



## CITY PLANNING COMMISSION

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May 7, 2014 / Calendar No. 4

C 140183 ZSM

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**IN THE MATTER OF** an application submitted by NYC Department of Housing Preservation and Development and 525 West 52<sup>nd</sup> Street Property Owner LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) - to allow the distribution of total allowable floor area under the applicable district regulations without regard for zoning district boundaries; and
2. Section 74-743(a)(2) - to allow the location of buildings without regard for the height and setback requirements of Sections 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts) and 23-663 (Required rear setbacks for tall buildings in other districts);

in connection with a proposed mixed use development on property bounded by West 53<sup>rd</sup> Street, a line 275 feet westerly of 10<sup>th</sup> Avenue, West 52<sup>nd</sup> Street, a line 375 feet easterly of 11<sup>th</sup> Avenue, a line midway between West 53<sup>rd</sup> Street and West 52<sup>nd</sup> Street, a line 250 feet easterly of 11<sup>th</sup> Avenue, West 52<sup>nd</sup> Street, and 11<sup>th</sup> Avenue (Block 1081, Lots 1, 60 and 1000-1008), within a Large-Scale General Development, in an R9/C2-5 District, within the Special Clinton District, Borough of Manhattan, Community District 4.

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This application for a special permit pursuant to Section 74-743 to permit the distribution of floor area without regard for zoning district boundaries and to allow the location of buildings without regard for the height and setback requirements was filed by the Department of Housing, Preservation and Development (HPD) and 525 West 52nd Street Property Owner LLC on November 25, 2013. A revised application was filed on May 1, 2014 to reflect the amount of total commercial floor area proposed. The proposed special permit, along with its related actions, would facilitate the development of two new buildings and rehabilitation of one building to provide approximately 530 residential units (of which 206 would be affordable to low-, moderate- and middle-income residents), 58,709 square feet of commercial floor area and approximately 7,500 SF of community gardens on portions of two blocks bounded by West 51st

Street and West 53rd Street between Tenth and Eleventh avenues in Manhattan Community District 4.

### **RELATED ACTIONS**

In addition to the proposed special permit (C 140183 ZSM), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

**C 140181 ZMM:** Amendment of the Zoning Map, Section No. 8c to change M1-5 (CL) and R8A (CL) districts to R9/C2-5 (CL), and R8 (CL) to R8A (CL) districts

**N 140182 ZRM:** Amendment to Zoning Resolution Section 96-00 Appendix A to include portions of the Project area in the Other Area - Western Subarea C2; Appendix F to include portions of the Project area in the Inclusionary Housing designated area; Section 96-31 to amend IH program to include low-, moderate and middle-income bands within R8A districts in the CL; Section 96-32 to amend IH program to include low-, moderate- and middle-income bands within R9 districts in the CL, and permit certain commercial and manufacturing uses in the Project area

**N 140184 ZCM:** Commission certification pursuant to Section 26-15 to allow more than one curb cut along a narrow street

**C 140185 HAM:** Urban Development Area Action Plan Designation and Disposition of property on portions of blocks bounded by West 51<sup>st</sup> and West 53rd streets; 10th and 11th avenues

### **BACKGROUND**

A full background discussion and description of this application appears in the report of the related action for a zoning map amendment (C 140181 ZMM).

### **ENVIRONMENTAL REVIEW**

This application (C 140183 ZSM), in conjunction with the application for the related actions, was reviewed pursuant the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations

(NYCRR), Section 617.00 et seq. and the New York City Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 13HPD106M. The lead agency is the New York City Department of Housing Preservation and Development.

A summary of the environmental review and the Final Environmental Impact Statement appears in the report of the related action for a zoning map amendment (C 140181 ZMM).

### **UNIFORM LAND USE REVIEW**

This application (C 140183 ZSM), in conjunction with the related ULURP applications (C 140181 ZMM and C 140185 HAM), was certified as complete by the Department of City Planning on December 2, 2013, and was duly referred to Manhattan Community Board 4 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b); along with the related non-ULURP actions (N 140182 ZRM and N 140184 ZCM), which were referred for information and review, in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Community Board 4 held a public hearing on this application (C 140183 ZSM), on January 6, 2014, and by a vote of 35 in favor, 1 opposed and 1 present but not eligible, recommended approval of the application.

A summary of the Community Board's conditions and recommendations appears in the report on the related application for a zoning map amendment (C 140181 ZMM).

### **Borough President Recommendation**

This application (C 140183 ZSM) was considered by the President of the Borough of Manhattan who issued a recommendation approving this application with conditions on March 12, 2014.

### **City Planning Commission Public Hearing**

On March 5, 2014 (Calendar No. 3), the City Planning Commission scheduled March 19, 2014, for a public hearing on this application (C 140183 ZSM). The hearing was duly held on March 19, 2014 (Calendar No. 18) in conjunction with the public hearing on the applications for related actions. There were 23 speakers in favor of the application and no speakers in opposition as described in the report on the related application for a zoning map amendment (C 140181 ZMM), and the hearing was closed.

