members of the Council:

The City Planning Commission (the "Commission") has received the attached correspondence, dated October 30, 2018, from the City Council regarding the proposed modifications, by the City Council and the private applicant, to the above-referenced application submitted by 69-02 Queens Blvd Woodside LLC for a zoning map amendment from an M1-1 District to an R7X District with a C2-3 overlay, a zoning text amendment to Appendix F to establish a Mandatory Inclusionary Housing Area, and a Zoning Special Permit for bulk modifications.

In accordance with Section 197-d(d) of the New York City Charter, the Commission, on October 31, 2018 has determined that the City Council's proposed modification raises no land use or environmental issues requiring further review.

Very truly yours,

A handwritten signature in blue ink that reads "Marisa Lago".

Marisa Lago  
Chair

cc: J. Young      D. DeCerbo      A. Laremont      R. Singer  
A. Wheeler      A. Fabre      W. Vidal      O. Abinader

Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Fl. - New York, N.Y. 10271  
(212) 720-3200  
[www.nyc.gov/planning](http://www.nyc.gov/planning)





**THE COUNCIL  
THE CITY OF NEW YORK  
LAND USE DIVISION  
250 BROADWAY - ROOM 1602  
NEW YORK NEW YORK 10007**

**RAJU MANN  
DIRECTOR**

**TEL.: 212-788-7335  
RMANN@COUNCIL.NYC.GOV**

October 30, 2018

Honorable Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31st Floor  
New York, NY 10271

**Re: Application No.: C 180267 ZSQ (L.U. 237)  
Related Applications No.: C 180265 ZMQ (L.U. 235),  
N 180266 ZRQ (L.U. 236)  
69-02 Queens Blvd**

Dear Chair Lago:

On October 24, 2018 the Land Use Committee of the City Council, by a vote 15-1-0 for Application **C 180267 ZSQ**, recommended modifications of the City Planning Commission's decision in the above-referenced matter. The modifications to the special permit relate to a reduction in the height and number of stories, and also reflect the applicant's revised proposal to include a school, as set forth on the proposed modified plans. The attached restrictive declaration will also be updated to reflect such changes to the project.

Pursuant to Section 197-d(d) of the City Charter and Section 11.70 of the Rules of the Council, I hereby file the proposed modifications with the Commission:

Matter ~~double-struck-out~~ is old, deleted by the City Council;  
 Matter double-underlined is new, added by the City Council;

1. The property that is the subject of this application (C 180267 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Perkins Eastman Architects, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
G-01	Cover Sheet & Drawing List	08/27/2018
Z-20	Zoning Analysis	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-30	Zoning Lot Site Plan	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-31	Enlarged Zoning Lot Site Plan	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-50	Waiver Plan - Roof Plan	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-51	Lot Coverage Plan	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-52	Required Yards Plan	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-60	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-61	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-62	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-63	Waiver Sections - East Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-64	Waiver Sections - East Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-65	Waiver Sections - Overall	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-66	Waiver Sections - Overall	<del>08</del> <u>10/27</u> <u>25/2018</u>
Z-67	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25/2018</u>

Honorable Marisa Lago, Chair  
Application No.: N 180267 ZSQ (L.U. No. 237)  
October 25, 2018  
Page 3 of 3

Z-101

Landscape Walkway Plan

08/27/2018

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4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, as such declaration has been modified by the Council, has been executed and recorded in the Office of the City Register, ~~New York County~~. Such restrictive declaration shall be deemed incorporated herein as a condition to this resolution.

Please feel free to contact me at (212) 482-5185 if you or your staff have any questions in this regard.

Sincerely,



Julie Lubin

General Counsel, Land Use

JL:mcs

RECEIVED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

C: Members, City Planning Commission  
Raju Mann, Director, Land Use Division  
Amy Levitan, Deputy Director  
Jeff Campagna, Esq., Deputy General Counsel  
Angelina Martinez-Rubio, Esq., Deputy General Counsel  
John Douglas, Project Manager  
Anita Laremont, Esq., DCP  
Danielle J. DeCerbo, DCP  
File



**EXHIBIT A**

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**

**QUEENS COUNTY**

Dated as of October 31, 2018

Block 2432, Lots 9, 21, 41, 44, and 50

**RECORD AND RETURN TO:**

Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, NY 10038  
Attention: Ross F. Moskowitz, Esq.

