

Speaker  
Office

CITY COUNCIL  
LAND USE DIVISION



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CITY PLANNING COMMISSION  
CITY OF NEW YORK

OFFICE OF THE CHAIR

November 13, 2019

City Council  
City Hall  
New York, NY 10007

Re: Peninsula Hospital Redevelopment Plan  
C 190251 MMQ  
C 190325 ZMQ  
N 190364 ZRQ  
C 190366 ZSQ  
C 190375 ZSQ  
Borough of Queens

Honorable Members of the Council:

The City Planning Commission (the "Commission") has received the attached correspondence, dated November 12, 2019, regarding the proposed modifications by the City Council and the separate revisions by the applicant (Peninsula Rockaway Limited Partnership) to the above-referenced application.

In accordance with Section 197-d(d) of the New York City Charter, the Commission, on November 13, 2019, has determined that the City Council's proposed modifications raise no land use or environmental issues requiring further review.

Very truly yours,

Kenneth J. Kruckles, Esq.  
Vice Chair

- |    |             |            |             |          |
|----|-------------|------------|-------------|----------|
| c: | D. DeCerbo  | S. Amron   | J. Young    | W. Vidal |
|    | A. Laremont | R. Singer  | A. Wheeler  | H. Saleh |
|    | O. Abinader | S. Everett | D. McCarthy |          |

Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Fl. - New York, N.Y. 10271-3100  
(212) 720-3200  
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THE COUNCIL  
THE CITY OF NEW YORK  
LAND USE DIVISION  
250 BROADWAY - ROOM 1602  
NEW YORK NEW YORK 10007

RAJU MANN  
DIRECTOR

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November 12, 2019

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

**Re: Application Nos.: N 190364 ZRQ (L.U. No. 551), C 190366 ZSQ (L.U. No. 552),  
C 190375 ZSQ (L.U. No. 553)  
Related Application Nos.: C 190325 ZMQ (L.U. No. 550)  
C 190251 MMQ (L.U. No. 554)**

**Peninsula Hospital Redevelopment Plan**

Dear Chair Lago:

On November 12, 2019 the Land Use Committee of the City Council, by a vote of 16-0-0 for Applications **N 190364 ZRQ, C 190366 ZSQ, and C 190375 ZSQ**, recommended modifications of the City Planning Commission's decision in the above-referenced matters.

The modification to the special permits is a height reduction, as shown on the modified plans. The modified plans separately reflect revisions by the applicant regarding floor area and dwelling unit count.

The attached restrictive declaration will also be modified to reflect the new drawing dates, as well as additional modifications shown in double underline and double strikethrough.

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

**N 190364 ZRQ (L.U. No. 551)**

Matter underlined is new, to be added;  
Matter ~~strikethrough~~ is to be deleted;  
Matter within # # is defined in Section 12-10;  
Matter ~~double struck out~~ is old, deleted by the City Council;

Matter double-underlined is new, added by the City Council  
\* \* \* indicates where unchanged text appears in the Zoning Resolution

\* \* \*

**Article VII  
ADMINISTRATION**

**Chapter 4  
Special Permits by the City Planning Commission**

\* \* \*

**74-74  
Large-Scale General Development**

\* \* \*

**74-744  
Modification of use regulations**

- (a) #Use# modifications  
(1) Waterfront and related #commercial uses#

\* \* \*

- (2) Automotive sales and service #uses#

\* \* \*

- (3) Retail establishments

\* \* \*

- (4) #Physical culture or health establishments#

For a #large-scale general development# located within an #MIH site#, in a C4 District within Queens Community District 14, #physical culture or health establishments# shall be permitted as-of-right. The special permit provisions of Section 73-36 (Physical Culture or Health Establishments) shall not apply.

\* \* \*

**APPENDIX F  
Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas**

\* \* \*

**Queens**

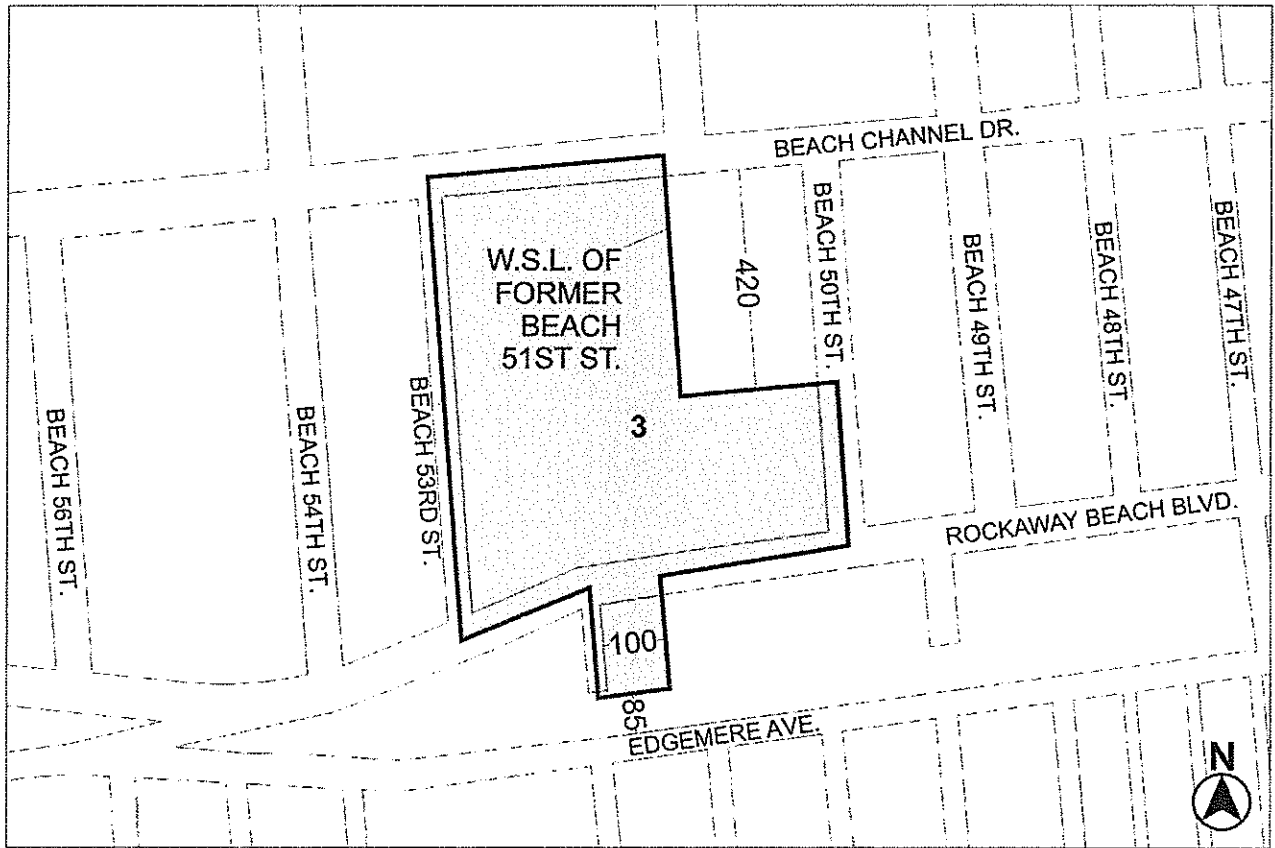
Honorable Marisa Lago, Chair  
Application Nos.: N 190364 ZRQ, C 190366 ZSQ, and C 190375 ZSQ  
November 12, 2019  
Page 3 of 5

\* \* \*

**QUEENS Community District 14**

\* \* \*

Map 3 – [date of adoption]



Mandatory Inclusionary Housing area (see Section 23-154(d)(3))

Area 3 – [date of adoption], MIH Program Option 1 ~~and Option 2~~

Portion of Community District 14, Queens

\* \* \*

Honorable Marisa Lago, Chair

Application Nos.: N 190364 ZRQ, C 190366 ZSQ, and C 190375 ZSQ

November 12, 2019

Page 4 of 5

**C 190366 ZSQ (L.U. No. 552)**

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 190366 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specification and zoning computation indicated on the following approved plans, prepared by Aufgang Architects and terrain-nyc landscape architecture pc, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	<del>09/23</del> <u>11/12/2019</u>
Z-100.00	Zoning Lot Site Plan	<del>05/06</del> <u>11/12/2019</u>
Z-110.00	Waiver Plan	<del>05/06</del> <u>11/12/2019</u>
Z-111.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
Z-112.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
Z-113.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
L-100	Pedestrian Plaza Plan	05/06/2019
L-200	Pedestrian Plaza Planting Plan	05/06/2019
L-201	Pedestrian Plaza Planting Details	05/06/2019
L-300	Pedestrian Plaza Seating Plan	05/06/2019
L-301	Pedestrian Plaza Seating Details 1	05/06/2019
L-302	Pedestrian Plaza Seating Details 2	05/06/2019
L-303	Pedestrian Plaza Seating Parts Plan	05/06/2019
L-400	Pedestrian Plaza Grading and Paving Plan	05/06/2019
L-401	Pedestrian Plaza Grading and Paving Details	05/06/2019
L-500	Pedestrian Plaza Photometric Plan	05/06/2019
L-501	Pedestrian Plaza Lighting Cut Sheet	05/06/2019
L-600	Pedestrian Plaza Signs and Site Furnishing Details	05/06/2019
L-601	Pedestrian Plaza Play Area Part Plan	05/06/2019
L-602	Pedestrian Plaza Sections	05/06/2019

**C 190375 ZSQ (L.U. No. 553)**

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

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

Honorable Marisa Lago, Chair

Application Nos.: N 190364 ZRQ, C 190366 ZSQ, and C 190375 ZSQ

November 12, 2019

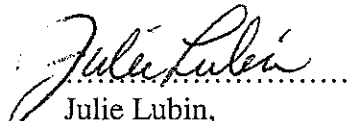
Page 5 of 5

1. The property that is the subject of this application (C 190375 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specification and zoning computation indicated on the following approved plans, prepared by Aufgang Architects and terrain-nyc landscape architecture pc, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	<del>09/23</del> 11/12/2019
Z-100.00	Zoning Lot Site Plan	<del>05/06</del> 11/12/2019
Z-120.00	Signage Details	<del>05/06</del> 11/12/2019

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

JL:mcs

RECEIVED BY: 

DATE: Nov, 12 2019

TIME: 3:00 PM

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

**COUNCIL MODIFICATIONS**

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**

Dated as of \_\_\_\_\_, 201[ ]

**QUEENS COUNTY**

~~Block 15842, Lot 1~~  
Block 15843, Lot 1 and  
Block 15857, Lot 1

**RECORD AND RETURN TO:**

Akerman LLP  
666 Fifth Avenue, 20<sup>th</sup> Floor  
New York, NY 10103

Attention:

## COUNCIL MODIFICATIONS



**COUNCIL MODIFICATIONS**

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**COUNCIL MODIFICATIONS**

## COUNCIL MODIFICATIONS

### SCHEDULE OF EXHIBITS

EXHIBIT A	DESCRIPTION OF SUBJECT PROPERTY
EXHIBIT B	CERTIFICATION OF PARTIES IN INTEREST
EXHIBIT C	SITE PLAN
EXHIBIT D	FORM OF NOTICE OF SUBSTANTIAL COMPLETION
EXHIBIT E	FORM OF NOTICE OF FINAL COMPLETION
EXHIBIT F-1	PROJECT COMPONENTS RELATED TO THE ENVIRONMENT <ul style="list-style-type: none"><li>• CONSTRUCTION AIR QUALITY</li><li>• CONSTRUCTION NOISE</li></ul>
EXHIBIT F-2	MITIGATION MEASURES <ul style="list-style-type: none"><li>• CONSTRUCTION &amp; OPERATIONAL TRANSPORTATION</li><li>• OPERATIONAL AIR QUALITY</li><li>• CONSTRUCTION NOISE</li></ul>
EXHIBIT G	PROJECT PHASING DIAGRAM
EXHIBIT H	PRIVATE STREET NETWORK TEMPORARY AND PERMANENT DESIGN DRAWINGS

## COUNCIL MODIFICATIONS

### DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

**THIS DECLARATION** (the “**Declaration**”), dated as of \_\_\_\_\_, 2019, by **PENINSULA ROCKAWAY LIMITED PARTNERSHIP**, a New York State limited partnership having an address c/o The Arker Companies, 1044 Northern Boulevard, Roslyn, New York 11576 (the “**Declarant**”).

