



IN THE MATTER OF an application submitted by Hebrew Home for the Aged at Riverdale, Inc., The Hebrew Home for the Aged at Riverdale Foundation, Inc., and Hebrew Home Housing Development Fund Company, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-901(a) of the Zoning Resolution to modify the use regulations of Section 22-13, to allow a long-term care facility (Use Group 3) in an R1-1 District (Block 5933, Lot 55), on property located at 5701-5961 Palisade Avenue (Block 5933, Lots 55, 210, 224, 225 and 230), in R1-1 and R4 Districts, within the Special Natural Area District (NA-2), Borough of the Bronx, Community District 8.

This application (C 180321 ZSX) for a special permit pursuant to Section 74-901(a) to modify the use regulations of Section 22-13 of the Zoning Resolution (ZR) to allow a long-term care facility in an R1-1 zoning district was filed by Hebrew Home for the Aged at Riverdale, Inc., The Hebrew Home for the Aged at Riverdale Foundation, Inc., and Hebrew Home Housing Development Fund Company, Inc. (collectively, the Hebrew Home) on April 23, 2018. Along with the related actions, it would facilitate the development of a long-term care facility on an approximately 32-acre campus in the Riverdale neighborhood of the Bronx, Community District 8.

RELATED ACTIONS

In addition to the special permit (C 180321 ZSX) that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

N 180322 ZAX Zoning authorization for modification of topographic features on a Tier I site (ZR 105-421).

N 180323 ZAX Zoning authorization for development on a steep slope and steep slope buffer (ZR 105-422).

N 180324 ZAX Zoning authorization for alteration of rock outcrops (ZR 105-424).

- N 180325 ZAX Zoning authorization for the modification of the botanic environment and tree planting and preservation requirements (ZR 105-425).
- N 180326 ZAX Zoning authorization for modification of height and setback regulations (ZR 105-432).
- N 180327 ZCX City Planning Commission certification for a restoration plan approval (ZR 105-45).

BACKGROUND

This application for a special permit pursuant to ZR Section 74-901(a) (Long-term care facilities) would facilitate the development of a long-term care facility on property located at 5701-5961 Palisade Avenue (Block 5933, Lots 55, 210, 224, 225, and 230). The site is split between R4 and R1-1 zoning districts, and the special permit is required to allow this use in an R1-1 district. The long-term care facility use is as-of-right in the R4 portion of the site.

The project site, known as the Hebrew Home campus, is bounded by the Metro-North Hudson Line rail tracks to the west, the College of Mount Saint Vincent to the north, Palisade Avenue to the east, and single family homes to the south. The surrounding area is developed with a mix of residential and institutional uses within R1-1, R1-2, R2, and R4 zoning districts. The immediate area to the south, east, and northeast of the site features mostly one- and two-family homes, and the Skyview-on-the-Hudson development to the east, which comprises three 20-story residential complexes with more than 1,300 residential units.

Several institutions surround the project area, including the College of Mount Saint Vincent immediately to the north, the High Ridge Home nursing facility and Salanter Akiba Riverdale Academy high school to the east, and the Riverdale YM-YWHA and Cardinal O'Connor Clergy Residence to the southeast. Within a 600 foot radius of the project area, including the Hebrew Home campus but excluding the Hudson River, institutional uses occupy more than 60 percent of the lot area.

Founded as The Hebrew Home for the Aged, the history of the Hebrew Home dates back to 1917, when it began providing shelter for poor, aging immigrants in a small synagogue in Harlem. In 1948, the Hebrew Home acquired the approximately 18.4-acre North Campus in Riverdale, where to this day it provides managed long-term care, assisted living, rehabilitation services, housing, skilled nursing and specialized services including elder abuse prevention.