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

THIS DECLARATION, made as of this [insert day] of [month], [year] (the "Declaration"), by 69-02 QUEENS BLVD WOODSIDE LLC, a New York limited liability company, having a principal office at 825 Third Avenue, 37th Floor, New York, New York 10022 ("Declarant").

**WITNESSETH:**

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Queens, County of Queens, City and State of New York, designated for real property tax purposes as Block 2432, Lots 9, 21, 41, and 44, and Declarant is the contract vendee of certain real property located in the Borough of Queens, County of Queens, City and State of New York, designated for real property tax purposes as Block 2432, Lot 50, which real property (Block 2432, Lots 9, 21, 41, 44, and 50) is more particularly described in Exhibit A annexed hereto and made a part hereof (the "Subject Property");

WHEREAS, Declarant desires to improve the Subject Property as a "large-scale general development" pursuant to the requirements of Section 12-10 of the Zoning Resolution (Definition) definition of "large-scale general development" (such proposed improvement of the Subject Property hereinafter referred to as the "Large-Scale Development Project");

WHEREAS, in connection with the Large-Scale Development Project, Declarant has filed an application with the New York City Department of City Planning ("City Planning") for approval by New York City Planning Commission (the "Commission" or "CPC") of: (1) a Map Amendment to Zoning Map 9d to change a portion of the Subject Property from an M1-1 zoning district to an R7X/C2-3 zoning district, under Application No. C 180265 ZMQ; (2) a



Text Amendment to Appendix F of the Zoning Resolution to create a Mandatory Inclusionary Housing district at the Subject Property under Application No. N 180266 ZRQ; and (3) a Special Permit, pursuant to Zoning Resolution Section 74-743, to waive certain height regulations applicable to the Subject Property under Application No. C 180267 ZSQ (the "Large-Scale Special Permit") (collectively, the "Land Use Applications");

WHEREAS, the site plan for the Large-Scale Development Project, attached hereto as Exhibit C, designates a pedestrian walkway that is to be constructed and maintained by Declarant and accessible to the public as set forth in this Declaration (referred to herein as the "Public Walkway");

WHEREAS, in connection with the Land Use Applications, an Environmental Assessment Statement (the "EAS") was completed as part of City Environmental Quality Review ("CEQR") Application No. 18DCP132Q; that the EAS was performed pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et seq. and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq., and the regulations promulgated thereunder at 6 NYCRR Part 617 ("SEQRA"); that the EAS determined the Land Use Applications would not have a significant adverse impact on the environment;

WHEREAS, after CPC approved Declarant's Land Use Applications on September 5, 2018, Declarant modified its Large-Scale Development Project to include a school within the approved site plan and that certain project components related to the environment ("PCRE") are included to address the addition of a proposed school to the Subject Property (the "Modification");

WHEREAS, Declarant performed additional environmental review to determine the potential impacts of including a school in the Large-Scale Development Project and determined, as set forth in a technical memorandum dated October 30, 2018 that the Modification would not result in any new significant adverse impact on the environment and that the conclusions in the EAS previously performed remain applicable;

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;

WHEREAS, Kensington Vanguard National Land Services as agent for Old Republic National Title Insurance Company (the "Title Company") has certified in the certification (the "Certification") attached hereto as **Exhibit B:1** and made a part hereof, that as of October 31, 2018, Declarant, Amrmenian Culture Association of American, Inc., and Mortgagee(s) are the sole parties-in-interest (the "Parties-in-Interest") in the Subject Property, as such term is defined in the definition of "zoning lot" in Section 12-10 of the Zoning Resolution;

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

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including

land owned by the City, lying within a one-half-mile radius of the Subject Property.

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

**ARTICLE I**

**DEVELOPMENT AND USE OF THE SUBJECT PROPERTY**

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

1.2. Development of Large-Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large-Scale Special Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Perkins Eastman, approved as part of the Large-Scale Special Permit and annexed hereto in **Exhibit "C"** and made a part hereof (the "Plans"):

<u>Drawing. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
G-01	Cover Sheet & Drawing List	08/27/2018
Z-20	Zoning Analysis	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-30	Zoning Lot Site Plan	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-31	Enlarged Zoning Lot Site Plan	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-50	Waiver Plan - Roof Plan	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-51	Lot Coverage Plan	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-52	Required Yards Plan	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-60	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25</u> /2018
Z-61	Waiver Sections - West Tower	<del>08</del> <u>10/27</u> <u>25</u> /2018