### **CONSIDERATION**

The Commission believes that this application for a special permit (C 140183 ZSM) in conjunction with the application for related actions, is appropriate. A full consideration and analysis of the issues, and the reasons for approving this application appear in the report on the related application for a zoning map amendment (C 140181 ZMM).

### **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Sections 74-743 of the Zoning Resolution:

1. The large-scale general development has a total of approximately two acres and will be developed as a unit under single fee ownership or alternate ownership arrangements as set forth in the zoning lot definition in Section 12-10 of the Zoning Resolution and contains existing buildings that form an integral part of the large-scale general development;
2. the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas than would be possible without such distribution and will thus benefit both the occupants of the large-scale general development, the neighborhood and the City as a whole;

3. the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block and will not unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
4. considering the size of the proposed large-scale general development, the streets providing access to such large scale general development will be adequate to handle traffic resulting therefrom; and
5. A declaration with regard to ownership requirements of the large-scale general development has been filed with the Commission.

## **RESOLUTION**

Therefore, the City Planning Commission, deeming the action described herein to be appropriate, adopts the following resolution:

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the application submitted by NYC Department of Housing Preservation and Development and 525 West 52<sup>nd</sup> Street Property Owner LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) - to allow the distribution of total allowable floor area under the applicable district regulations without regard for zoning district boundaries; and
2. Section 74-743(a)(2) - to allow the location of buildings without regard for the height and setback requirements of Sections 35-24 (Special Street Wall Location and Height and

Setback Regulations in Certain Districts) and 23-663 (Required rear setbacks for tall buildings in other districts);

in connection with a proposed mixed use development on property bounded by West 53<sup>rd</sup> Street, a line 275 feet westerly of 10<sup>th</sup> Avenue, West 52<sup>nd</sup> Street, a line 375 feet easterly of 11<sup>th</sup> Avenue, a line midway between West 53<sup>rd</sup> Street and West 52<sup>nd</sup> Street, a line 250 feet easterly of 11<sup>th</sup> Avenue, West 52<sup>nd</sup> Street, and 11<sup>th</sup> Avenue (Block 1081, Lots 1, 60 and 1000-1008), within a Large-Scale General Development, in an R9/C2-5 District, within the Special Clinton District, Borough of Manhattan, Community District 4, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 140183 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by Handel Architects LLP, filed with this application and incorporated in this resolution:

Dwg Nos.	Title	Last Revised Date
Z-030	Zoning Compliance Summary	05/01/2014
Z-100	Roof Plan/Site Plan	11/25/2013
Z-120	Open Space Diagram	11/25/2013
Z-140	Sections & Waiver Diagrams	11/25/2013
Z-141	Sections & Waiver Diagrams	11/25/2013
Z-142	Sections & Waiver Diagrams	11/25/2013
Z-143	Sections & Waiver Diagrams	11/25/2013

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are

subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
5. Development pursuant to this resolution shall be allowed only after the attached Restrictive Declaration marked as Exhibit A hereto, as the same may be modified with any necessary administrative or technical changes, all as acceptable to counsel to the Department, is executed by the applicants or its successors, and such declaration shall have been recorded and filed in the Office of the Register of the City of New York, New York County.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, renewal or extension of the special permit hereby granted.

7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 140183 ZSM), duly adopted by the City Planning Commission on May 7, 2014 (Calendar No. 4), is filed with the Office of the Speaker, City Council and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD**, Chairman

**KENNETH J. KNUCKLES, *ESQ.***, Vice Chairman

**ANGELA M. BATTAGLIA, RAYANN BESSER, MICHELLE R. DE LA UZ,**

**MARIA DEL TORO, JOSEPH DOUEK, ANNA HAYES LEVIN,**

**ORLANDO MARIN**, Commissioners

**IRWIN G. CANTOR, *P.E.*, ALFRED C. CERULLO, *III***, Commissioners, Recused



**“Exhibit A”**

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**THIS DECLARATION** (this “Declaration”), made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by **525 WEST 52 PROPERTY OWNER LLC**, having an address at c/o Taconic Investment Partners, 111 Eighth Avenue, New York, New York 10011 (the “Parcel D Declarant”), **THE CITY OF NEW YORK**, a municipal corporation, having an address at City Hall, New York, New York 10007 (the “City Declarant”), **CLINTON PARKVIEW APARTMENTS HOUSING DEVELOPMENT FUND CORPORATION**, a \_\_\_\_\_, having an address at 426 West 56<sup>th</sup> Street, New York, New York 10019 and **CLINTON PARKVIEW APARTMENTS, L.P.**, a \_\_\_\_\_ limited partnership, having an address at 747 Tenth Avenue, New York, New York 10019 (collectively, the “Parcel B Declarant”), **CLINTON HOUSING WEST 53<sup>RD</sup> PARTNERS, L.P.**, a \_\_\_\_\_ limited partnership, having an address at c/o Clinton Housing Development Corporation, 403 West 40<sup>th</sup> Street, New York, New York 10018 (the “Parcel A Declarant”) (Parcel D Declarant, City Declarant, Parcel B Declarant and Parcel A Declarant, collectively, the “Declarants”).