#### **WITNESSETH:**

**WHEREAS**, Peninsula Rockaway Housing Development Fund Corp., a New York not-for-profit corporation, (the “**Nominee**”) is the nominal fee owner of the premises located in the Borough of Queens, County of Queens, City of New York, and State of New York, designated for real property tax purposes as (a) ~~Block 15842, Lot 1 and~~ Block 15843, Lot 1 (“**Parcel 1**”) and (b) Block 15857, Lot 1 (“**Parcel 2**”) on the Tax Map of the City of New York, which real property is more particularly described in attached Exhibit A (Parcel 1 and Parcel 2 are collectively referred to as the “**Subject Property**”);

**WHEREAS**, pursuant to that certain Declaration of Interest and Nominee Agreement dated as of May 5, 2016, and recorded as CRFN 2016000172286 by and between Declarant and Nominee, Nominee has granted to Declarant all equitable and beneficial interests in 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 of a “large scale general development” (such proposed improvement of the Subject Property hereinafter referred to as the (“**Large-Scale Development Project**”));

**WHEREAS**, Declarant intends that the Large-Scale Development Project will contain eleven (11) new residential, community facility, and commercial buildings that will contain affordable and moderate-income housing that incorporate sustainability and resiliency features on the Subject Property;

**WHEREAS**, Declarant intends to develop the Large-Scale Development Project in five phases, as set forth in Exhibit G;

**WHEREAS**, the Site Plan, as defined herein, for the Large-Scale Development Project includes a Private Street Network, attached as Exhibit H to provide for a better site plan and facilitate improved circulation within the superblock and in the neighborhood (the “**Private Street Network**”);

**WHEREAS**, Declarant intends to construct the Private Street Network in five phases, and all interim and final segments of the Private Street Network will be publicly accessible and privately maintained as set forth in this Declaration;

**WHEREAS**, the Site Plan for the Large-Scale Development Project, attached as Exhibit C, designates a portion of the Subject Property as Publicly Accessible Area that is to be constructed

## COUNCIL MODIFICATIONS

and maintained by Declarant and accessible to the public as set forth in this Declaration (the “Publicly Accessible Area” or “PAA”);

**WHEREAS**, in connection with the Large-Scale Development Project, Declarant filed an application with the New York City Department of City Planning (“DCP”) for approval by New York City Planning Commission (the “Commission” or “CPC”) of: (1) a zoning map amendment to rezone Parcel 1 from an R5 and R5/C1-2 zoning districts to a C4-4 zoning district and Parcel 2 from a C8-1 to a C4-3A zoning district under Application No. 190325 ZMQ; (2) zoning text amendments under Application No. 190364 ZRQ to designate the Subject Property a Mandatory Inclusionary Housing area and permit a physical culture establishment as-of-right; (3) a special permit, pursuant to Zoning Resolution Section 74-743 to waive applicable yard requirements and height and setback regulations under Application No. 190366 ZSQ (the “Large-Scale Special Permit”); (4) a special permit, pursuant to Zoning Resolution Section 74-744(c)(1) to allow signage that exceeds the surface area requirements under Application No. 190375 ZSQ; and (5) a City Map amendment to map a portion of Beach 52<sup>nd</sup> Street under Application No. 190251 MMQ (collectively referred to as the “Land Use Applications”);

**WHEREAS**, the Commission acting as lead agency for the City Environmental Quality Review Application No. 18DCP124Q conducted an environmental review of the Land Use Applications 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 issued a Notice of Completion for the Final Environmental Impact Statement (the “FEIS”) prepared the Land Use Applications on September 13, 2019;

**WHEREAS**, at the time of the Commission’s Approval of the Land Use Applications the Commission found, as required pursuant to SEQRA, that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the decision certain project components related to the environment (“PCREs”) and those Mitigation Measures, as defined herein, that were identified in the FEIS as practicable;

**WHEREAS**, to ensure that the development of the Subject Property pursuant to the Final Approval, as defined herein, is consistent with the analysis in the FEIS upon which the Commission has made its findings and that the development of the Subject Property incorporates certain PCREs and Mitigation Measures for potential significant adverse environmental impacts as conditions of the Commission’s decision on the Land Use Applications, Declarant has agreed to restrict the development, operation, use, and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration;

**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;

## COUNCIL MODIFICATIONS

**WHEREAS**, pursuant to the certificate attached as Exhibit B:1 (the "**Title Company**") has certified that, as of the date of this Declaration, Declarant, Nominee and Wells Fargo Bank, N.A. 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 have either executed this Declaration or waived their rights to execute this Declaration by written instrument attached as Exhibit B:2, which instrument is intended to be recorded simultaneously with this Declaration;

**WHEREAS**, Declarant desires, on the terms and conditions herein, to restrict the manner in which the Subject Property may be developed, redeveloped, maintained, and operated now and in the future and intends these restrictions to benefit the Subject Property and all the land lying within a one-half mile radius of the Subject Property; and

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

### ARTICLE I

#### CERTAIN DEFINITIONS

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

**Adjustments** shall have the meaning set forth in Section 5.4(a).

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

**Applicable Law** shall mean all presently existing or hereafter enacted laws, orders, ordinances, rules, regulations and requirements of all federal, state, municipal, and local governments and their departments, agencies, commissions, boards, and officers, and any other governmental agency applicable to or having appropriate jurisdiction over the Subject Property or any portion thereof.

**Approval** shall mean approval of the Land Use Applications by the Commission relating to the Large-Scale Development Project or otherwise with respect to the Subject Property.

**Association** shall have the meaning set forth in Section 10.1 of this Declaration.

**Assessment Property** shall have the meaning set forth in Section 10.5.

**Association Members** shall have the meaning set forth in Section 10.3.

**Association Obligation Date** shall have the meaning set forth in Section 10.1.

**Board** shall have the meaning set forth in Section 9.1.

**Building** or **Buildings** shall mean any one of the buildings shown on the Site Plan or all such buildings, as the context shall require.

## COUNCIL MODIFICATIONS

**“Building Permit”** shall mean the issuance of any permit by DOB whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property; (ii) a foundation permit, authorizing foundation work at the Subject Property; (iii) a demolition permit, authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof; (iv) a New Building Permit, as defined herein; or (v) any other permit normally associated with the development of a building.

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

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

**“Chairperson”** shall mean the Chair of the Commission from time to time or any successor to the jurisdiction thereof.

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

**“City Council”** shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

**“Commission”** or **“CPC”** shall have the meaning given in the Recitals to this Declaration.

**“Construction Commencement”** shall mean the issuance of the first Building Permit by DOB to Declarant for the commencement of work to develop the Subject Property, in whole or in part, regarding the Large-Scale Development Project or any portion thereof.

**“Coop/Condominium”** shall have the meaning set forth in Section 9.1(a).

**“Condominium Obligation Date”** shall have the meaning set forth in Section 9.1(a).

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

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

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

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



## COUNCIL MODIFICATIONS

“**Delay Notice**” shall have the meaning set forth in Section 6.3 of this Declaration.

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

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

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

“**DPR**” shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

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

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

“**FDNY**” shall mean the New York City Fire Department or any successor to its jurisdiction.

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

“**FEIS Requirement**” shall mean any measure set forth in the FEIS that is required in order for the Commission to find in the Commission’s Approval of the Land Use Applications that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the Approval PCREs and those Mitigation Measures that were identified in the FEIS as practicable.

“**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 or approving with modifications 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.

## COUNCIL MODIFICATIONS

“**Final Completion**” or “**Finally Complete**” shall mean the completion of all relevant items of work that remain to be completed after Substantial Completion.

“**Final Street Network Plan**” shall mean plans of the complete Private Street Network and all Street Network Phases, which conform to the standards set by DOB for Builders Pavement Plans.

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

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

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

“**Land Use Applications**” shall have the meaning set forth in the Recitals to this Declaration.

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

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

“**Maintenance Obligations**” shall refer to the totality of Declarant’s obligations and consist of both of the PAA Maintenance Obligation and the Street Maintenance Obligation.

“**Maintenance and Protection of Traffic Plan**” or “**MPT**” shall have the meaning set forth in Section 5.1(c).

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

## COUNCIL MODIFICATIONS

**“Modification of Mitigation Measure”** shall have the meaning set forth in Section 5.9.

**“Monitor”** shall mean the environmental monitor hired to ensure compliance with the PCREs set forth in Article V.

**“Monitor Agreement”** shall mean the agreement between the Declarant and Monitor as set forth in Section 6 1(c)

**“Mitigation Measure”** shall mean the measures set forth in Article V and Exhibit F1-F2 that are required to mitigate the significant adverse impacts identified in the FEIS.

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

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

**“New Building Permit”** shall mean the issuance of a permit by DOB in the form a “New Building” Job type authorizing construction of a new Building.

**“New York City Charter”** shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

**“Notice of Final Completion”** shall have the meaning set forth in Section 6.4 of this Declaration.

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

**“Offering Plan”** shall have the meaning set forth in Section 9.2.

**“Open Space Mitigation Measure”** shall mean the measures set forth in Article V of this Declaration that are required to partially mitigate the significant adverse impacts on active open space identified in the FEIS.

**“Open Space Mitigation Notice”** shall have the meaning set forth in Section 5.2(c).

**“Open Space Mitigation Interested Parties”** shall mean DPR and DCP.

**“Operational Air Quality Mitigation Measure”** shall mean the measures set forth in Article V of this Declaration that are required to mitigate the significant adverse impacts on air quality identified in the FEIS.

**“Operational Specifications”** shall have the meaning set forth in Section 4.5 of this Declaration.

## COUNCIL MODIFICATIONS

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

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

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

“**Private Street Network**” shall have the meaning set forth in the Recitals.

“**Project Components Related to the Environment**” or “**PCRE**” shall mean the measures set forth in Article V of this Declaration that are identified in the FEIS as components of the Large-Scale Development Project that are required to avoid impacts to the environment.

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

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

“**Possessory Interest**” shall have the meaning set forth in Section 10.5(d).

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

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

“**PAA Maintenance Obligation**” shall have the meaning set forth in Section 3.4 of this Declaration.