Z-62	Waiver Sections - West Tower	<del>08_10/27_25/2018</del>
Z-63	Waiver Sections - East Tower	<del>08_10/27_25/2018</del>
Z-64	Waiver Sections - East Tower	<del>08_10/27_25/2018</del>
Z-65	Waiver Sections - Overall	<del>08_10/27_25/2018</del>
Z-66	Waiver Sections - Overall	<del>08_10/27_25/2018</del>
Z-67	Waiver Sections - West Tower	<del>08_10/27_25/2018</del>
Z-101	Landscape Walkway Plan	08/27/2018

## ARTICLE II

### PUBLIC WALKWAY

#### 2.1 Construction of the Public Walkway.

(a) Declarant shall construct the Public Walkway substantially in accordance with the specifications in Drawing No. [\_\_\_\_\_] of the Plans, attached hereto in Exhibit C.

(b) Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State, and Federal permits and approvals to fully construct the Public Walkway.

(c) Declarant shall not accept a Temporary or Permanent Certificate of Occupancy from the New York City Department of Buildings (“DOB”) for any of the residential units on the Subject Property until the Chairperson of the CPC (the “Chair”) certifies to Declarant and DOB that the Public Walkway is Substantially Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Public Walkway is Substantially Complete and shall request that the Chair issue a certification to Declarant and DOB certifying the Substantial Completion of the Public Walkway.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(c)(i) herein, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Public Walkway is not Substantially Complete and the items that need to be completed in order to determine that the Public Walkway is Substantially Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Substantial Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of the receipt of such notice, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Substantial Completion.

(iv) "Substantial Completion" or "Substantially Complete" shall mean that the Public Walkway has been constructed substantially in accordance with the Plans and has been completed to such an extent that all portions of the Public Walkway may be operated and made available for public use.

(d) Declarant shall not accept a Permanent Certificate of Occupancy from DOB for any of the residential units on the Subject Property until the Chair certifies to Declarant and DOB that the Public Walkway is Finally Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Public Walkway is Finally Complete and shall request that the Chair issue a certification to Declarant and DOB certifying the Final Completion of the Public Walkway.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(d)(i) herein, the Chair shall either: (A) issue a Notice of Final Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Public Walkway is not Finally Complete and the items that need to be completed in order to determine that the Public Walkway is Finally Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Final Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of receipt of such notice, the Chair shall either: (A) issue a Notice of Final Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Final Completion.

(iv) "Final Completion" or "Finally Complete" shall mean the constructed Public Walkway fully complies with all aspects of the Plans and that all items specified by the Chair, as incomplete, during the Substantial Completion review process were completed.

## 2.2 Public Access Easement.

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

(b) All liens, including but not limited to judgment liens, mortgage liens, mechanics' liens and vendees' liens, and all burdens, covenants, encumbrances, leases, licensees, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and easements, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Easement as herein defined in Article 2.2(a).

## 2.3 Hours of Access.

(a) The Public Walkway shall be open and accessible to the public each day during the hours of 6:00 a.m. to 10:00 p.m. all year.

(b) Declarant may only close the Public Walkway, in a manner that reduces the area closed to the utmost extent, in order to: (a) perform required maintenance, repairs, or replacements of the Public Walkway, or portions thereof, and shall notify the Chair of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Public Walkway; or (b) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under a the Public Walkway and shall notify the Chair of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Public Walkway; or (c) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in Article 2.3(c).

(c) In the event that the closure of the Public Walkway is required due to an emergency condition specified herein, Declarant shall notify the Chair 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 Chair 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 Public Walkway may be closed, pursuant to Article 2.3(b), 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 Public Walkway is required.

(d) In the event of a closure pursuant to Article 2.3(b), Declarant will close only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform the needed work in such a manner that the public will continue to have access to the Public Walkway.

2.4 Maintenance and Repair. Declarant shall be responsible for the maintenance and repair of the Public Walkway in accordance with the standards set forth herein (the “Maintenance and Repair Obligations”). All such maintenance shall be performed in a good and worker-like manner.

(a) Cleaning.

(i) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Public Walkway in clean, neat, and good condition.

(ii) All walkways, lighting and all other improvements and facilities installed in the Public Walkway shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.