In 2003, the City Planning Commission and the City Council approved the comprehensive plan submitted by Bronx Community Board 8, known as *CD 8 2000: A River to Reservoir Preservation Strategy*, (N 000618 NPX) pursuant to Section 197-a of the City Charter to serve as a policy guide for subsequent actions by City agencies. A 2005 zoning map amendment (C 050480 ZMX), intended by the City Planning Commission to be in keeping with the goals delineated in the 197-a Plan, rezoned all or portions of 23 blocks in the Riverdale-on-Hudson neighborhood, including the South Campus of the Hebrew Home, from R1-2 to R1-1.

The Hebrew Home campus comprises 32 acres on a dramatic slope with its lowest point at the Hudson River/Metro-North rail line to the west, rising upward toward Palisades Avenue and the Skyview-on-the-Hudson development. The North Campus, located in the R4 district, comprises 18.4 acres, and the South Campus, located in the R1-1 district, comprises 13.6 acres. The entire project area, which includes both the North Campus and the South Campus, is located within the Special Natural Area District (SNAD) NA-2.

North Campus

The R4 zoning district is mapped over the North Campus, which allows residential uses up to a maximum floor area ratio (FAR) of 0.75. Community facility uses, including affordable independent residences for seniors and long-term care facilities, are permitted a maximum FAR of 1.29. Height and setback regulations permit a perimeter wall of a building containing affordable independent residences for seniors or long term care facilities to rise up to 25 feet before setback. The maximum building height is 45 feet.

The 18.4-acre North Campus contains the existing Hebrew Home campus comprising nine buildings. The buildings include the Riverwalk building (137 nonprofit residences for the elderly),

Resnick Pavilion (317 skilled nursing facility beds), Jacob Reingold Pavilion (174 skilled nursing facility beds), Goldfine Pavilion (144 skilled nursing facility beds), Gilbert Pavilion (144 skilled nursing facility beds), and Stolz Pavilion (100 skilled nursing facility beds and 35 assisted living units), the staff dining building, electrical building, and service building. In total, the existing Hebrew Home campus contains 879 skilled nursing beds, 35 assisted living units, and 137 nonprofit residences for the elderly. The campus also contains 317 parking spaces (237 surface and 80 garage spaces).

South Campus

The R1-1 residential district mapped over the South Campus allows a maximum single-family and two-family residential uses and community facility uses up to a maximum FAR of 0.5. A long-term care facility use, which is a Use Group 3 community facility use, is only permitted in an R1 zoning district with a special permit. Height and setback regulations are governed by a sky exposure plane starting 25 feet above the front yard line.

The South Campus was purchased from the Passionist Fathers of Riverdale in 2011 and is currently developed with a 120-year-old mansion, known as the Victorian Home, which later added a small chapel adjacent to the home, and a large retreat house, known as the Cardinal Spellman Retreat House. The four-story Retreat House consists of 54,800 square feet of floor area, 91 rooms, and a central steeple that rises to approximately 67 feet above the front yard line. The Retreat House and three utility buildings on the South Campus are proposed to be demolished as part of the proposal, with the Victorian Home and chapel remaining. There are 107 existing surface parking spaces to the north of the Retreat House that are accessible from the northernmost driveway.

Proposed Development

The proposed development would be a Continuing Care Retirement Community (CCRC), the first in the City since the use was defined in the Zoning for Quality and Affordability text (N 160049 ZRY). A CCRC is required to be licensed under Article 46 of the New York State Public Health Law and requires a mix of independent living, assisted living, and skilled nursing care. To qualify for the special permit, the CCRC must offer a contract with long-term care services and housing

for independent living with residential service and amenities. The CCRC must also have fewer independent living dwelling units than assisted living and nursing beds.

The Hebrew Home intends to demolish the existing Goldfine Building. In its place, the proposed CCRC would comprise a new building with three wings on a one-story base containing 388 independent living units. The northernmost wing would be a 12-story wing on the North Campus with 271 independent living units and below-grade parking. This use is permitted as-of-right within the existing R4 zoning district, but the proposed development exceeds the district's maximum height of 45 feet and requires an authorization pursuant to ZR Section 105-432 (N 180326 ZAX). The other two wings would be located on the South Campus, within an R1-1 zoning district. This portion of the building would include 117 independent living units in six-story and four-story wings with below-grade parking.