“**Phase**” shall mean any of the phases shown in the Phasing Diagram attached as Exhibit G.

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

“**School Mitigation Measure**” shall mean the measures set forth in Article V of this Declaration that are required to partially mitigate the significant adverse impacts on public elementary and intermediate schools identified in the FEIS.

“**School Mitigation Notice**” shall have the meaning set forth in Section 5.3(d).

“**School Mitigation Interested Parties**” shall mean SCA and DOE.

“**Scope of Work**” shall have the meaning set forth in Section 5.4(b).

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

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

## COUNCIL MODIFICATIONS

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

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

“**Substantial Completion**” or “**Substantially Complete**”, with respect to the Publicly Accessible Area, shall mean that such Publicly Accessible Area has been constructed substantially in accordance with the Site Plan, as 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 improvement may 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. With respect to segments of the Private Street Network, Substantial Completion or Substantially Complete shall mean that the street segments associated with a Street Network Phase, as defined herein, have been constructed substantially in accordance with the Street Final Plan and have been completed to such an extent that the street segments may be operated and made available for public use, notwithstanding minor or insubstantial items of construction, planting, or street furniture.

“**Street Easement**” shall have the meaning set forth in Article IV of this Declaration.

“**Street Maintenance Obligation**” shall have the meaning set forth in Article IV of this Declaration.

“**Street Network Phase**” shall mean any of the phases shown in the Private Street Network Phasing Diagram attached as Exhibit H.

“**Successor Declarant**” shall have the meaning set forth in Section 9.1(b).

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

“**Title Company**” shall mean a title insurance company licensed to do business by the State of New York.

“**Transportation Mitigation Measure**” shall mean the measures set forth in Article V of this Declaration that are required to partially mitigate the significant adverse impacts on transportation identified in the FEIS.

“**Unit Interested Party**” shall have the meaning set forth in Section 9.1.

“**Zoning Resolution**” shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

## COUNCIL MODIFICATIONS

### ARTICLE II

#### DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

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

2.2 Development of Large-Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large-Scale Special Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Aufgang Architects, Terrain-NYC Landscape, and PHT Lighting Design Inc., approved as part of the Large-Scale Special Permit and attached in Exhibit "C" and made a part hereof (the "Site Plan"):

#### C 190366 ZSQ

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	<del>09/23</del> <u>11/12/2019</u>
Z-100.00	Zoning Lot Site Plan	<del>05/06</del> <u>11/12/2019</u>
Z-110.00	Waiver Plan	<del>05/06</del> <u>11/12/2019</u>
Z-111.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
Z-112.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
Z-113.00	Waiver Section	<del>05/06</del> <u>11/12/2019</u>
L-100	Pedestrian Plaza Plan	05/06/2019
L-200	Pedestrian Plaza Planting Plan	05/06/2019
L-201	Pedestrian Plaza Planting Details	05/06/2019
L-300	Pedestrian Plaza Seating Plan	05/06/2019
L-301	Pedestrian Plaza Seating Details 1	05/06/2019
L-302	Pedestrian Plaza Seating Details 2	05/06/2019
L-303	Pedestrian Plaza Seating Parts Plan	05/06/2019
L-400	Pedestrian Plaza Grading and Paving Plan	05/06/2019
L-401	Pedestrian Plaza Grading and Paving Details	05/06/2019
L-500	Pedestrian Plaza Photometric Plan	05/06/2019
L-501	Pedestrian Plaza Lighting Cut Sheet	05/06/2019

## COUNCIL MODIFICATIONS

L-600	Pedestrian Plaza Signs and Site Furnishing Details	05/06/2019
L-601	Pedestrian Plaza Play Area Part Plan	05/06/2019
L-602	Pedestrian Plaza Sections	05/06/2019

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### C 190375 ZSQ

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	<del>09/23</del> <u>11/12/2019</u>
Z-100.00	Zoning Lot Site Plan	<del>05/06</del> <u>11/12/2019</u>
Z-120.00	Signage Details	<del>05/06</del> <u>11/12/2019</u>

2.3 Submission of As-Built Drawings. Following the issuance of a Permanent Certificate of Occupancy for a Building, as-built drawings for the Building, associated segments of the Private Street Network, and the PAA, if applicable, shall be submitted to DCP. The as-built drawings shall include the following: Declarant's company name, address and telephone number, Subject Property's address, drawing date, the word "As-Built", and Declarant's signature.

### ARTICLE III

#### PUBLICLY ACCESSIBLE AREA

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

(a) Declarant shall construct the Publicly Accessible Area substantially in accordance with the specifications in Drawing No. L-100-602 of the Site Plan attached 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 Accessible Area.

(c) Declarant shall not accept a Temporary or Permanent Certificate of Occupancy, as set forth in Article VI, for Building E2 in Phase 4, as shown in Exhibit G, until the Chairperson has determined that the PAA is Substantially Complete.

##### 3.2 PAA Easement.

(a) Immediately upon the certification of Substantial Completion, Declarant grants the City and the general public a permanent, perpetual access easement over the entirety of the Publicly Accessible Area, subject to the terms of this Declaration, unobstructed from the surface of the Publicly Accessible Area to the sky, for the purposes of (i) passive recreational use by the general public and (ii) pedestrian access (the "PAA 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 PAA Easement as herein defined in Article 3.2(a).



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### 3.3 Hours of Access.

(a) The Publicly Accessible Area shall be open and accessible to the public each day of the week between 6:00 am to 10:00 pm all year.

(b) Declarant may close the Publicly Accessible Area in order to: (i) perform required maintenance, repairs, or replacements of the Publicly Accessible Area, or portions thereof, and shall notify the Chairperson of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Area; (ii) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under the Publicly Accessible Area and shall notify the Chairperson of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Area; or (iii) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in this Article, III.

(c) In the event that the closure of the Publicly Accessible Area is required due to an emergency condition specified herein, Declarant shall notify the Chairperson of such closing and its expected duration as soon as practicable but in no event more than two (2) business days after such closure. The notice to the Chairperson shall further specify which portion has been closed and describe the nature of the emergency or hazardous condition causing the closure. Emergency conditions for which the Publicly Accessible Area may be closed, pursuant to Article 3.3(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 Publicly Accessible Area.

(d) In the event of a closure, pursuant to this Article, III, Declarant shall only close those portions of such areas which must or should reasonably be closed to effectuate the repairs or remediation, shall 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 shall, wherever reasonably possible, perform the needed work in such a manner that the public will continue to have access to the Publicly Accessible Area.

3.4 Maintenance and Repair. Declarant shall be solely responsible for the maintenance and repair of the PAA, and all such maintenance shall be performed in a good and worker-like manner (the "**PAA Maintenance Obligation**"). The PAA Maintenance Obligation shall include but not limited to the following:

(a) Cleaning.

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

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

(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 PAA 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;

## COUNCIL MODIFICATIONS

- (gg) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size; and
- (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; and
  - (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;
  - (aa) 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;
  - (bb) 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; and
  - (cc) 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 Publicly Accessible Area in state of good repair and in compliance with the specifications set forth in the Site Plan. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the specifications set forth in the Site Plan and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

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- (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 Publicly Accessible Area for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

3.5 Signage. Pursuant to Local Law 116 of 2018, the Publicly Accessible Area qualifies as a Privately Owned Public Space (“POPS”), and Declarant shall provide signage in accordance with the Site Plan.

3.6 Private Easement. Notwithstanding the provisions of this Article, III, the private easement, for the benefit of Peninsula General Nursing Home Corp. dated 3/12/1971 and recorded 3/16/1971 in Reel 465 Page 647, located within the Large-Scale Development Project shall be maintained open and unobstructed as a right of way for vehicular access throughout Development and upon the completion of the Large-Scale Development Project in accordance with the terms of the recorded easement.

## ARTICLE IV

### PRIVATE STREET NETWORK

#### 4.1 Design and Construction.

(a) Declarant shall, at its sole cost and expense, construct the Private Street Network, for the purpose of providing public pedestrian and general vehicular access, in accordance with an

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approved Final Street Network Plan that is consistent with the plans set forth in Exhibit H and which conforms to DOT and FDNY standards.

(b) Declarant may construct the Private Street Network in five phases as set forth in Exhibit H. If Declarant elects to build the Private Street Network in phases, Declarant shall construct the street segments within each Phase in accordance with the approved Final Street Network Plan for such Phase. As a condition precedent to applying for Building Permits for any Phase, the Chairperson must certify to DOB that a Final Street Network Plan has been submitted for the segment of the Private Street Network within such Phase (the “**Street Phasing Certification**”).

(c) 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 Private Street Network.

(d) Declarant shall not accept a Temporary or Permanent Certificate of Occupancy, as set forth in Article VI, for a Building within any Phase until the Chairperson has determined that the segment of the Private Street Network within such Phase is Substantially Complete.

4.2 **Street Easement.** The Private Street Network and any Substantially Completed Street Network Phase shall be accessible to the public at all times, except when required to be closed for repairs and in order to preserve private ownership in accordance with Section 4.7. Declarant grants to the City and general public a permanent, perpetual, and non-exclusive public access easement overall and any portion of the roadbed and sidewalks of the Private Street Network for public pedestrian and general vehicular use, subject to the terms and conditions of this Declaration, which shall be effective from and after Substantial Completion of all or any segment of the Private Street Network (the “**Street Easement**”). Notice of the of the Street Easement, which form must be approved by DCP, shall be separately recorded against the Subject Property to facilitate awareness of the public’s right of way.

4.3 **Liens.** Declarant agrees that liens, including but not limited to judgment liens, mortgage liens, mechanics liens, and vendees’ liens, shall be subject and subordinate to the rights, claims, entitlements, interests, and priorities created by the Street Easement.

4.4 **Use and Floor Area.** The Private Street Network, and each segment thereof, shall only be used for the purpose set forth in Section 4.1(a), unless otherwise approved by the City. In no event shall any structure or building be constructed on or above any segment of the Private Street Network, as otherwise shown in the Site Plan. Neither shall any excavation below the Private Street Network be authorized as otherwise shown in the Site Plan and approved by the City, except for the purposes of installing, repairing, or maintaining utilities, water, sewer, and drainage infrastructure. However, the Private Street Network shall not be deemed to reduce the floor area (as defined in the Zoning Resolution) that may be developed on the Subject Property.

4.5 **Operational Requirements.** Declarant shall maintain the Private Street Network in full compliance with approved operational specifications, which shall include but not be limited to traffic control devices and parking regulations (the “**Operational Specifications**”). As part of

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the Street Phasing Certification, the Chairperson, in consultation with DOT, shall approve the Operational Specifications for the subject Street Network Phase. To ensure compliance with the Operational Specifications, Declarant's management company shall monitor and inspect daily all improved segments of the Private Street Network, for unlawful parking and cleanliness. The Declarant shall also retain a towing company to promptly remove any illegally parked vehicles. As a condition precedent to the issuance and acceptance of a TCO for any Building, Declarant shall execute agreements with a management company and a towing company, and the services provided in the agreements shall commence no later than the date on which the first TCO for the Large-Scale Development Project is issued.