**WITNESSETH:**

**WHEREAS**, the Parcel D Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1081, Lot [\_\_\_\_] (f/k/a Lots 1001-1008), which real property is shown as the easterly portion of Parcel D on the diagram annexed hereto as **Exhibit “A”** (the “Parcel Diagram”) and more particularly described in **Exhibit “A-1”** annexed hereto and made a part hereof (“Parcel D-Easterly Portion”);

**WHEREAS**, City Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1081, part of Lot 1, which real property is shown as Parcels C, C' on the Parcel Diagram and more particularly described in **Exhibit "A-2(i)"** annexed hereto and made a part hereof (Parcel C and C' collectively, the "CHDC Parcel"), and the westerly portion of Parcel D shown on the Parcel Diagram and more particularly described in **Exhibit "A-2(ii)"** annexed hereto and made a part hereof ("Parcel D-Westerly Portion");

**WHEREAS**, upon the issuance of the Land Use Approvals (as hereinafter defined), the City Declarant will convey the CHDC Parcel to Clinton Housing Development Company ("CHDC") and the Parcel D-Westerly Portion, so that upon such conveyance, CHDC shall be the fee owner of the CHDC Parcel and Parcel D Declarant shall be the fee owner of the Parcel D-Westerly Portion (the Parcel D-Easterly Portion and the Parcel D-Westerly Portion, collectively, "Parcel D");

**WHEREAS**, City Declarant is also the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1081, part of Lot 1, which real property is shown as Parcels E and E' on the Parcel Diagram and more particularly described in **Exhibit "A-3"** annexed hereto and made a part hereof (collectively, the "City Parcel");

**WHEREAS**, the Parcel B Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1081, part of Lot 1, which real property is shown as Parcel

B on the Parcel Diagram and more particularly described in **Exhibit “A-4”** annexed hereto and made a part hereof (“Parcel B”);

**WHEREAS**, Parcel A Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1081, Lot 60 (f/k/a Lots 60, 61 and 160), which real property is shown as Parcels A and A’ on the Parcel Diagram and more particularly described in **Exhibit “A-5”** annexed hereto and made a part hereof (collectively, “Parcel A”);

**WHEREAS**, Parcel A, Parcel B, the CHDC Parcel, Parcel D and the City Parcel, are herein collectively referred to as the “Subject Property”);

**WHEREAS**, the Declarants desire that they and their respective successors in interest to the Subject Property (“Successor Declarant(s)”) improve the Subject Property as a “large-scale general development” meeting the requirements of Section 12-10 of the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”) definition of “large-scale general development” (such proposed improvement of the Subject Property, the “Large Scale Development Project”); and

**WHEREAS**, Parcel D Declarant desires to develop a new building on Parcel D (the “Parcel D Building”) and the City desires that CHDC develop a new building on the CHDC Parcel (the “CHDC Building”) (Parcel D and the CHDC Parcel, collectively, the “Development Parcels”; the Parcel D Building and the CHDC Building, collectively, the “New Buildings”; and the development of the New Buildings by Parcel D Declarant and CHDC, the “Proposed Development”);

**WHEREAS**, (i) Parcel A is improved with one or more buildings (the “Existing Parcel A Building”), (ii) Parcel B is improved with a building (the “Existing Parcel B Building”), and (iii) the City Parcel is improved with a building (the “Existing City Building”) (all of the foregoing, collectively, the “Existing Buildings”), all of which are intended to remain;

**WHEREAS**, CHDC and Parcel D Declarant (collectively, the “Development Declarants”) desire to improve the Development Parcels with the Proposed Development, which together with Parcel A, Parcel B and the City Parcel, will meet the requirements of the definition of “large-scale general development” contained in Section 12-10 of the Zoning Resolution (such proposed improvement of the Subject Property the “Large Scale Development Project”);

**WHEREAS**, in connection with the Large-Scale Development Project, City Declarant acting through its Department of Housing Preservation and Development (“HPD”) (as applicant) and Parcel D Declarant (as co-applicant) have filed an application with the New York City Department of City Planning (hereinafter “City Planning”), for approval by New York City Planning Commission (the “Commission”) of the following actions: (A) Zoning Map amendments (Section Map 8c) (i) changing an M1-5 (CL) District to an R9/C2-5 (CL) District; and (ii) changing an R8A (CL) District to an R9/C2-5 (CL) District; (B) Zoning Resolution (“ZR”) Text Amendments (i) amending ZR Section 96-00 Appendix A map to make applicable to the Development Parcels the Inclusionary Housing (“IH”) Program by means of amending the boundary of “Other Area – Western Subarea C2” (“Subarea C2”) in the Special Clinton District Map to include a portion of Block 1081; (ii) amending ZR Section 96-32 to modify the IH income bands within certain R9 districts within the CL; (iii) amending ZR Section 96-32 to add language that permits the continuation of existing uses and previously approved expansion