In total, the proposed Hebrew Home Continuing Care Retirement Community would consist of 388 independent living units (271 on North Campus; 117 on South Campus), 607 skilled nursing home beds, and 105 assisted living units. The Hebrew Home would continue to operate the 137 units for the elderly in its existing buildings on the North Campus. On the South Campus, it would maintain the Victorian Home and chapel and construct a new tennis court.

The proposal includes connections for direct access from the independent living building to the assisted living units and nursing beds within the existing Hebrew Home for residents of the CCRC who need these services. As proposed, the new development would not fully utilize the available floor area. The two new CCRC South wings would comprise 190,700 square feet, for a total proposed floor area of 197,328 square feet, and the new CCRC North wing would add 415,440 square feet, for a total of 989,307 square feet.

The proposal would provide 509 total parking spaces on the site. On the North Campus, 392 parking spaces would be provided (241 surface spaces and 151 garage spaces) where 391 parking spaces are required. On the South Campus, 117 parking spaces are required and proposed. Existing surface parking on the South Campus would be eliminated and the current driveway system would be modified for efficiency. The 509 parking spaces represent an 85-space increase.

Currently, vehicles enter the campus from Palisade Avenue at the northeast and southeast corners of the North Campus. The entrance at the southeast corner of the North Campus, which was a service and maintenance entrance, would be closed. The remaining North Campus entrance would be retained, but the security gate would be relocated an additional 70 feet in from Palisade Avenue to allow more vehicles to queue on the site. A new main entrance for residents and visitors would be created on the South Campus, with access at an existing curb cut across from Sigma Place on Palisade Avenue. A second entrance, the current driveway and turnaround in front of the Victorian Home on the South Campus, would remain unchanged but would not be connected to the network of roads within the project area. In total, there would be three public vehicular entrances to the campus from Palisade Avenue: two on the South Campus and one on the North Campus. An existing service entrance at the south end of the South Campus would also be retained, but would be gated and available only to small maintenance vehicles.

Subsequent to certification, in response to comments received during public review, the Hebrew Home modified its application on September 4, 2018 to reduce the height of the North Campus building and mechanical equipment to less than the elevation of the Resnick Pavilion. The revised height would allow for an 11-story building (approximately 123 feet). On the South Campus, the height of the two wings would be reduced from six stories to five stories and from four stories to three stories. The modification of the proposed building would reduce the total independent living units from 388 units to 386 units. In addition to the modification of the proposed building, the applicant included an extension of a pedestrian path into the area west of the south wings and added additional trees to the campus along Palisade Avenue to provide additional screening.

In order to expand the existing Hebrew Home for the Aged to facilitate the development of a CCRC, the Hebrew Home is seeking a special permit to allow the proposed use within an R1 zoning district. Authorizations are also required to modify the natural features and the height and setback regulations within a SNAD area to facilitate the new building and roadways.

Actions Necessary to Facilitate the Project

Special permit pursuant to 74-901 to allow for the development of a Long-Term Care Facility in an R1-1 zoning district (C 180321 ZSX)

The requested action would allow the proposed long-term care facility use to be located in an R1-1 zoning district. The two south campus wings of the proposed development would be located within the R1-1 zoning district.

Authorization pursuant to 105-432 to modify height and setback regulations (N 180326 ZAX)

Under the height and setback regulations in the R4 zoning district, a perimeter wall may rise to 25 feet before being setback. Above that height, the building is subject to a sloping plane up to a maximum height limit of 45 feet. The Hebrew Home is seeking a modification of the height requirements on the North Campus to develop a building that does not conform to the sky exposure plane or maximum building height. The CCRC North wing would rise at the perimeter wall to a height of 122 feet 8 inches.

Authorizations pursuant to 105-42 to alter natural features (N 180322 ZAX, N 180323 ZAX, N 180324 ZAX, N 180325 ZAX)

The Hebrew Home is seeking four authorizations to alter the natural features to build the proposed development pursuant to 105-421 for modification of topographic features on a Tier I site; 105-422 for a development, enlargement, or site alteration, of a steep slope or steep slope buffer; 105-424 for alteration of rock outcrops; and 105-425 for modification of botanic environment and tree preservation and planting requirements.