4.6 Street Maintenance Obligation. Declarant shall be solely responsible for monitoring the use of the Private Street Network and maintaining all Substantially Completed segments of the Private Street Network in a state of good repair and cleanliness (the "**Street Maintenance Obligation**"). The Street Maintenance Obligation shall include but not be limited to the following:

- (a) Maintaining the paved surfaces in good repair;
- (b) Monitoring street usage and compliance with the Operational Specifications;
- (c) Maintaining streetlights;
- (d) Clearing snow from the street at such times as the accumulated snowfall in any 12-hour period exceeds two inches;
- (e) Maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner;
- (f) Maintaining signage indicating that the Private Street Network is privately owned and maintained; and
- (g) Maintaining the traffic control devices and road markings as specified in the Operational Specifications.

4.7 Closure of Private Street Network. Notwithstanding Section 4.2, Declarant may close all or any portion of the Private Street Network either: (i) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits, or other equipment on or under Private Street Network or for the repair thereof; (ii) as may be approved by DOB or DOT in connection with work on any of the buildings in the Large-Scale Development Project; or (iii) in the event of an emergency or hazardous condition. Except in cases of emergency, Declarant shall provide seven (7) Business Days prior notice to the public, DCP, and DOT of the temporary closure of any portion of the Private Street Network, by posting signs at appropriate locations. In cases of emergency, Declarant shall provide such public notice as soon as practicable and shall promptly, but in no event more than two (2) Business Days after such closure, give notice to DOT and DCP that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof. Emergency conditions, for which the Private Street Network may be closed pursuant to

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(iii) above, shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events engendering public health, safety or property, provided that no such closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with DOT, and any direction by the New York City Police Department (“NYPD”) or DOB regarding the emergency situation. Declarant will close or permit to be closed only those portions of the Private Street Network which must or should reasonably be closed to effect the repairs, replacements or mitigation of hazardous site conditions to be undertaken, pursuant to (i), (ii), and (iii), above and will exercise due diligence in the performance of such repairs, replacements, or mitigation such that they are completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. Notwithstanding other limitations contained in the Declaration, Declarant shall have the right to close all or any portions of the Private Street Network to the City and the general public one (1) Business Day in each year to preserve its ownership interest in such portions of the Private Street Network.

4.8 Maintenance and Access Security. Declarant shall, as a condition precedent to accepting a Temporary Certificate of Occupancy, as set forth in Article VI, either: (i) post or cause the posting with DOT a performance bond for the benefit of the City, in a form reasonably satisfactory to DOT and issued by a surety company licensed to do business in the State of New York; (ii) deposit with DOT 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 DOT other security reasonably acceptable to the City (the “**Maintenance Security**”). The Maintenance Security shall be in an amount set at one hundred and twenty-five percent (125%) of an amount equal to the assessed cost, over a two-year period, of maintaining and performing the needed capital repairs for the full width and length of the street segments of the Private Street Network within Substantially Completed segment of the Private Street Network (the “**Assessed Maintenance Cost**”). The Assessed Maintenance Cost shall be adjusted every five years to reflect changes in the CPI. The Assessed Maintenance Cost, which includes but is not limited to street cleaning, pothole filling, drainage repair, sidewalk and signage repair, tree care, curb replacements, sidewalk reconstruction, roadway repaving, and replacement of both posted and painted signage, shall be submitted to DCP for approval. If the Maintenance Security is not renewed at least thirty (30) calendar days prior to the expiration date of such Maintenance Security or if the City is informed in any way that the instrument of the Maintenance Security will be cancelled or will not be renewed, the City shall be entitled to draw down on the full amount of the Maintenance Security for the purpose of maintaining the Private Street Network. Declarant shall promptly replenish any sums drawn down and used by the City for the maintenance of the Private Street Network so that the available Maintenance Security remains at the amount set herein.

4.9 Right of Inspection. During construction of the Private Street Network, the City upon one (1) Business Day’s prior notice, shall have the right to inspect and determine whether the Private Street Network is being constructed in substantial conformance with the approved Final Street Network Plan.

4.10 Right of Access. The City, acting through DOT, in addition to any rights or remedies contained in Article VII of the Declaration, shall have the right to access the Private Street Network at all times the Private Street Network is open and at other times upon reasonable

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notice, for the purpose of inspecting the Private Street Network and determining Declarant's compliance with the terms of this Declaration or for any lawful purpose.

4.11 Right of Access for Repairs. The Declarant hereby grants the City, its agents, or its contractors, the right, upon five (5) Business Day's prior written notice, to enter the Private Street Network upon a Maintenance Default to perform Declarant's Street Maintenance Obligation 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 obligations relating to the Private Street Network under the Declaration, and if upon notice, in accordance with this Declaration, Declarant has not commenced and diligently prosecuted efforts to effect a cure as provided in Article VII.

4.12 Assumption of Liability. Declarant shall assume all costs and liabilities arising from the construction, improvement, maintenance, and repair of the Private Street Network including, without limitation, all liabilities arising from the size, location, grade, design and configuration of the Private Street Network. Actions taken by the City pursuant to this Article, IV, shall not constitute an assumption of responsibility or be construed as an implied or express acceptance by the City of the Private Street Network or any segment thereof under either the General City Law or any other law; upon the City exercising its Right to Repair set forth in Section 4.11, Declarant shall promptly resume its Street Maintenance Obligations.

4.13 Waiver. Declarant waives any right, cause of action or claim for damages against the City or any of its subdivisions, whether such right, cause of action or claim arises from the use of the Private Street Network in accordance with the terms of this Declaration or otherwise.

## ARTICLE V

### ENVIRONMENTAL PROTECTION MEASURES

Declarant shall implement the following Project Components Related to the Environment ("**PCREs**") and Mitigation Measures in accordance with the FEIS and as further set forth in this Article, V~~5~~. To ensure the timely implementation of the PCREs and Mitigation Measures, the Phases shall be constructed in the numerical sequence specified in Exhibit G. The ~~such~~ PCREs, ~~and~~ Mitigation Measures, and sequence of the Phases may be modified in accordance with the provisions of Section 5.7~~9~~.

#### 5.1 Project Component Related to the Environment.

(a) Construction Noise. To avoid or minimize increases in noise levels at sensitive receptors in relation to construction of the Large-Scale Development Project, the Declarant shall implement the PCREs related to noise, as indicated on Exhibit F-1.

(b) Construction Air Quality. To avoid or minimize pollutant emissions in relation to construction of the Large-Scale Development Project, the Declarant shall implement the PCREs related to air quality, as indicated on Exhibit F-1.



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(c) Construction Transportation. To avoid or minimize congestion and maintain pedestrian and vehicle safety in relation to construction of the Large-Scale Development Project, the Declarant shall prepare a plan of the proposed staging areas, temporary lane and sidewalk alterations on public streets, the duration such alterations will be implemented, the width and length of affected street segments, sidewalk protection measures for pedestrians on public streets, the location of flaggers to control trucks entering the Subject Property, and temporary fencing consistent with the FEIS (the “**Maintenance and Protection of Traffic Plan**” or “**MPT**”). Declarant shall submit a MPT to DOT for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

(d) Timing of the PCREs. The implementation of the construction PCREs must be confirmed by the Monitor, as defined herein, prior to Declarant accepting Building Permits for a Phase. The Monitor shall separately confirm the implementation of the MPT prior to the start of construction for any Phase.

(e) Appointment and Role of Independent Environmental Monitor.

(i) Declarant shall, with the consent of DCP, retain a third party (the “**Monitor**”) to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures set forth in this Article, V, and Exhibits F1-F2. 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 implementing of the PCREs and Mitigation Measures.

(ii) 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 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; (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 fails to act upon a proposed Monitor Agreement within thirty (30) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement 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 prior to any demolition or excavation on the Subject Property and shall continue in effect

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at all times that construction activities are occurring on the Subject Property with respect to any Phase, until the issuance of temporary or permanent certificate of occupancies.

(iii) The Monitor shall: (i) assist and advise DCP with regard to the review of plans and measures proposed by Declarant for purposes of satisfying PCREs and Mitigation Measures; and (ii) provide reports of Declarant's compliance with the PCREs and Mitigation Measures during any period of construction. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a PCRE or Mitigation Measure 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. 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, 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 the applicable portion of the Subject Property either on or outside 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 PCREs and Mitigation Measures, 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 coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any of the Buildings and conducted in a manner that will minimize any interference with the Development. The Monitor Agreement shall provide that Declarant shall have the right to require Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities.

(iv) Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to this Section, 5.1(e), in accordance with the terms of the Monitoring Agreement.

### 5.2 Environmental Mitigation Relating to Open Space.

(a) The FEIS has identified a significant adverse impact to active open space that occurs upon occupancy of more than 1,244 residential units and that in order to partially mitigate the impact the Declarant shall provide the Open Space Mitigation Measure, as defined herein, in order to increase the active open space in the study area.

(b) The Open Space Mitigation Measure shall consist either: (i) under direction and with approval from DPR providing active recreation improvements to 1.67 acres of Rockaway Community Park, consistent with the 2014 Rockaway Parks Conceptual Plan; such active recreation improvements will consist of, but are not limited to, tennis courts, basketball courts, handball courts, and/or ballfields; or (ii) under direction and with approval from DPR, providing 1.67 acres of new publicly accessible active open space, in consultation with DCP, within the open

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space study area to serve the proposed population and offset the proposed project's impact on existing active open space (the "**Open Space Mitigation Measure**").

(c) Declarant shall give DPR at least two (2) months' notice prior to applying for Building Permits for any Building within Phase 4 of the Large-Scale Development Project as designated on Exhibit G, which together with all Development that has previously received a TCO or PCO, would result in the occupancy of more than 1,244 residential units on the Subject Property (the "**Open Space Mitigation Notice**"). The Open Space Mitigation Notice shall include a proposed plan, developed by the Declarant in consultation with DPR, which demonstrates the proposed measure to mitigate the impact substantially in accordance with the FEIS and Section 5.2(b). Within thirty (30) days of receiving the Open Space Mitigation Notice, DPR shall certify whether the plan submitted in connection with the Open Space Mitigation Notice achieves the partial mitigation of active open space substantially in accordance with the FEIS and shall notify the Declarant whether DPR accepts or reject the Open Space Mitigation Measure.

(d) Declarant shall not accept and DOB shall not issue a TCO or PCO, pursuant to Article VI, for any portion of the Large-Scale Development Project, which together would result in the occupancy of more than 1,244 new residential units on the Subject Property, unless and until DPR certifies to DOB that the Declarant has satisfied the Open Space Mitigation Measure. If funding is the selected mitigation, such funds must be provided thirty (30) days prior to the Declarant's acceptance of a TCO or PCO for more than 1,244 dwelling units.

(e) Notwithstanding anything to the contrary, if Declarant demonstrates to the satisfaction of the Chairperson that DPR failed to respond to the Open Space Mitigation Notice or certify the Open Space Mitigation Measure selected in accordance with the time periods set forth in Section 5.2(c), then Declarant shall have no further obligations under this Declaration or the FEIS relating to the Open Space Mitigation Measure.

### 5.3 Environmental Mitigation Relating to Community Facilities.

(a) The FEIS identified a significant adverse impact to public schools that occurs upon occupancy of more than 910 new non-senior residential units and that in order to fully mitigate the impact the Declarant shall, subject to the provisions set forth herein, increase the elementary school capacity in the study area by 162 seats and intermediate school capacity in the study area by 57 seats (the "**School Mitigation Measure**").