of specified uses related to certain title vested urban renewal uses and existing community facility and arts facilities within the LSGD; (iv) amending the boundary of the IH designated area on Map 2 in ZR Appendix F in order to extend the IH to portions of the Project Area, (C) Urban Development Action Area Project (“UDAAP”) Designation and Disposition regarding HPD’s intended disposition of City-owned property and unused development floor area in order to effectuate the Proposed Development, (D) Large Scale General Development Special Permit pursuant to ZR Section 74-743 (the “Large Scale Special Permit”) to (i) permit transfer of floor area without regard for zoning district boundaries, and (ii) to allow for the location of buildings without regard for the applicable height and setback regulations set forth in ZR Sections 35-24 and 24-552, and (E) Chair Certification pursuant to ZR 26-15 ZR to allow more than one curb cut on a zoning lot on West 53rd Street (all of the foregoing Actions, collectively, the “Land Use Applications”);

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

**WHEREAS**, HPD acted as lead agency and conducted an environmental review of the Land Use Applications pursuant to CEQR and SEQRA;

**WHEREAS**, [First American Title Insurance Company] (the “Title Company”) has certified in the certification (the “Certification”) attached hereto as **Exhibit “B”** and made a part hereof, that as of \_\_\_\_\_, 2014, Declarants and [<sup>1</sup>\_\_\_\_\_] are the sole

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<sup>1</sup>List parties other than Declarants that are named in the parties-in-interest certification

parties-in-interest (the “Parties -in-Interest”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution;

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

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

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

**ARTICLE I**

**CERTAIN DEFINITIONS**

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

1.01 “Approvals” shall mean all the approvals of the Land Use Applications by the Commission and City Council with respect to the Proposed Development of the Subject Property.

1.02 “Association” shall have the meaning set forth in Section 5.03 of this Declaration.

1.03 “Attorney General” shall mean the Attorney General of the State of New York.

1.04 “Board” shall have the meaning set forth in Section 5.03 of this Declaration.

1.05 “Chair” shall mean the Chair of the City Planning Commission of the City of New York from time to time, or any successor to its jurisdiction.

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

1.07 “City Council” shall mean the City Council of the City of New York, or any successor to its jurisdiction.

1.08 “Commission” shall mean the City Planning Commission of the City of New York, or any successor to its jurisdiction.

1.09 “Declarants” shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 5.06 of this Declaration and any entity that becomes a Declarant pursuant to this Declaration.

1.10 “Declaration” shall mean this Declaration, as same may be amended or modified from time to time in accordance with its provisions.

- 1.11 “Development” shall have the meaning given in the Recitals to this Declaration.
- 1.12 “Development Declarants” shall have the meaning given in the Recitals to this Declaration.
- 1.13 “Development Parcels” shall have the meaning set forth in the Recitals to this Declaration.
- 1.14 “DOB” shall mean the Department of Buildings of the City of New York, or any successor to the jurisdiction thereof under the New York City Charter.
- 1.15 “Effective Date” shall have the meaning given in Section 3.01 of this Declaration.
- 1.16 “Existing Buildings” shall have the meaning set forth in the Recitals to this Declaration.
- 1.17 “Final Approval” shall mean approval or approval with modifications of the Land Use Applications by the Commission pursuant to New York City Charter Section 197-c, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving or approving with modifications 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 or approval with modifications of the Land Use Applications by the City Council, or (b) the City Council disapproves the decision of the Commission and the Mayor of the City of New York (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 Mayor’s disapproval, in which event “Final Approval” shall mean 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.

1.18 “Floor Area” shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

1.19 “Force Majeure” shall mean that a Force Majeure Event has occurred and Declarant has provided the Delay Notice.

1.20 “Force Majeure Event” shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant(s), which causes delay in the performance of Declarant’s obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals or actions by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the

denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xiii) orders of any court of competent jurisdiction, (xiv) unusual delays in transportation, or (xv) the pendency of any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the Association, or the holder of a Mortgage on the Subject Property in control of the Subject Property, as applicable, complies with the procedures set forth in Section 4.04.

1.21 “GLSD” or “Large Scale General Development” shall have the meaning given in the Recitals to this Declaration.

1.22 “Land Use Applications” shall have the meaning given in the Recitals to this Declaration, as such Land Use Applications may be hereafter modified.

1.23 “Large Scale Special Permit” shall have the meaning given in the Recitals to this Declaration.

1.24 “Mortgage” shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property.

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

1.26 “Named Mortgagee” shall have the meaning given in Section 5.04 of this Declaration.

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

1.28 “Notice” shall have the meaning given in Section 5.03 of this Declaration.

1.29 “Obligations” shall mean any requirement of this Declaration, including, without limitation, the requirements set forth in Article II.