A CPC Certification pursuant to 105-45 for a restoration approval (N 180327 ZCX)

The Hebrew Home will be completing a Restoration Plan with respect to certain natural features that have been changed on the North Campus without prior approval of the City Planning Commission. The proposed Restoration Plan of the site includes planting new trees, shrubs, and ground cover to remediate the violation.

ENVIRONMENTAL REVIEW

This application (C 180321 ZSX), in conjunction with the related actions (N 180322 ZAX, N 180323 ZAX, N 180324 ZAX, N 180325 ZAX, N 180326 ZAX, and N 180327 ZCX), was reviewed pursuant to 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, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 18DCP134X. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Conditional Negative Declaration (CND), signed by the Applicant, was issued April 23, 2018. The City Planning Commission determined that the proposed actions will have no significant effect on the quality of the environment, once it is modified as follows:

The Applicant will enter into a Restrictive Declaration to ensure the implementation of project components relating to construction (transportation) that would avoid the potential for any significant adverse impacts. The project components are as follows:

- The applicant agrees to provide off-site parking and a shuttle service for construction workers to and from the development site for the duration of the construction period, as specified in a Restrictive Declaration to be recorded against the property.

The CND was published in the City Record on April 30, 2018 and in the New York State Environmental Notice Bulletin on May 2, 2018. Pursuant to SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.*, a 30-day comment period followed. Twelve comments were received.

On September 21, 2018, a Revised Environmental Assessment Statement (EAS) was issued which describes and analyzes modifications to the proposed actions. The Revised EAS concluded that the proposed actions would not result in any new or different significant adverse environmental impacts not already identified in the previous CND. A Revised CND was issued on September 26,

2018. The Revised CND reflects the changes to the proposed actions and supersedes the CND issued on April 23, 2018.

In order to avoid the potential for significant adverse construction (transportation) impacts, as part of the proposed actions, the applicant will enter into a Restrictive Declaration, which incorporates the provision of the above construction mitigation measure. The Restrictive Declaration restricts the manner in which the project site may be developed or redeveloped by requiring the declarant to provide a contractual agreement between the applicant and an off-site parking and shuttle provider to the NYC Department of Buildings prior to the issuance of the first work permit for any portion of the proposed development. The proposed traffic mitigation measures were deemed to be reasonable and appropriate. Consequently, no significant adverse impacts related to construction would occur.

In connection with the proposed actions, an (E) designation (E-477) would be assigned to site within the Development site (Block 5933, Lots 55, 210, 224, 225, and 230) to avoid potential significant adverse impacts related to air quality. The (E) designation requirements related to air quality would apply to the following sites:

Bronx, Block 5933, Lots 55, 210, 224, 255 and 203

The (E) designation text related to air quality is as follows:

Any new residential and/or community facility development for Proposed Building 1 (North Site) on Block 5933, Lot 225 must exclusively use natural gas as the fuel type for HVAC systems, and ensure that the heating, ventilation, and air conditioning stack(s) is located at the highest tier or at least 143 feet above grade to avoid any significant adverse air quality impacts.

Any new residential and/or community facility development for Proposed Building 2 (South Site) on Block 5933, Lot 55 must exclusively use natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilation, and air conditioning stack(s) is located at the highest tier or at least 82 feet above grade to avoid any significant adverse air quality impacts.

Any new residential and/or community facility development for Proposed Building 3 (South Site) on Block 5933, Lot 55 must exclusively use natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilation, and air conditioning stack(s) is located at the highest tier or at least 61 feet above grade to avoid any significant adverse air quality impacts.

With the measures specified above, the proposed actions would not result in any significant adverse impacts related to air quality.

The City Planning Commission has determined that the proposed actions will have no significant effect on the environment.