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

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

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

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

(b) Landscape Maintenance. A maintenance program for the planted portions of the Public Walkway shall be established, consisting of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season."

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

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

- (bb) Remove all landscaping debris including leaves and dead branches;
- (cc) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- (dd) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;
- (ee) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
- (ff) Remove any sand deposited as a result of winter sandings;
- (gg) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;
- (hh) Reseed grassed areas as needed.

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

- (aa) Rake and collect leaves;
- (bb) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;

(cc) Apply commercially available nitrogen rich fertilizer to all lawn areas;

(dd) Reseed grassed areas as needed.

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

(aa) Inspect trees on a regular basis and spray when necessary;

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

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

(dd) Weed as needed, no less than on a bi-weekly basis.

(c) Repairs and Replacements. Declarant shall perform repairs and replacements as needed to maintain the Public Walkway in state of good repair and in compliance with the

specifications set forth in the Drawings. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the specifications set forth in the Drawings and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

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

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

(iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;

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

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

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

(vii) Construction Defects and Hazardous Conditions: Declarant shall periodically inspect the Public Walkway for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

2.5 Signage. Pursuant to Local Law 116 of 2018, the Public Walkway qualifies as a Privately Owned Public Space (“POPS”), and Declarant shall comply with any signage regulations therein promulgated by the New York City Department of City Planning regarding POPS.

### ARTICLE III

#### PROJECT COMPONENTS RELATED TO THE ENVIRONMENT

3.1 Declarant shall inform, in writing, the Division of Traffic Engineering and Planning of the New York City Department of Transportation (“DOT”) and City Planning six months prior to Declarant applying for Temporary Certificates of Occupancy, for the portions of the Large-Scale Development Project that will contain the proposed Modification, of the project’s construction status, for the purposes of implementing the agreed upon PCREs, which are:

- (a) At the intersection of Queens Boulevard and 69<sup>th</sup> Street:
  - (i) Reallocate four seconds of green time from the eastbound/westbound phase to northbound phase during the AM peak hour; and

(ii) Reallocate three seconds of green time from the eastbound/westbound phase to northbound phase and one second of green time from eastbound/westbound to southbound phase during afternoon peak hour.

(b) At the intersection of Queens Boulevard and 70th Street:

(i) Reallocate one second of green time from the eastbound/westbound phase to eastbound/westbound left-turn phase during the AM peak hour.

## **ARTICLE IVH**

### **DEFAULTS AND REMEDIES**

43.1 Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Section 3.3 herein. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the

Subject Property subject to the Large Scale Special Permit; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

43.2 Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the the Land Use Applications.

43.3 Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give Declarant, every mortgagee of all or any portion of the Property set forth in a recorded mortgage agreement (a "Mortgagee") and every Party in Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party in Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30)



day period, Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Article IV herein, and the right to cure shall apply equally to all Declarants.

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

#### **ARTICLE IV**

##### **MISCELLANEOUS**

54.1 **Representation.** Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation, or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a large-scale general development as set forth herein.

54.2 **Binding Effect.**

(a) The restrictions, covenants, rights, and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant 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.

(b) Notwithstanding anything to the contrary contained in this Declaration, in the event that any building or building segment in the Subject property is converted to a condominium form of ownership, any Affordable Housing Unit as defined herein shall not have any obligation for and shall not be subject to levy or execution for the Maintenance and Repair Obligations. An Affordable Housing Unit shall mean any residential unit of housing within any building on the Subject Property that is rented to "low income households" (as such term is defined in Section 23-911 of the Zoning Resolution) or "middle income households" (as such term is defined in Section 23-911 of the Zoning Resolution).

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

54.4 Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 4.3 above.

54.5 Offering Plan. In the event that cooperative or condominium units are offered for sale in any building on the Subject Property, a summary of the terms of this Declaration shall be included in any offering plan issued. Such offering plan shall clearly identify the rights and obligations pursuant to this Declaration of any cooperative or condominium that may be formed.

54.6. Property Owner's Association. In the event that the Subject Property becomes subject to condominium ownership, in order to perform Declarant's Maintenance and Repair Obligations with respect to the Public Walkway, Declarant shall cause to be organized, pursuant to Article V of this Declaration, a property owner's association (the "Association") upon the issuance of a Temporary Certificate of Occupancy for any building or building

segment on the Subject Property that is either: 1) governed by a condominium regime; 2) conveyed to a housing corporation to be governed by a cooperative regime; or 3) governed by such other legal regime which shall require the organization of a not-for-profit membership organization comprising homeowners (such date of required filing shall be referred to as the "Association Obligation Date").