(b) The School Mitigation Measures shall consist of accommodating an increase in school capacity by up to 162 public elementary and 57 public intermediate school seats at school(s) in the school study area where such capacity increase is warranted (as determined by DOE/SCA) either by: (i) providing funding to the DOE/SCA; (ii) performing work in accordance with SCA specifications and procurement processes; or (iii) in accordance with DOE/SCA approval, provide off-site land and/or fit-out annex space (up to core and shell) located either off- or on-site.

(c) Prior to implementation of the School Mitigation Measure, the Declarant may conduct an additional analysis, in accordance with the CEQR Technical Manual guidelines, to determine whether, based on the data available at the time of the additional analysis, the extent of

## COUNCIL MODIFICATIONS

the impacts and/or timing of when the impacts on public elementary and intermediate schools are projected to occur varies from that which had been identified in the FEIS. Such additional analysis shall be submitted by Declarant to the SCA, DOE, and DCP for review prior to DOB issuing a TCO or PCO for the first Building constructed within Phase 2, as set forth in Exhibit G. If the SCA and DOE, in consultation with DCP, as lead agency, determine, based on the additional analysis submitted by Declarant, that the extent of the impacts and/or timing of when the impacts are projected to occur varies from that set forth in the FEIS, the School Mitigation Measure shall be adjusted, up or down, accordingly.

(d) Declarant shall give DOE and the SCA (the DOE and the SCA shall collectively be referred to as the “School Mitigation Interested Parties”), as well as the City Council Member for District 31, at least two (2) months’ advance notice of Declarant’s intention to apply for the first Building Permit for Phase 3 of the Large-Scale Development Project as designated on Exhibit G, which, together with all Development that has previously receive a TCO or PCO, would result in the occupancy of more than 910 non-senior residential units on the Subject Property (the “School Mitigation Notice”). The School Mitigation Notice shall include a proposed plan, developed by the Declarant in consultation with the School Mitigation Interested Parties, which demonstrates the proposed measure to mitigate the impact substantially in accordance with the FEIS and Section 5.3(d). Within thirty (30) days of receiving the School Mitigation Notice, subject to DCP concurrence, the School Mitigation Interested Parties shall certify whether the plan submitted in connection with the School Mitigation Notice achieves the full mitigation of school seats substantially in accordance with the FEIS and shall notify the Declarant whether they accept or reject the School Mitigation Measure.

(e) Declarant shall not accept and DOB shall not issue a TCO or PCO, pursuant to Article VI, for any portion of the Large-Scale Development Project, which together with all Development that has previously received a TCO or PCO, would result in the occupancy of more than 910 new residential units for purposes of the required ~~the~~ elementary school mitigation and 1,030 new residential units for purposes of the required ~~the~~ intermediary school mitigation, unless and until the School Mitigation Interested Parties certify to DOB that the Declarant has satisfied the School Mitigation Measure. If funding is the selected mitigation, such funds must be provided prior to the Declarant’s acceptance of a TCO or PCO for more than 910 dwelling units.

(f) Notwithstanding anything to the contrary, if Declarant demonstrates to the satisfaction of the Chairperson that the School Mitigation Parties failed to respond to the School Mitigation Notice or certify the School Mitigation Measure selected in accordance with the time periods set forth in Section 5.3(c), then Declarant shall have no further obligations under this Declaration or the FEIS relating to the School Mitigation Measure.

### 5.4 Environmental Mitigation Relating to Operational and Construction Transportation.

(a) Chapter 20 of the FEIS identifies mitigation measures to operational transportation impacts, including traffic and pedestrians, and construction-period traffic impacts, which measures are anticipated to be implemented in connection with each Phase of the Large-Scale Development Project, as more particularly set forth in Exhibit F2. To implement the Mitigation Measures, it

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will be necessary to determine: (i) to what extent the FEIS-identified traffic, pedestrian, and construction-traffic mitigation measures (collectively referred as the “**Transportation Mitigation Measures**”) will be needed and implemented as the Buildings within each Phase are constructed and occupied; and (ii) the need for any DOT-approved adjustments to the FEIS-identified traffic and pedestrian mitigation measures based on current conditions (“**Adjustments**”), provided that any such Adjustments shall be commensurate with the intended effects of the Transportation Mitigation Measures and shall be the most cost-effective measures available to reasonably achieve such intended effects.

(b) Declarant shall not apply for and shall not accept a Building Permit regarding a Phase, unless and until DOT has approved a Scope Work for the Transportation Mitigation Measures, including any Adjustments, regarding: (i) the installation of new signals at the intersections identified in connection with the Phase, including the installation of required conduits; (ii) restriping and other changes to lane geometries; and (iii) signal timing changes, in connection with completed Phases as well as during construction of each Phase, all as set forth in Exhibit F2 (the “**Scope of Work**”). Upon approval by DOT of a Scope of Work, the Chairperson shall certify to DOB that the Scope of Work has been approved by DOT.

(c) DOT shall make reasonable efforts to approve the Scope of Work within 90 days of receipt of proposed Scope of Work. In reviewing the Scope of Work, to the extent that DOT deems unnecessary one or more specific Transportation Mitigation Measures in a particular Phase, Declarant shall continue to be obligated to include such measures in the Scope of Work for each subsequent Phase, unless otherwise determined by DOT.

(d) Within thirty (30) days of the completion and seventy percent (80%) occupancy of all the Buildings within a Phase, Declarant shall notify DOT of Declarant’s intent to perform the Transportation Mitigation Measures set forth in the Scope of Work. Upon receipt of Declarant’s notice to proceed with the implementation of the Scope of Work, DOT shall determine the needed warrant analysis to confirm the implementation of the Transportation Mitigation Measures set forth in the Scope of Work. To the extent that a traffic control device is specified in a Builders Pavement Plan (“BPP”), DOT shall certify to DOB that Declarant cannot install such a device until a warrant analysis is performed and that DOB may issue a TCO, pending the completion of the needed warrant analysis if Declarant has complied with all other aspects of the BPP.

(e) Declarant shall either pay DOT or the City for the ordinary and customary costs, if any, of improvements associated with the needed Transportation Mitigation Measures and/or Adjustments (including but not limited to the costs associated with the design, installation of the traffic signal(s), proposed geometric modifications, traffic signs and pavement markings removals/installations) or, if so directed by DOT, shall in good order implement such measures itself under DOT’s direction and in compliance with DOT requirements for implementation. Declarant shall submit all the required drawings/designs as per AASHTO and DOT specifications to DOT for its review and approval and to other City agencies, as appropriate. Any and all signal work shall be performed by an electrical contractor approved by DOT.

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5.5 Environmental Mitigation Relating to Operational Air Quality. Declarant shall comply with the Operational Air Quality Mitigation Measures and timing of those measures set forth in Exhibit F-2 (the "Operational Air Quality Mitigation Measure").

5.6 Environmental Mitigation Relating to Construction Noise. Declarant shall comply with the Construction Noise Mitigation Measures and timing of those measures set forth in Exhibit F-2 (the "Construction Noise Mitigation Measure").

5.7 Force Majeure Involving a PCRE or Mitigation Measure. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE or Mitigation Measure required by the FEIS by reason of the occurrence of a Force Majeure Event, as determined by the Chairperson, pursuant to the procedures set forth in Section 6.3, then Declarant shall not be excused from performing such PCRE or Mitigation Measure that is affected by Force Majeure Event unless and until the Chairperson 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.

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

5.9 Innovation; Alternatives; Modifications Based on Further Assessments.

(a) Innovation and Alternatives. In complying with any PCRE or Mitigation Measure set forth in this Article, V, or in the FEIS, Declarant may, at its election, implement innovations, technologies, or alternatives that are or hereafter become available, 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 Measures").

(b) Modifications Based on Further Assessments. Where Declarant believes, in good faith, based on changed conditions, that the sequence of the Phases should be modified or 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 required phasing sequence and PCRE or Mitigation Measure ("Modification of Mitigation Measure"), it shall set forth the basis for such belief in an analysis submitted to DCP (the "Section 5.9 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 in the Registers Office. Following the delivery of a notice to DCP requesting an Section 5.9 Request Alternative Mitigation Measure or a Modification of a Mitigation Measure pursuant to this Section 5.9 (the "Section 5.9 Request"), Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on such~~

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request and accompanying materials and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 5.9 Request. In the event that DCP determines that the required phasing sequence could be modified or that the relevant PCRE or Mitigation Measure should not apply or could be modified, Declarant may modify the phasing sequence or 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 in the Registers Office.

### ARTICLE VI

#### CERTIFICATES OF OCCUPANCY

##### 6.1 Temporary Certificates of Occupancy.

(a) Declarant shall not accept a TCO for any Building until the following conditions are met:

(i) DCP has issued a Notice of Substantial Completion for the segments of the Private Street Network within the Phase that the Building is located and Declarant has provided the Maintenance Security and proof of the executed management and towing contracts in accordance with Article IV; and

(ii) The applicable Mitigation Measures set forth in Article V are determined to have been completed by the Chairperson, except if the implementation of such Mitigation Measures requires further analysis upon occupancy of such Building, in which case Declarant must have fulfilled its obligations to request the implementation of the Mitigation Measure.

(b) Declarant shall not accept a TCO for Building E2 in Phase 4, as shown in Exhibit G, until DCP has issued a Notice of Substantial Completion for the PAA. The TCO for Building E2 shall reflect the PAA space for the Large-Scale Development Project

(c) The TCO for any Building shall reflect the segments of the Private Street Network that must be provided within the Phase that the Building is located.

(d) In the event that due to a Force Majeure Event Declarant has obtained a TCO, prior to completion of the conditions set forth in Section 6.1(a), upon cessation of the Force Majeure Event Declarant shall, as promptly as possible, satisfy the conditions of Section 6.1(a)

##### 6.2 Notice of Substantial Completion.

(a) Notification. Declarant shall notify the Chairperson at such time as it believes that the PAA, if applicable, and segments of the Private Street Network for a Phase is Substantially Complete and shall request that the Chairperson certify to DOB the Substantial Completion of the PAA and segments of the Private Street Network.

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(b) Initial Review. No later than thirty (30) days after the receipt of the notification set forth in Section 6.2(a), the Chairperson shall either: (i) issue a Notice of Substantial Completion; or (ii) deliver to Declarant written notice setting forth the reasons why the PAA, if applicable, and segments of the Private Street Network within the Phase are not Substantially Complete and the items that need to be completed in order to determine that the PAA and segments of the Private Street Network within the Phase are Substantially Complete.

(c) Subsequent Review. Upon completing the outstanding work specified by the Chairperson based on the Initial Review, Declarant shall notify the Chairperson of such completion. No later than twenty (20) calendar days of the receipt of such notice, the Chairperson shall either: (i) issue a Notice of Substantial Completion; or (ii) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chairperson has issued a Notice of Substantial Completion.