1.30 “Parcel(s)” shall mean Parcel A, Parcel B, the CHDC Parcel, Parcel D and the City Parcel, as the context may require.

1.31 “Party-in-Interest” shall have the meaning given in the Recitals to this Declaration.

1.32 “Plans” shall mean the drawings for the Development prepared by Handel Architects LLP, as approved pursuant to the Approvals, reduced-size copies of which are attached as **Exhibit “C”** to this Declaration, as more particularly described in Section 2.01(a).

1.33 “Possessory Interest” shall mean either (1) a fee interest in the Subject Property or any portion thereof or (2) 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.

1.34 “Register” shall have the meaning given in Section 3.01 of this Declaration.

1.35 “Register’s Office” shall have the meaning given in Section 3.01 of this Declaration.

1.36 “Rezoning” shall have the meaning given in the Recitals to this Declaration.

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

1.38 “Substantial Completion” or “Substantially Complete”, shall mean completion of construction substantially in accordance with the Plans, in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

1.39 “Subject Property” shall have the meaning given in the Recitals to this Declaration.

1.40 “Successor Declarant” shall have the meaning given in Section 5.05 of this Declaration.

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

1.42 “Zoning Resolution” shall have the meaning set forth in the Recitals to this Declaration.

1.43 Certain additional terms are defined in the Sections in which they first appear or to which they most closely pertain.

## **ARTICLE II**

### **DEVELOPMENT AND USE OF THE SUBJECT PROPERTY**

#### **2.01 Development of the Subject Property.**

(a) Designation of Large Scale General Development. Declarants hereby declare and agree that, following the Effective Date (as defined in Section 3.01 hereof), 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.

(b) Development of the Subject Property. If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permit, Declarants covenant that the Subject Property shall be developed in substantial conformity with the plans prepared by Handel Architects LLP, approved as part of the Large Scale Special Permit and annexed hereto in **Exhibit “C”** and made a part hereof.

<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>
Z-030	Zoning Compliance Summary	5/01/2014
Z-100	Roof Plan/Site Plan	11/25/2013
Z-120	Open Space Diagram	11/25/2013
Z-140	Sections & Waiver Diagrams	11/25/2013
Z-141	Sections & Waiver Diagrams	11/25/2013
Z-142	Sections & Waiver Diagrams	11/25/2013
Z-143	Sections & Waiver Diagrams	11/25/2013

(c) Amendment to Plans. Subject to the provisions of Section 2.01(a) and (b), in the event that any Declarant seeks to develop any portion of the Subject Property other than with the Proposed Development, such Declarant shall not be authorized to develop such portion of the Subject Property except (i) as would be permitted pursuant to the applicable zoning district regulations, or (ii) where an alternative has been reviewed and approved, and the plans for such alternative development have been incorporated into this Declaration in accordance with Section 3.02 or Section 3.03 hereof.

(d) Representation. Declarants hereby represent and warrant 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.

### **ARTICLE III**

#### **EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION**

##### **3.01 Effective Date; Lapse; Cancellation.**

(a) This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Land Use Applications (the "Effective Date").

(b) Upon such Final Approval of the Land Use Applications and prior to application for any Building Permit relating to the Subject Property, the Declarants shall record

this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Land Use Applications and required by this Declaration to be recorded in public records, in the Office of the City Register, New York County (the “Register’s Office”), indexing them against the entire Subject Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarants shall deliver to the Commission a copy of all such documents, as recorded, certified by the City Register (the “Register”), promptly upon receipt of such documents from the Register. If the Declarants fail to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by the Declarants or by the City, shall be borne by Declarants.

(c) Notwithstanding anything to the contrary contained in this Declaration, if the 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 or terminating it may be recorded. Prior to the recordation of such instrument discharging or terminating this Declaration, the Declarants shall notify the Chair of Declarant’s intent to discharge or terminate this Declaration and request the Chair’s approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged or terminated

survive such termination. Upon recordation of such instrument, Declarants or Successor Declarants (as hereinafter defined) shall provide a copy thereof to the Commission so certified by the Register.

3.02 **Amendment.** This Declaration may be amended, modified or cancelled only upon application by any of the Declarants, with the consent of the other Declarants (provided, however, that no consent from the other Declarants will be required with respect to any amendments or modifications if such amendments and modifications do not affect the rights or obligations of the other Declarants pursuant to the Approvals or as set forth in this Declaration), and with the express written approval of the Commission or an agency succeeding to the Commission's jurisdiction (except with respect to a cancellation pursuant to Section 3.01 hereof, for which no such approval shall be required). No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarants.

3.03 **Minor Modifications.** Notwithstanding the provisions of Section 3.02 above, any change to this Declaration proposed by any of the Declarants, which the Chair deems to be a minor modification of this Declaration, may by express written consent be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest (including the other Declarants, provided that such minor modification does not affect the rights or obligations of the other Declarants pursuant to the Approvals or as set forth in this Declaration). Such minor modifications shall not be deemed amendments requiring the approval of the Commission.