UNIFORM LAND USE REVIEW

This application (C 180321 ZSX) was certified as complete by the Department of City Planning on April 23, 2018, and was duly referred to Bronx Community Board 8 and the Bronx Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the application for the related actions (N 180322 ZAX, N 180323 ZAX, N 180324 ZAX, N 180325 ZAX, N 180326 ZAX, and N 180327 ZCX), which were duly referred to Bronx Community Board 8 and the Bronx Borough President in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 8 held a public hearing on this application (C 180321 ZSX) on June 18, 2018, and on that date, by a vote of 10 in favor, 18 in opposition, and with two abstentions, adopted a resolution recommending disapproval of the application.

Borough President Recommendation

The Bronx Borough President held a public hearing on this application (C 180321 ZSX) on July 12, 2018, and issued a recommendation on July 30, 2018 approving the application with the following conditions:

1. “Reduction of the proposed 12-story CCRC building on the North Campus to a roof elevation height lower than 248’9”, and a mechanical elevation height of 261’8”, which would make this structure shorter than the existing Resnick Building to the north.

2. Reduction of the proposed CCRC South Campus buildings from six-stories to five-stories (172' rooftop and 189' mechanical elevation) and from four-stories to three-stories (150'8" rooftop and 167'8" mechanical elevations), respectively.
3. The addition of 60 shade trees and 24 evergreen trees.
4. Limit the one-story CCRC connectors to 132' elevation.
5. Provide public access to assure completion of the Hudson River Greenway.
6. The South Campus will remain as permanent open space beyond the maximum footprint of the South Campus buildings proposed here, as per a restrictive declaration. If any development related to the CCRC occurs on the South Campus, including a reduction in square footage and/or footprint, this provision will still apply. If it is decided that construction of a CCRC will not take place on the South Campus, then these provisions would be rendered moot and the site would revert back to the requirements as per the designated R1-1 zoning district.
7. Move the north entrance west of Palisade Avenue to reduce traffic along West 261st Street and Palisade Avenue.
8. Planting of green roofs throughout the proposed CCRC buildings.
9. Establishment of an advisory committee during the construction period that will consist of at least one representative from the following groups: Hebrew Home for the Aged, Riverdale Nature Preservancy, Skyview Owners Corporation, Riverdale Community Coalition, West 261st Street Homeowners Association and Bronx Community Board #8. The committee will meet as necessary but not less than four times per year until construction of CCRC North and CCRC South are completed or the project is discontinued. My office would reserve the right to participate on this advisory committee. The Hebrew Home will consult with this committee regarding construction, design and environmental impacts during the course of construction.
10. No construction vehicles will park on public or private streets surrounding the site."

City Planning Commission Public Hearing

On July 25, 2018 (Calendar No. 1), the City Planning Commission scheduled August 8, 2018, for a public hearing on this application (C 180321 ZSX) and related actions. The hearing was duly held on August 8, 2018 (Calendar No. 33), in conjunction with the application for the related

actions. Twelve speakers testified in favor of the application and three testified in opposition.

Three members of the applicant team spoke in favor of the project, with three additional members available to answer questions. The team included the CFO of the Hebrew Home, the applicant's land use attorney, the project architects, and the applicant's environmental consultant. The team described the Hebrew Home campus, the CCRC model, the proposed project and how the Hebrew Home has agreed to a Memorandum of Understanding (MOU) with a local community group to address residents' concerns and the Borough President's recommendations. Six additional speakers spoke in favor of the proposal, including the LiveOn NY director of public policy, several residents of the Hebrew Home facility and people who have had family live there. The speakers noted the value of the Hebrew Home, the high level of care and support the facility provides and its positive impact on the community and New York City.