6.3 Force Majeure. In the event that Declarant is unable to Substantially Complete the PAA or segment of the Private Street Network by the time a Building is ready for a TCO, as a result of a Force Majeure Event, 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 Chairperson shall, within ten (10) calendar 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 Chairperson shall state with particularity the reasons it believes Force Majeure has not occurred. Such certification or notice shall constitute a final determination. Upon a determination that a Force Majeure Event has occurred, the Chairperson shall grant Declarant appropriate relief for such delay, including certifying in writing to the DOB that the Chairperson has no objection to the issuance of a TCO for all or part of the building(s) in the Large-Scale Development Project. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event is continuing. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the PAA Work. As a condition of granting such relief, DCP may require that Declarant post a bond or other security in a form and amount reasonably acceptable to DCP in order to ensure that the PAA Work is Substantially Completed and that all other requirements of Section 6.1 or 7.1, as applicable, are satisfied. 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 Area. Such estimated cost is subject to the reasonable approval of DCP. Declarant shall be obligated to Substantially Complete or Finally Complete construction within the period of time specified in the Delay Notice, or such lesser period of time as DCP reasonably determined in the Delay Notice; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice or as reasonably determined by DCP, DCP may grant additional time for Substantial Completion or Final Completion, as the case may be.

6.4 Permanent Certificates of Occupancy. Declarant shall not accept a Permanent Certificate of Occupancy from DOB for any building on the Subject Property until the Chairperson certifies to Declarant and DOB that the PAA, if applicable, and segments of the Private Street



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Network, within the Phase corresponding to building Declarant is seeking a Permanent Certificate of Occupancy is Finally Complete, subject to the following provisions:

(a) Notification. Declarant shall notify the Chairperson at such time as it believes that the PAA, if applicable, and segments of the Private Street Network within a Phase are Finally Complete and shall request that the Chairperson certify to DOB the Final Completion of the PAA and segments of the Private Street Network within such Phase.

(b) Initial Review. No later than thirty (30) days after the receipt of the notification set forth in Section 6.4, the Chairperson shall either: (A) issue a Notice of Final Completion; or (B) deliver to Declarant written notice setting forth the reasons why the PAA and segments of the Private Street Network are not Finally Complete and the items that need to be completed in order to determine that the PAA and segments of the Private Street Network within the Phase are Finally Complete.

(c) Subsequent Review. Upon completing the outstanding work specified by the Chairperson to achieve Final Completion, Declarant shall notify the Chairperson of such completion. No later than twenty (20) calendar days of receipt of such notice, the Chairperson shall either: (A) issue a Notice of Final Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chairperson has issued a Notice of Final Completion.

(d) The applicable Mitigation Measures set forth in Article V are determined to have been completed by the Chairperson, except if the implementation of such Mitigation Measures requires further analysis upon occupancy of such Building, in which case Declarant must have fulfilled its obligations to request the implementation of the Mitigation Measure.

## ARTICLE VII

### ENFORCEMENT

#### 7.1 Enforcement by the City.

(a) Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein.

(b) No person or entity other than the Declarant, its successors and assigns, or the City shall have any right to enforce the provisions of this Declaration. Nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or in any attached exhibits, including any claim by any public or private landowner to be the beneficiary of an easement appurtenant to lands adjoining the Subject Property which could or might be affected by the enforcement of the provisions of this Declaration with respect to the Subject Property.

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(c) In the event of a failure to cure, upon notice, a breach of the restrictions, covenants, easements, obligations, and agreements herein, the City shall have the right to pursue enforcement of this Declaration and seek any remedy herein provided against any party that constitutes a Declarant at the time in question, including any Association Members as defined in Section 10.3, subject to the limitations set forth in Section 10.5(f).

7.2 Additional Remedies. 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.

7.3 Enforcement by Declarant. Declarant shall have the right to pursue any remedy available to Declarant, both administrative and judicial and at law and equity, to enforce its rights under this Declaration.

7.4 Notice and Cure.

(a) If Declarant fails to perform any of its obligations under this Declaration, the City shall give Declarant and Mortgagee thirty (30) days written notice of such alleged default, during which period Declarant shall have the opportunity to cure the noncompliance. If the City finds that Declarant has diligently commenced and prosecuted efforts to cure the noncompliance during such thirty (30) day period, then the aforesaid thirty (30) day period shall be extended for so long as Declarant continues to proceed diligently with curing the noncompliance.

(b) Notwithstanding the foregoing, in the event of a denial of public access of an ongoing nature or interference on a continuing basis with the City's rights pursuant to this Declaration, the City may immediately exercise any and all of its rights hereunder, including but not limited to the issuance of violations and seeking a mandatory injunction; in such an event, the notice and cure provisions of this Section, 7.4(a), shall not apply.

7.5 Default.

(a) In the event that any alleged default has not been cured or there is a denial of public access as set forth in this Article, the City shall be entitled to draw down on the Maintenance Security and to apply such monies to cure such defaults and shall be entitled to any other remedy available in law or at equity. If the City has drawn down the Maintenance Security, Declarant shall within five (5) business days post a new Maintenance Security replacing the Maintenance Security drawn down by the City. Nothing set forth herein shall prevent the City from curing a default, in accordance with this Article, prior to drawing down on the Maintenance Security and then drawing down on the Maintenance Security to the extent necessary to reimburse or otherwise pay for such expenses incurred.

(b) If, upon or after Substantial Completion of the Private Street Network, Owner fails to timely post and/or maintain the Maintenance Security and such failure has not been cured as set forth in this Article, then, in addition to any other remedy provided herein, Declarant shall be liable to the City for liquidated damages in the cash amount of \$1000 per day for every calendar day or part thereof that a failure to provide the Maintenance Security continues. Declarant acknowledges

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that: (i) said cash amount is reasonable in proportion to the probable damages likely to be sustained by the City if Declarant fails to comply with the terms of this Declaration; (ii) the amount of actual damages to be sustained by the City in the event of such failure is incapable of precise estimation; and (iii) such payment does not constitute a penalty or punitive damages for any purposes.

### ARTICLE VIII MISCELLANEOUS

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

8.2 Binding Nature; Successors and Assigns.

(a) The provisions of this Declaration shall be covenants running with the land and shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of Declarant to the Subject Property, including Mortgagee, and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property, subject to the further provisions of this Section, 8.2. Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

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

(c) Notwithstanding the provisions of Section 8.2(b), in the event that a temporary or permanent certificate of occupancy has been issued for any portion of the Large-Scale Development Project prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure, the Declarant that developed such portion of the Large-Scale Development Project that was allowed to proceed due to the Force Majeure event shall remain obligated as Declarant until a Notice of Final Completion has been issued.

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

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

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

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

8.7 Notice.

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

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

Attention:  
Daniel Moritz  
c/o The Arker Companies  
1044 Northern Boulevard  
Roslyn, New York

with a copy to:  
Akerman LLP  
666 Fifth Avenue  
New York, NY 10103

Attention: Steven Sinacori, 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:

## COUNCIL MODIFICATIONS

the General Counsel of CPC at the same address

(iii) if to a Mortgagee:

~~[mortgagee]~~Wells Fargo Bank, N.A.  
150 East 42<sup>nd</sup> Street, 36<sup>th</sup> Floor  
New York, NY 10017  
Attention: Monica Mutharika

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, 8.8, 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: (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.

### 8.8 Applications.

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

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section, 8.9(b), shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

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

## COUNCIL MODIFICATIONS

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

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

### ARTICLE IX

#### CONDOMINIUMS AND COOPERATIVE CORPORATIONS

9.1 Filing Requirements.

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

(b) The initial Declarant or any successor entity to the balance and entirety of Declarant’s fee interest in the Subject Property (the “**Successor Declarant**”), together with the Coop/Condominium, shall be considered Declarants until all Phases of the PAA and Private Street Network are Finally Complete. At such time as Declarant or the Successor Declarant no longer holds a fee interest in the Subject Property (unless such interest is solely that of a Unit Interested Party and Declarant no longer retains the right to control the Board) and provided that all Phases of the PAA and Private Street Network are Finally Complete, the initial Declarant or the Successor Declarant shall no longer be deemed a Declarant, and the Coop/Condominium shall be deemed to be the sole Declarant and Party in Interest under this Declaration, subject to the provisions of Article XI. In such event, the Board of the Coop/Condominium shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, subject to the provisions of Article XI.

## COUNCIL MODIFICATIONS

(c) Each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Board; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration; and (z) nominates, constitutes and appoints the Board its true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration and exhibits hereto.

(d) From and after the Association Obligation Date (hereinafter defined): (i) the Board of any Coop/Condominium shall be responsible for satisfying its obligations as an Association Member (hereinafter defined), and (ii) any Coop/Condominium shall continue to be considered a Declarant, provided that: (x) prior to Final Completion of all Phases of the PAA and Private Street Network, any party that constitutes a Declarant under this Article or Article X shall be jointly and severally responsible for the construction and Final Completion of the PAA and Private Street Network, and (y) upon Final Completion of all Phases of the PAA and Private Street Network, the liability of any Coop/Condominium that is a Declarant shall be limited to the extent of its proportionate share of the Maintenance Obligations assessed by the Association pursuant to Article X.

9.2 Offering Plans. Upon the marketing and sale of securities appurtenant to units in a Coop/Condominium constructed or otherwise included in the Large-Scale Development Project as is contemplated in this Article, a summary of the terms of this Declaration shall be included in any offering plan or “red herring” issued in connection therewith (the “**Offering Plan**”). Such Offering Plan shall clearly identify the rights and obligations of the unit owners or the owners of shares of stock in the cooperative corporation, as the case may be, under this Declaration, as well as the obligations of the Association Members (hereafter defined) with respect to the assessment of maintenance fees for the ongoing operation and maintenance of the PAA and Private Street Network. The cost of maintenance of the Public Access Area and the obligations of the Coop/Condominium under this Declaration are essential elements of the City actions permitting the development of the Large-Scale Development Project in accordance with the provisions of this Declaration, and in accordance with any other approvals granted by the City, shall be described in any Offering Plan and copies of the Declaration shall be provided as exhibits thereto.

9.3 Common Elements. Any condominium declaration shall, upon filing, contain provisions describing all areas covered in the PAA and Private Street Network as “common elements,” as that term is constructed under RPL 339-I, or, alternatively, as elements owned jointly by multiple Coops/Condominiums on the zoning lot in their capacity as members of a Property Owners’ Association, for which Unit Interested Parties are obligated to pay assessments, as provided in Article X.

9.4 Estoppel. Declarant shall certify in writing to the Chairperson, or any individual succeeding to its position, that all governing documents of the Coop/Condominium are in full compliance with the requirements of this Declaration and shall provide the Chairperson with copies of such governing documents within ten (10) days of the AG’s acceptance for filing of the Offering Plan for such Coop/Condominium. If Declarant fails to comply with the provisions of this Section 9.5, the City may proceed with any available enforcement measures.

## COUNCIL MODIFICATIONS

### ARTICLE X

#### PROPERTY OWNER'S ASSOCIATION

10.1 Property Owner's Association. If the Subject Property is subdivided and conveyed to multiple fee owners and/or ground lessees, Declarant shall cause one property owner's association (the "Association") to be organized, pursuant to the provisions of 13 NYCRR Article 22, to assume all Maintenance Obligations. The obligations of the Associations under this Declaration shall commence on the date that a Declaration of Covenants, Restrictions and Easements establishing the Association is recorded in the Register's Office (the "DCRE") (the "Association Obligation Date"), at which time the Associations shall be deemed a Declarant.

10.2 Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant's performance of the Maintenance Obligations as set forth in this Declaration. In the event that all Phases of the PAA and Private Street Network are not Finally Complete, it shall remain the responsibility of individual Association Members to Finally Complete the PAA and Private Street Network.