3.04 **Future Recording.** Any modification, amendment or cancellation of this Declaration shall be executed and recorded in the same manner as this Declaration.

3.05 **Certain Provisions Regarding Modification.** For so long as any Declarant, or any successor entity to the balance and entirety of such Declarant's fee interest in the Subject Property so that Declarant no longer holds any fee interest in the Subject Property (the "Successor Declarant"), shall hold a fee interest in the Subject Property or any portion thereof, all other Unit Interested Parties, their heirs, successors, assigns and legal representatives, hereby irrevocably (i) consent to any amendment, modification, cancellation, revision or other change in this Declaration, (ii) 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 (iii) nominate, constitute and appoint Declarant, or any Successor Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration or to evidence such Unit Interested Parties' consent or waiver as set forth in this Section 3.05.

## **ARTICLE IV**

### **COMPLIANCE; DEFAULTS; REMEDIES**

4.01 **Default.** (a) Declarants acknowledge that the restrictions, covenants, and Obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. 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. If any Declarant fail to perform any of its obligations under this Declaration with respect to its Obligations (a

“Violation Controlling Declarant”), the City shall seek to enforce this Declaration first against such Violation Controlling Declarant(s), as applicable, and exercise any administrative legal or equitable remedy available to the City, and Declarants hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarants’ or any other Party in Interest’s right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City’s rights of enforcement shall be subject to the cure provisions and periods set forth in Section 4.01(c) hereof. Declarants also acknowledge that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling a Violation Controlling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any building located within the Large Scale General Development Project that does not comply with the provisions of this Declaration; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarants, Mortgagees, and Declarants’ successors and assigns and the City, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

(c) Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give the Violation Controlling Declarant, every Mortgagee of all or any portion of the Violation Controlling Declarant's Parcel, and every Party in Interest in such Parcel, ninety (90) days written notice of such alleged violation, during which period the Violation Controlling Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure a Violation Controlling Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Violation Controlling Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by the Violation Controlling Declarant. If a Violation Controlling Declarant, any Party in Interest or Mortgagee commence to effect such cure within such ninety (90) day period (or if cure is not capable of being commenced within such ninety (90) day period, the Violation Controlling Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid ninety (90) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as the Violation Controlling Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Section 5.03 hereof, and the right to cure shall apply equally to all Declarants.

(d) If, after due notice and opportunity to cure as set forth in this Declaration, a Violation Controlling Declarant, Mortgagee or a Party in Interest shall fail to cure the alleged violation with respect to its Parcel, the City may exercise any and all of its rights, including without limitation those delineated in this Section 4.01 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that such Violation Controlling Declarant is in default of a material Obligation under this Declaration.

The time period for curing any violation of this Declaration by the Violation Controlling Declarant shall be subject to extension due to the occurrence of a Force Majeure Event subject to the provisions of Section 4.04 hereof.

4.02 **Rights of Mortgagees.** Except as otherwise provided in Section 4.03 of this Declaration, if a Violation Controlling Declarant shall fail to observe or perform any of the covenants or provisions contained in this Declaration as same apply to its Parcel and such failure continues beyond the cure period set forth in Section 4.01 hereof, the City shall, before taking any action to enforce this Declaration, give notice to any Named Mortgagee, setting forth the nature of the alleged default. A Named Mortgagee shall have available to it an additional cure period of the same number of days as the Violation Controlling Declarant had in which to cure such alleged default, as extended by Force Majeure Events. If such Named Mortgagee has commenced to effect a cure during such period and is proceeding with reasonable diligence towards effecting such cure, then such cure period shall be extended for so long as such Named Mortgagee is continuing to proceed with reasonable diligence with the effectuation of such cure. With respect to the effectuation of any cure by any Named Mortgagee, such Named Mortgagee shall have all the rights and powers of the Declarant pursuant to this Declaration necessary to cure such default. If a Named Mortgagee performs any obligation or effects any cure the

Violation Controlling Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Violation Controlling Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant.

4.03 **Enforcement of Declaration.** No person or entity other than Declarants, Mortgagees, the City, or a successor, assign or legal representative of any such party, shall be entitled to enforce, or assert any claim arising out of or in connection with, this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than the parties named above in this Section, who shall be deemed to be the proper entities to enforce the provisions of this Declaration, and 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 any document or instrument executed or delivered in connection with the Land Use Applications. Declarant consents to the enforcement by the City, administratively or at law or equity, or by any legal means necessary, of the covenants, conditions, easements, agreements and restrictions contained in this Declaration.