Three speakers spoke in opposition to the application as certified. Two of the speakers, representing the Riverdale Nature Preservancy and Riverdale Community Coalition, were parties to the MOU. The third speaker was a land use consultant. All three stated that, while they had concerns about the certified application, they would support the project with the changes outlined in the MOU.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application (C 180321 ZSX), in conjunction with the related actions (N 180322 ZAX, N 180323 ZAX, N 180324 ZAX, N 180325 ZAX, N 180326 ZAX, and N 180327 ZCX), was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant

to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 et seq.). The designated WRP number is 12-136.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that this application for a special permit (C 160270 ZSX), in conjunction with the related actions (N 180322 ZAX, N 180323 ZAX, N 180324 ZAX, N 180325 ZAX, N 180326 ZAX, and N 180327 ZCX), is appropriate.

The application, along with the related actions, would facilitate the development of a single building with three wings to be used as a long-term care facility within an R1-1 zoning district.

The CCRC model provides residents and their families a peace of mind while allowing access to a range of life-care options. Residents of the CCRC will be subject to a life care contract approved by the New York State Department of Health and New York State Department of Financial Services, which will ensure that a resident will not be asked to leave the facility if he or she is financially unable to pay monthly costs. The Commission recognizes that the Hebrew Home proposal would allow for the first CCRC approved in the City of New York since the use was permitted upon adoption of the Zoning for Quality and Affordability text. The Commission believes that the CCRC use will give New York City residents another senior housing option that allows them to age in place.

The Commission acknowledges the Bronx Borough President's recommendations, testimony from various residents and correspondence received by the Commission expressing concern about the building's height and the site plan for the proposed facility. On September 4, 2018, the applicant revised its proposal to reduce the height of the North Campus wing from 12 stories to 11 stories and reduce the height of the South Campus wings from six stories to five stories and from four stories to three stories. The modification of the proposed building would reduce the total

independent living units from 388 units to 386 units. The Commission applauds the applicant's willingness to respond to these concerns.

The Commission also received a letter from the applicant dated August 16, 2018. In this letter, the applicant stated a willingness to increase the number of trees on campus; make a good-faith effort to provide public access to the Home's Sculpture Garden and events on the lawns; provide green roofs and mechanical screening; replace the existing chain link fence with an appropriately designed fence; relocate the main north entry gate west from Palisade Avenue to reduce traffic queuing; install outdoor lighting with consideration to effects on surrounding properties; and establish a community advisory committee to address design, construction and post-construction operational issues. The letter also stated that the Hebrew Home would protect the remainder of the South Campus (the portion outside the footprint of the revised development proposal) as permanent open space.

In the August 16th letter the Hebrew Home also responded to the community's request for a defined path accessing the proposed Hudson River Greenway, noting that there is currently not a Hudson River Greenway to connect to and stating that the Hebrew Home is committed to studying locations for the access path. In response to the comments suggesting that the Hebrew Home should construct a pedestrian sidewalk on the property along Palisade Avenue, the Hebrew Home noted that there are numerous obstacles to such a sidewalk but that it would study the feasibility of providing one. The Hebrew Home stated that it would engage with the community advisory committee regarding these issues. The Commission encourages the Hebrew Home to continue to pursue the Hudson River Greenway and pedestrian sidewalk connections and notes that future changes to the site plan to accommodate a sidewalk or Hudson River Greenway path may require SNAD actions.

In written testimony, issues were raised regarding precedent for future Long-Term Care Facilities being located within the community. The proposed Hebrew Home CCRC building will not lead to further expansion of Long-Term Care Facility uses in lower density residential areas without a full public review process, as each Long-Term Care Facility use within an R1 or R2 zoning district would be subject to a separate special permit.

The Commission recognizes that more than 60 percent of the surrounding area consists of institutional uses and the proposed development will be located on a lot with an existing vacant institutional use. The Commission further recognizes the elevation changes in the surrounding area, as the residential community to the east is located on a hill sloping upward to where the Skyview-on-the-Hudson is located, approximately 120 feet higher than the Hebrew Home campus. Furthermore, the Commission believes that reducing the building height from approximately 144 feet to approximately 122 feet and providing green roofs will reduce the visual impact of the Hebrew Home facility on the residential community to the east.