#### 10.3 Members.

(a) The members of the Association (the "Association Members") shall consist of (a) the fee owners and/or ground lessees of any portion of the Subject Property that has not been developed as or converted to a Coop/Condominium, and (b) the Boards of any portion of the Subject Property which is developed as or converted to a Coop/Condominium.

(b) Each Member hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration, relating to the PAA and Private Street Network, 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 and Exhibits hereto relating to the PAA and Private Street Network.

(c) Each Member, by acceptance of a deed or lease for a portion of the Subject Property, shall, whether or not the covenant is expressed in such deed or lease, be deemed to have consented to pay all assessments which may be imposed by the Association on the parcel owned or leased by such Member, as set forth herein.

10.4 Powers. Declarant shall cause the Association to be established with the power and authority to:

(a) Maintain, repair and operate the PAA and Private Street Network to the extent required by this Declaration, and the terms of any license, easement or other agreement that may hereafter be executed between or among DCP, DOT, and Declarant with respect to the PAA and Private Street Network;



## COUNCIL MODIFICATIONS

- (b) 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;
- (c) collect, receive, administer, protect, invest and dispose of funds;
- (d) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article X;
- (e) exercise any of its duties or obligations pursuant to this Declaration without seeking the consent of any Unit Interested Parties; 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 or New York State Business Corporation Law, or the rules and regulations promulgated by the Department of Law for the regulation of homeowners' (property owner's) Associations, as the case may be.

### 10.5 Assessments.

(a) The Association shall assess real property constituting each Coop/Condominium or fee parcel within the Subject Property (the "**Assessment Property**") for its proportionate share of the Maintenance Obligations as provided in the DCRE, in order to obtain funds for the performance of the obligations of Declarant pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with Applicable Law. For Association Members who are Boards, a reasonable basis for such proration shall be conclusively established if the AG accepts for filing an offering plan for the sale of interests in such Association and the Coop/Condominium, as applicable, which plan describes such proration. The Boards of each Coop/Condominium shall collect such assessments from the owners of individual residential or commercial units for delivery to the Association in accordance with the DCRE and the governing documents of each Coop/Condominium.

(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.

(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 a Board, 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 for unpaid maintenance or common charges. The periodic assessments charged to an Association Member which is a Board 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),

## COUNCIL MODIFICATIONS

including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party by acceptance of a deed or a lease to a portion of the Subject Property, thereby agrees to the provisions of this Section, 10.5. Any unit owner may eliminate the Association's lien described above on his or her unit by payment to the Condominium 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 may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Area or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that an Association Member's liability with respect to future assessments shall end upon the valid sale or transfer of such Association Member's interest in the Subject Property.

(d) Association Members who may be assessed for the Maintenance Obligations 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 all or substantially all of any parcel or portion thereof, or (iii) any single Building, 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 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 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 14 until the mortgagee or lien holder succeeds to such Possessory Interest.

(e) Upon acceptance of an Offering Plan for the sale of membership interests in the Association by the AG, the Association shall certify in writing to the Chairperson or any individual succeeding its position, that all governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chairperson of such governing documents. If Declarant fails to comply with the provision of this Section, 10.5, the City may proceed with any available enforcement measures.

(f) Association Members shall be considered Declarants. Notwithstanding the foregoing, upon Final Completion of all Phases of the PAA and Private Street Network, the liability of any Association Member shall be limited to such Association Member's proportionate share of the Maintenance Obligations assessed by the Association pursuant to Section 10.5(a). In the event of a default by the Association, the City shall, prior to enforcing any rights against any Association Members, seek enforcement against the Association and, if applicable, the initial Declarant or a Successor Declarant, pursuant to the notice and cure provisions of Section 7.4.

10.6 Deed References. Every deed conveying title to, or a partial interest in, all or a portion of the Subject Property, every lease of all or any portion of the Subject Property, each condominium declaration, or bylaws relating to any portion of the Subject Property shall contain a recital or other provision that (a) the Association Member is liable for its pro rata share of the assessment by the Association and the obligation to make such payments is binding on such

## COUNCIL MODIFICATIONS

Association Member, and (b) the construction and maintenance of the PAA and Private Street Network and all other obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Subject Property.

### ARTICLE XI

#### AMENDMENT, MODIFICATION & CANCELLATION

11.1 This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval and upon express written consent of the Commission or an agency succeeding to the Commission's jurisdiction, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation.

11.2 Notwithstanding anything to the contrary contained in Section 11.1 hereof, any change to this Declaration proposed by Declarant and submitted to the Chairperson, which the Chairperson deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chairperson and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind.

11.3 A modification to a PCRE or Mitigation Measure pursuant to Section 5.9 of this Declaration shall not require a modification of this Declaration.

11.4 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.

**COUNCIL MODIFICATIONS**

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

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

**PENINSULA ROCKAWAY LIMITED  
PARTNERSHIP, a  
New York limited partnership**

By: \_\_\_\_\_  
Name:  
Title:

COUNCIL MODIFICATIONS

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

On the \_\_\_\_ day of \_\_\_\_\_ 2019, before me, the undersigned, a Notary Public 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**COUNCIL MODIFICATIONS**

**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT B**

**PARTIES-IN-INTEREST CERTIFICATION**

(attached)

**EXHIBIT C**

**PUBLICLY ACCESSIBLE OPEN SPACE PLAN**

(attached)



**EXHIBIT D**

**FORM OF NOTICE OF SUBSTANTIAL COMPLETION**

[Letterhead of the Chair of the New York City Planning Commission]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

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

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

This letter constitutes the Notice of Substantial Completion of the \_\_\_\_\_ pursuant to the Restrictive Declaration made by PENINSULA ROCKAWAY LIMITED PARTNERSHIP dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Declaration").

By this notice, the undersigned, for the New York City Planning Commission, confirms that the [Street Network Phase or Publicly Accessible Open Space] (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 OF NOTICE OF FINAL COMPLETION**

[Letterhead of the Chair of the New York City Planning Commission]

[Date]

**NOTICE OF FINAL COMPLETION**

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

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

This letter constitutes the Notice of Final Completion of the \_\_\_\_\_ pursuant to the Restrictive Declaration made by PENINSULA ROCKAWAY LIMITED PARTNERSHIP dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Declaration").

By this notice, the undersigned, for the New York City Planning Commission, confirms that the [Street Network Phase or Publicly Accessible Open Space] (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 F-1**  
**Project Components Related to the Environment**

**Construction Air Quality**

- Measures to reduce pollutant emissions during construction of the Large-Scale Development Project will be in accordance with all applicable laws, regulations, and building codes. The proposed emission reduction program will significantly reduce DPM emissions consistent with the goals of the currently best available control technologies under NYC Local Law 77, which are required only for publicly funded City projects. To minimize pollutant emissions and ensure that construction of the Large-Scale Development Project, Declarant has committed to the following measures to reduce air pollutant emissions.
  - **Diesel Equipment Reduction.** Minimize the use of diesel engines and maximize the use of electric engines where practical.
  - **Utilization of Newer Equipment.** All nonroad construction equipment will meet EPA's Tier 4 or newer emissions standards for nonroad engines.
  - **Best Available Tailpipe Reduction Technologies.** In the event nonroad construction equipment for the Proposed Project does not meet EPA Tier 4 or newer emissions standards, then best available tailpipe reduction technologies are to be utilized.
    - a. Nonroad diesel engines with a power rating of 50 hp or greater and controlled truck fleets (i.e., truck fleets under long-term contract, such as concrete mixing and pumping trucks) will utilize the best available tailpipe reduction technology for reducing diesel particulate matter (DPM) emissions, such as diesel particle filters (DPFs).
    - b. Construction contracts will specify that all diesel nonroad engines rated at 50 hp or greater will utilize DPFs, either installed on the engine by the original equipment manufacturer or a retrofit DPF verified by the EPA or the California Air Resources Board, and may include active DPFs, if necessary or other technology proven to achieve equivalent emissions reduction. Stationary equipment will be fitted with devices to reduce NO<sub>2</sub>.
  - **Dust Control.** Fugitive dust control plans will be required as part of contract specifications.
    - a. Truck exit areas will be established for washing off the wheels of all trucks that exit the construction site.
    - b. Tracking pads will be established at construction exits to prevent dirt from being tracked onto roadways.
    - c. Truck routes within the construction site will be either watered or, in cases where such routes will remain in the same place for an extended duration, the routes will be stabilized, covered with gravel, or temporarily paved to avoid the re-suspension of dust.
    - d. All trucks hauling loose material will be equipped with tight fitting tailgates and their loads securely covered prior to leaving the sites. T

- e. Vehicles on-site will be limited to a speed of five mph.
  - f. Water sprays and or misting systems will be used for all excavation, and transfer of spoils to ensure that materials are dampened as necessary to avoid the suspension of dust into the air. Loose materials will be watered, stabilized with a biodegradable suppressing agent, or covered. In addition, all necessary measures will be implemented to comply with the NYC Air Pollution Control Code regulating construction-related dust emissions.
  - g. Construction areas will be surrounded by perimeter fencing to contain fugitive dust emissions.
  - h. Fugitive dust during truck loading will be minimized through the use of screens to block the wind or by carrying out the loading when winds are less than 10 mph.
- **Idle Times.** On-site vehicle idle time will 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 otherwise required for the proper operation of the engine.
  - **Source Location.** Stationary equipment will be located at least 50 feet away from nearby sensitive receptors (i.e., residential buildings and publicly-accessible open spaces) and at least 30 feet away from sidewalks, to the extent practicable and feasible.
  - **Ultra-Low Sulfur Fuel.** All diesel engines used in construction will use ultra-low sulfur fuel (ULSD).
  - **Construction Fencing.** Install a construction fence at least 8 feet high per the NYC Construction Code. The fence between the Building B1 and B2 sites and the Peninsula Nursing Home will be at least 16 feet high.

### Construction Noise

- Path controls are placed between the equipment and the sensitive receptors to block noise. The following path controls will be implemented to the extent feasible and practicable.
  - Noise barriers shall be erected around the perimeter of the construction areas where construction activities are taking place to minimize construction noise consistent with reasonable construction procedures. Noise barriers shall be a solid fence with a minimum height of 8 feet. The fence between the Building B1 and B2 sites and the Peninsula Nursing Home will be at least 16 feet high incorporating a sound barrier matting attached to one side of it.
  - Noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, will be located away from and shielded from sensitive receptors.
  - Where feasible, truck deliveries will take place behind noise barriers.
- Source controls reduce noise levels at the source of the noise. The following general source controls will be implemented to the extent feasible and practicable.
  - Equipment shall be properly installed, and quality mufflers must be installed and maintained.

- Construction sites will be configured to minimize back-up alarm noise. In addition, all trucks will not be allowed to idle more than three minutes per Title 24, Chapter 1, Subchapter 7, Section 24-163 of the NYC Administrative Code.
- Equipment with noise levels quieter than typical noise levels generated by construction equipment will be used.
- Table 1 below summarizes the construction equipment anticipated for use and the developer-committed source and path controls feasible for construction noise as well as construction plans and phasing that will reduce the potential impacts of noisy equipment. These measures are in addition to the construction fencing described above under path controls.