4.04 **Delay By Reason of Force Majeure Event.** In the event that Declarant is unable to comply with any Obligations of this Declaration (including, without limitation, any violation of this Declaration under Section 4.01 hereof) as a result of a Force Majeure Event, then Declarant may, upon written notice to the Chair (the "Delay Notice"), request that the Chair, certify the existence of such Force Majeure Event. Such Delay Notice shall include a description of the Force Majeure Event, and, if known to such Declarant, its cause and probable duration and the impact it is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. In the exercise of its reasonable

judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice certify in writing whether a Force Majeure Event has occurred. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonably specificity, in the certification, the reasons therefore. If the Chair certifies a Force Majeure Event exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying the Buildings Department that a Building Permit, TCO, or a PCO, as applicable, may be issued for the New Building. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that Force Majeure Events have occurred. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Upon a certification or deemed certification that Force Majeure Events have occurred, the City may grant such Declarant appropriate relief. As a condition of granting such relief, the City may require that such Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration. Any delay caused as the result of Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continue. Declarant shall recommence the Obligation at the end of the probable duration of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; 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 the Chair, the Chair shall grant additional time to re-commence the Obligation.

4.05 **Declarants' Remedies for Breach by Other Declarants.** Each of the Declarants shall develop or occupy its Parcel in compliance with the terms and provisions of this Declaration as it pertains to such Declarant's Parcel. In the event of any Violation Controlling

Declarant's breach of the terms and conditions of this Declaration (including, without limitation, Article II hereof), which breach shall not have been cured after all applicable notice and cure rights, the other Declarants (each individually, a "Non-Violation Controlling Declarant" and collectively, the "Non-Violation Controlling Declarants") shall have any and all rights and/or remedies available at law, in equity, under this Declaration or otherwise. Such rights and/or remedies shall include, without limitation, (A) injunctive relief (i) to prevent the actual or threatened filing with the appropriate Governmental Entity of any plans or specifications that are not consistent with this Declaration, (ii) to stop work on any actual or threatened non-conforming buildings and improvements, (iii) to compel work so that any buildings and improvements is constructed in accordance with this Declaration, (iv) to compel removal of any such non-complying buildings or improvements, and/or (B) the right to sue for actual and/or consequential damages, and/or (C) the right cure such breach at the expense and for the account of the Violation Controlling Declarant (and if necessary, in the name of Violation Controlling Declarant with the right to file all required applications on behalf of and as agent of the Violation Controlling Declarant), and the Violation Controlling Declarant will execute and deliver such documents and applications as may be required in connection therewith, it being agreed that a Non-Violation Controlling Declarant shall have a license to have access to the Violation Controlling Declarant's Parcel for the purpose of effecting such cure, provided, however, that such access and cure (i) shall only occur after notice to the Violation Controlling Declarant, (ii) except in the event of an emergency as reasonably determined by a Non-Violation Controlling Declarant, shall only occur at reasonable times, and (iii) shall not unreasonably interfere with the Violation Controlling Declarant's use and occupancy of the Violation Controlling Declarant's building; and provided, further, that during the period of such access and cure, the Non-Violation

Controlling Declarant shall procure and maintain liability insurance, naming the Violation Controlling Declarant (and any mortgagee of the Violation Controlling Declarant's Parcel of which the Non-Violation Controlling Declarant has notice) as an additional insured, in the form and in the amounts customarily carried in connection with work of the type necessary to cure such breach. Each Declarant (in such capacity, the "Indemnifying Party") shall indemnify, defend and hold harmless the other Declarants (the "Indemnified Parties") from and against and in respect of any loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) asserted against, imposed on or incurred by the Indemnified Parties by reason of, or resulting from or relating to a breach of this Declaration as it relates to the Indemnifying Party's Parcel.

## ARTICLE V

### MISCELLANEOUS

5.01 **Binding Effect.** Except as specifically set forth in this Declaration and, subject to applicable law, Declarants shall have no obligation to act or refrain from acting with respect to the Subject Property. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding on each Declarant and any successor or assign of such Declarant who acquires a Possessory Interest such Declarant's Parcel, provided that the Declaration shall only be binding upon a Declarant or successor or assign thereof for the period during which such Declarant or such successor or assign thereof is the holder of a Possessory Interest in the Subject Property and only to the extent of such Possessory Interest in the Subject Property. At such time as a Declarant or any successor or assign to such Declarant no longer holds a Possessory Interest in the Subject Property, such Declarant's or such Declarant's successor's obligation and liability under this Declaration shall wholly cease and terminate except with respect to any liability



during the period when such Declarant held a Possessory Interest in the Subject Property, and the party succeeding such Declarant or such Declarant's successor shall be deemed to have assumed the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party succeeds to a Possessory Interest in the Subject Property to the extent of such party's Possessory Interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of a Possessory Interest in the Subject Property. The provisions of this Declaration shall run with the land and shall inure to the benefit of and be binding upon Declarants.