54.7 Notice.

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

(i) if to Declarant:

to the address at the commencement of this Declaration

Attention: Director of Real Estate

with a copy to:

Stroock & Stroock & Lavan LLP

180 Maiden Lane

New York, New York 10038

Attention: Ross F. Moskowitz, Esq.

(ii) if to CPC:

New York City Planning Commission

120 Broadway, 31<sup>st</sup> Floor

New York, New York 10271

Attention: Chairperson

with a copy to:

the General Counsel of CPC at the same address

(iii) if to Mortgagee (or any future Mortgagee):

ConnectOne Bank

301 Sylvan Avenue

Englewood Cliffs, New Jersey 07632

Attention: Legal

or at the address provided in writing to CPC in accordance with this

Declaration

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

CPC shall be provided to all Declarants of whom CPC has notice.

(c) From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the City and DPR of its address for notice.

54.8 Applications.

(a) Declarant shall include a copy of this Declaration with any application made to DOB for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Large Scale Development Project subject to the Large-Scale Special Permit. Nothing in this Declaration herein shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Large-Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 54.8(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

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

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

## ARTICLE VI

### HOMEOWNERS ASSOCIATION

6.1 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, 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 fails to comply with the provisions of this Section 65.1, the City may proceed with any available enforcement measures.

6.2 Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant's Maintenance and Repair Obligations relating to the Public Walkway.

6.3 Members. The members of the Association (the "Association Members") shall consist of (a) the fee owners of any portion of the Subject Property other than any "Unit Interested Party," which shall be defined as owners, lessees, and occupants of any individual residential or commercial condominium unit, as well as all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit, and (b) the Boards of Managers of any portion of the Subject Property which is subject to a declaration of condominium.

6.4 Powers. To the extent permitted by law, Declarant shall cause the Association to be established with all such powers and authority as may be provided by law, including the power and authority to:

(a) impose fees or assessments against the Association Members, for the purpose of collecting funds 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 Article III; and

(d) 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.

6.5 Successors. Every deed conveying title to, or a partial interest in, the Subject Property, other than a deed to an Affordable Housing Unit, every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, 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 (i) 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 (ii) the



obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Subject Property in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

6.6 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 Maintenance and Repair Obligations and for any other 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 who are the Boards of Managers of a Condominium, a reasonable basis for such proration shall be conclusively established if the New York State Attorney General accepts for filing an offering plan for the sale of interests in such Condominium, as applicable, which plan describes such proration. The Boards of Managers of each Condominium shall collect such assessments from the owners of individual residential or commercial units ("Unit Owners," or each, individually, a "Unit Owner"), other than the Affordable Housing Units, for delivery to the Association in accordance with the condominium declarations.

(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 by the Association Member against which each such assessment is made, except that if the Association Member is the Board of Managers of a Condominium, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of such Condominium for unpaid common charges of the Condominium. The periodic assessments charged to an Association Member which is the Board of Managers of 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 Subject Property, thereby agrees to the provisions of this Section 65.6. Any Unit Owner may eliminate the Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association

to the Condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Walkway or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments shall end upon the valid sale or transfer of such Unit Owner's interest in the Subject Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) It is expressly understood that Association Members, who may be assessed for the operation, maintenance, and repair of the Public Walkway shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or portion thereof, or (iii) any single building to be built on the Subject Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Subject Property 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 a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under applicable law 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 V until the mortgagee or lien holder succeeds to such Possessory Interest.

## ARTICLE VII

### AMENDMENT, MODIFICATION, AND CANCELLATION

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

76.2 Notwithstanding anything to the contrary contained in Section 76.1 hereof, the Chair may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of the CPC.

76.3 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 as defined herein 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. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, and each and every Unit Interested Party, as defined herein, 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.

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

**69-02 QUEENS BLVD WOODSIDE LLC**

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By:  
Name:  
Title:

**ACKNOWLEDGEMENT**

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.

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Notary Public

**Exhibit A**

Description of the Subject Property

**Exhibit B:1**

Certification of Parties-in-Interest



**Exhibit B:2**

Waiver and Subordination Agreement(s)

**Exhibit C**

Plans