**Table 1 PCREs for Construction Activities**

<b>Equipment</b>	<b>DEP &amp; FHWA Typical L<sub>max</sub> Noise Levels at 50 feet (dBA)</b>	<b>Developer- Committed Noise Levels at 50 feet (dBA) (Source Controls)</b>
<i>Stationary Equipment</i>		
Concrete Pump	N.L.	82
Electric Hoist	N.L.	74.1
Manlift	85	75
Pile Rig	95	85
<i>Mobile Equipment</i>		
Bobcat	N.L.	75
Delivery Truck	N.L.	84
Excavators	85	77

*Notes:*

N.L. - not listed by DEP or in RCNM

Source: NYC CEQR Technical Manual (2014) and FHWA Roadway Construction Noise Model User's Guide (January 2006); NYC Noise Code (2005).

## EXHIBIT F-2: MITIGATION MEASURES

### Transportation

#### Mitigation Measures Triggered at the End of Phase 1:

##### *Traffic*

- Intersection 3 (Rockaway Beach Boulevard & Beach 116<sup>th</sup> Street): Reallocate 1 second from NB/SB phase to EB/WB phase in Weekday AM, Weekday MD, Weekday PM peak hours.
- Intersection 4 (Beach Channel Drive & Rockaway Freeway): Reallocate 4 seconds from NB phase to EB/WB phase in Weekday AM (intersection remains unmitigated), Weekday PM (intersection remains unmitigated), and Saturday MD peak hours, 2 seconds from NB phase to EB/WB phase in Weekday MD peak hour. *Note: the intersection will be partially mitigated during the Weekday AM and PM peak hours, as identified in Chapter 20, "Mitigation."*
- Intersection 5 (Beach Channel Drive & Beach 108<sup>th</sup> Street): Reallocate 3 seconds from NB phase to EB/WB phase in Weekday AM peak hour.
- Intersection 26 (Beach Channel Drive and Beach 53<sup>rd</sup> Street): Signalize the intersection.
- Intersection 42 (Rockaway Freeway and Seagirt Boulevard): Change signal offset in Weekday MD peak hour by 6 seconds.
- Intersection 49 (Beach Channel Drive and Nameoke Avenue): Reallocate 3 seconds from EB phase to NB/SB phase in Weekday MD and Saturday MD peak hours, 4 seconds from EB phase to NB/SB phase in Weekday PM peak hour.

#### Mitigation Measures Triggered at the End of Phase 2:

##### *Traffic*

- Intersection 7 (Rockaway Beach Boulevard and Beach 108<sup>th</sup> Street): Reallocate 4 seconds from NB/SB phase to EB/WB phase in Weekday AM peak hour.
- Intersection 8 (Beach Channel Drive & Beach 92<sup>nd</sup> Street/Beach 94<sup>th</sup> Street): Reallocate 1 second from EB/WB phase to NEB (Cross Bay Bridge & Beach 94<sup>th</sup> Street)/WB phase in Weekday AM and Weekday MD peak hours, 2 seconds from EB/WB phase to NEB (Cross Bay Bridge & Beach 94<sup>th</sup> Street)/WB phase in Weekday PM and Saturday MD peak hours.
- Intersection 23 (Arverne Boulevard and Beach 54<sup>th</sup> Street): Install "No Standing Anytime" parking regulation along the north curb of the WB approach between Beach 54<sup>th</sup> Street and Beach 53<sup>rd</sup> Street (intersection remains unmitigated during the Weekday MD and Weekday PM peak hours). *Note: the intersection will be partially mitigated during the Weekday MD and PM peak hours, as identified in Chapter 20, "Mitigation."*
- Intersection 27 (Rockaway Beach Boulevard and Beach 53<sup>rd</sup> Street): Signalize the intersection. Restripe the EB approach as one left-turn lane and one through lane. Restripe the WB approach to align the EB and WB approaches and eliminate on-street parking along the north curb of the WB receiving lanes.

### **Mitigation Measures Triggered at the End of Phase 3:**

#### ***Traffic***

- Intersection 13 (Beach Channel Drive & Beach 73<sup>rd</sup> Street): Restripe the EB approach to provide one left-turn/through lane and one through lane and eliminate on-street parking to provide one additional eastbound receiving lane. Restripe the WB approach and eliminate on-street parking to provide one left-turn/through lane, and one through/right-turn lane and eliminate on-street parking to provide one additional westbound receiving lane. Install "No Standing Anytime" parking regulations along the north curb of the WB approach (for approximately 170') and along the north curb of the WB receiving lanes between Beach 73<sup>rd</sup> and Beach 74<sup>th</sup> streets and between Beach 74<sup>th</sup> and Beach 75<sup>th</sup> streets (for approximately 120'). Install "No Standing Anytime" parking regulations along the south curb of the EB receiving lanes (for approximately 125').
- Intersection 19 (Arverne Boulevard and Beach 59<sup>th</sup> Street): Restripe the WB approach to provide one left-turn turn bay, one through lane, and one parking lane. Restripe the EB approach to provide a median to better align the EB and WB approaches. Reallocate 1 second from SB phase to EB/WB phase in Weekday PM peak hour.

#### ***Pedestrians***

- Crosswalks:  
South crosswalk at Beach 54th Street and Beach Channel Drive Crosswalk: widen the crosswalk by six feet and relocate stop bar 10 feet from crosswalk.

### **Mitigation Measures Triggered at the End of Phase 4:**

#### ***Traffic***

- Intersection 16 (Rockaway Beach Boulevard and Beach 62<sup>nd</sup> Street): Reallocate 4 seconds from EB phase to EB/WB phase in Weekday AM peak hour.
- Intersection 20 (Rockaway Freeway and Beach 59<sup>th</sup> Street): Reallocate 2 seconds from SB phase to WB phase in Weekday MD peak hour, 1 second from SB phase to WB phase in Saturday MD peak hour.
- Intersection 21 (Rockaway Beach Boulevard and Beach 59<sup>th</sup> Street): Reallocate 2 seconds from NB/SB phase to SB phase in Weekday MD peak hour to mitigate intersection 20, and 1 second from NB/SB phase to SB phase in Saturday MD peak hour to mitigate intersection 20. *Note: intersection 21 will be unmitigable during all the peak hours, as identified in Chapter 20, "Mitigation."*
- Intersection 28 (Rockaway Beach Boulevard and Beach 52<sup>nd</sup> Street): Signalize the intersection. Restripe the EB approach to one wider left-turn/through/right-turn lanes and one narrower parking lane.

#### ***Traffic (Additional Intersections for Peak Construction in Phase 4)***

- Intersection 15 (Beach Channel Drive and Beach 62<sup>nd</sup> Street): Reallocate 1 second from NB /SB phase to WB (Arverne Boulevard) phase in Weekday PM Saturday PM peak hours.
- Intersection 24 (Rockaway Freeway and Beach 54<sup>th</sup> Street): Reallocate 2 seconds from NB/SB phase to EB/WB phase and 1 second from NB/SB phase to WB phase during the

Weekday PM peak hour to mitigate intersection 25. Reallocate 1 second from NB/SB phase to EB/WB phase and 1 second from NB/SB phase to WB phase during the Saturday PM peak hour to mitigate intersection 25.

- Intersection 25 (Edgemere Avenue and Beach 54<sup>th</sup> Street): Reallocate 2 seconds from NB/SB phase to EB/WB phase and 1 second from NB/SB phase to SB phase during the Weekday PM peak hour to mitigate intersection 25. Reallocate 1 second from NB/SB phase to EB/WB phase and 1 second from NB/SB phase to SB phase during the Saturday PM peak hour to mitigate intersection 25.
- Intersection 46 (Beach Channel Drive and Mott Avenue): Reallocate 1 second from EB/WB phase to NB/SB phase in Saturday PM peak hour.
- Intersection 47 (Beach Channel Drive and Dix Avenue): Reallocate 1 second from EB/WB phase to NB/SB phase in Weekday PM and Saturday PM peak hours.

### **Mitigation Measures Triggered at the Full Build-Out of the Proposed Project:**

#### *Traffic*

- Intersection 44 (Rockaway Freeway and Cornaga Avenue): Reallocate 1 second from NB/SB phase to EB/WB phase in Weekday AM peak hour.
- Intersection 48 (Beach Channel Drive and Birdsall Avenue): Reallocate 1 second from EB/WB phase to NB/SB phase in Weekday AM peak hour, 3 seconds from EB/WB phase to NB/SB phase in Weekday PM peak hour.
- Intersection 50 (Beach Channel Drive and Hassock Street): Reallocate 1 second from EB/WB phase to NB/SB phase in Weekday AM peak hour.

#### *Pedestrians*

- Sidewalks:  
North sidewalk on the west leg of Beach 56<sup>th</sup> Street and Arverne Boulevard: pave one section of unpaved sidewalk (grass) with concrete.

#### **Operational Air Quality**

The maximum predicted PM<sub>2.5</sub> concentrations at the Rockaway Beach Boulevard/Beach 54<sup>th</sup> Street/Beach 53<sup>rd</sup> Street is predicted to exceed NAAQS and result in a significant adverse air quality impact. Therefore, a traffic mitigation measure to signalize Rockaway Beach Boulevard/Beach 53<sup>rd</sup> Street intersection location will be required. Signalization of this intersection is necessary to provide gaps for vehicles traveling southbound on Beach 53<sup>rd</sup> Street due to the high pedestrian volumes expected on the north crosswalk.

#### **Construction Noise**

- The following additional path controls will be implemented as mitigation to the extent feasible and practicable: portable noise barriers, panels, curtains, enclosures, and acoustical tents. The required construction and materials for these measures are as shown in Chapter 28 of NYCDEP's Citywide Construction Noise Mitigation. Where practicable and feasible, noise curtains and equipment enclosures will be placed around the noisy equipment shown in Table 1 to provide an STC of 30 (a 5 dBA insertion loss) or greater of noise shielding to sensitive receptor locations.



**Table 1: Construction Path Controls**

Equipment	DEP & FHWA Typical L <sub>max</sub> Noise Levels at 50 feet (dBA)	Developer-Committed Noise Levels at 50 feet (dBA) (Source Controls)	Developer-Committed Path Controls and Construction Practices
Air Compressor (< 350 cfm)	75-80	67	Portable enclosure; position so noise levels at sensitive receptors < 75 dBA
Bobcat	N.L.	75	Source control
Chain Saws	85	75	Portable enclosure
Circular Saws	76	76	Portable enclosure
Crane: Manitowoc 999	85	77	Portable enclosure
Cut-Off Saw	N.L.	76	Source control
Electric Hoist	N.L.	74.1	Source control
Excavators	85	77	Source control
Drum Mixer	80	76	Portable enclosure
Generators	70-82	68	Portable enclosure
Manlift	85	75	Source control
Jackhammer	85	85	Portable enclosure
Mortar Mixer	N.L.	85	Portable enclosure
Pile Rig	95	85	Source control
Pumps (Grout)	77	77	Portable enclosure
Rebar Bending Machine	80	80	Portable enclosure

**Notes:**

N.L. – not listed by DEP or in RCNM

Source: NYC *CEQR Technical Manual* (2014) and *FHWA Roadway Construction Noise Model User's Guide* (January 2006); NYC Noise Code (2005).

**EXHIBIT G**

**Project Phasing Diagram**

**[Attached]**

**EXHIBIT H**

**Private Street Network Temporary and Permanent Design Drawings**

**[Attached]**