5.02 **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarants, and any or all of their respective successors and assigns or the subsequent holders of any interest in the Subject Property, on an in rem basis only, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event that any building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Interested Party's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Interested Party's percentage interest in the

common elements of the condominium in which such condominium unit is located applied to the assessment imposed on the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the condominium pursuant to the provisions of Article 4 hereof. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against the applicable Declarant, and the boards of managers of any condominium association. In the event that the condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

### **5.03 Condominium and Cooperative Ownership**

(a) In the event that the Large Scale Development Project or any portion thereof is developed as, sold, or converted to condominium or cooperative ownership requiring the approval of the Attorney General of the State of New York (the "Attorney General"), Declarant so doing shall provide a copy of this Declaration and any subsequent modification hereof to the Attorney General with the offering documents at the time of application for

approval of any offering plan for such condominium or cooperative. Declarant shall include in the offering plan, if any, for such condominium or cooperative this Declaration or any portions hereof which the Attorney General determines shall be included and, if so included in the offering plan, shall make copies of this Declaration available to condominium purchasers and cooperative shareholders purchasing from such Declarant pursuant to such offering plan. Such condominium or cooperative (or the board of managers of a condominium or board directors of a cooperative having a Possessory Interest therein) shall be deemed to be a Declarant for purposes of this Declaration, and shall succeed to a prior Declarant's obligations under this Declaration in accordance with Section 5.01 hereof.

(b) With respect to any portion of the Subject Property which shall be subject to a condominium, cooperative or similar form of ownership, for the purposes of this Declaration, except as otherwise set forth below, the board of directors or managers of the condominium, cooperative or similar association (such entity, a "Board") or a master association (an "Association") selected by the Board and authorized by underlying organizational documents to act on behalf of the individual condominium unit owners, cooperative shareholders or similar owners, shall have the sole right as Declarant of such portion of the Subject Property to assess a lien for any costs incurred under this Declaration or to otherwise act as a Declarant with respect to this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any individual condominium unit owner, cooperative shareholder or other similar owner who may be considered a party in interest under the Zoning Resolution shall not be required. For purposes of this Declaration, the Board or the Association, as the case may be, shall be

deemed the sole Party in Interest with respect to the property interest subjected to the condominium, cooperative or similar ownership arrangement, and any such condominium unit owner, cooperative shareholder or other similar owner, or holder of any lien encumbering any such individual unit, shall not be deemed a Party in Interest. For purposes of Section 5.04 hereof, notice to the Board or the Association, as the case may be, shall be deemed notice to the Declarant of the applicable portion of the Subject Property.

5.04 **Notices.**

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

If to Parcel D Declarant:

c/o Taconic Investment Partners

New York, New York 10011]

Attention: Charles Bendit  
Andrew Zlotnick, Esq.  
Gerry Ritterman

with a copy to:

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: Gary R. Tarnoff, Esq.

If to CHDC:

[Clinton Housing Development Entity]  
403 West 40th Street  
New York, New York 10018  
Attention:

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Meredith J. Kane, Esq.

If to City Declarant:

with a copy to:

If to Parcel B Declarant:

with a copy to:

If to Parcel A Declarant:

with a copy to:

If to the Commission:

Chair  
City Planning Commission of the City of New York  
22 Reade Street  
New York, New York 10007  
(or the then official address)

with a copy to:

Department of City Planning  
Office of the Counsel  
22 Reade Street  
New York, New York 10007  
  
(or the then official address)

If to a Party in Interest other than Declarants:

at the address provided in writing to the Commission  
in accordance with this Section 5.03

If to a Mortgagee:

at the address provided in writing to the Commission  
in accordance with this Section 5.03

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 5.04, 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 hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission has notice ("Named Mortgagee"), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

5.05 **Certificates.** The City will at any time and from time to time upon not less than thirty (30) days' prior notice by any of the Declarants or a Named Mortgagee execute, acknowledge and deliver to such Declarant or such Named Mortgagee, as the case may be, a

statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate any Declarant is in default in the performance of any Obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as such Declarant or such Named Mortgagee may reasonably request. If the City fails to respond within such thirty (30) day period, Declarant may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: “**SECOND NOTICE PURSUANT TO SECTION 5.04 OF THE DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**”). If the City fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to have certified (i) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as such Declarant or such Named Mortgagee had requested, and such deemed certification may be relied on by such Declarant or such Named Mortgagee and their respective successors and assigns.

5.06 **Successors of Declarant.** References in this Declaration to “Declarant(s)” shall be deemed to include successors of Declarant, if any, which are holders of a Possessory Interest in the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a successor of

Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the “Declarant” hereunder unless such holder commences to develop the Subject Property in accordance with the terms of Section 2.01 hereof or has acquired its interest from a Party who has done so.

5.07 **Parties-in-Interest.** Declarants shall provide the City with an updated Certification of Parties-in-Interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

5.08 **Governing 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.

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



such provision shall be severed and the remainder of this Declaration shall continue to be of full force and effect.

5.10 **Applications**. Declarants shall include a copy of this Declaration as part of any application pertaining to the Subject Property (as to which the provisions of this Declaration are applicable) submitted to the DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

5.11 **Incorporation by Reference**. Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

5.12 **Counterparts**. This Declaration may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the undersigned have executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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By:

Name:

Title:

[Standard Acknowledgment]