The Commission believes that the buffer provided in the proposed site plan is adequate to accommodate the proposed development. The Commission acknowledges the concerns of neighborhood residents regarding the character of the surrounding R1 district within the SNAD, and notes that the open space the Hebrew Home has committed in its application to preserving the portion outside the building footprint within the R1 district. Given the surrounding context, the commitments by the Hebrew Home, and the nature of the Commission's findings for this project, the Commission believes that a greater than *de minimis* reduction of the buffer to construct new developments within the R1 portion of the site would require a new special permit. The Commission believes that the SNAD requirements and special permit provide adequate and appropriate protections for the area's open space and character.

The Commission recognizes that the intent of the SNAD is to achieve a balance between development and the preservation of natural features. The Hebrew Home is seeking a height and setback authorization that will allow the proposed development to reduce the overall footprint of the building resulting in a development that will limit the impact on the natural features.

The Commission further recognizes that natural features that will be affected by the development are subject to four SNAD authorizations, including the impacting of topographic features, steep slope and steep slope buffers, rock outcroppings, and tree planting and botanic features. Recognizing that any development would impact the natural features, the Commission believes that the Hebrew Home has sited the proposed development in a way that will limit the impact on

all natural features, and that the natural features that will be impacted will be subject to the least amount of disturbance that will allow the Hebrew Home to achieve the goals of the proposal.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-901(a) (Long-term care facilities) of the Zoning Resolution:

- (1) Such use is compatible with the character of the surrounding area;
- (2) The proposed buildings access, orientation and landscaping create an adequate buffer between the proposed facility and nearby residences; and
- (3) The streets providing access to such use are adequate to handle the traffic generated thereby or provision has been made to handle such traffic.

RESOLUTION

RESOLVED, that having considered the Environmental Assessment Statement (EAS), for which a Conditional Negative Declaration (CND) was issued on April 23, 2018, and Revised EAS for which a Revised CND was issued on September 26, 2018, with respect to this application (CEQR No. 18DCP134X), the City Planning Commission finds that the actions described herein will have no significant impact on the environment, and be it further

RESOLVED, by the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with the WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 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 Hebrew Home for the Aged at Riverdale, Inc., The Hebrew Home for the Aged at Riverdale Foundation, Inc., and Hebrew Home Housing Development Fund Company, Inc. for the grant of a special permit pursuant to Section 74-901(a) of the Zoning Resolution to modify the use regulations of Section 22-13, to allow a long-term care facility (Use Group 3) in

an R1-1 District (Block 5933, Lot 55), on property located at 5701-5961 Palisade Avenue (Block 5933, Lots 55, 210, 224, 225 and 230), in R1-1 and R4 Districts, within the Special Natural Area District (NA-2), Borough of the Bronx, Community District 8, is approved, subject to the following terms and conditions:

- 1) The property that is the subject of this application (C 180321 ZSX) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Perkins Eastman, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1	Zoning Analysis	September 25, 2018
Z-2	Base Plane and Average Curb Level	September 25, 2018
Z-3	Zoning Lot Site Plan	September 25, 2018
Z-4	Waiver Plan (R1-1 Zoning)	September 25, 2018
Z-5	Waiver Elevations & Sections (R1-1 Zoning)	September 25, 2018

- 2) Such development shall confirm to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plan 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) Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

- 5) 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, sublessee or occupant.
- 6) Upon 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, cancellation or amendment 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 180321 ZSX), duly adopted by the City Planning Commission on September 26, 2018 (Calendar No. 6) 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, Esq., *Vice Chair*

ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III,

JOSEPH I. DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*



BRONX COMMUNITY BOARD NO. 8

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Lamont Parker

June 29, 2018

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

Re: DCP Application: C 280321 ZSX
CEQR: 18DCP134X
Hebrew Home for the Aged at
Riverdale, Inc.,
5701-5961 Palisade Avenue, Bronx NY
10471
Block: 5933 Lots: 55, 210, 224, 225, 230

Dear Chair Lago:

At its regular Board meeting held on June 18, 2018, Bronx Community Board No. 8 rejected the following resolution by a vote of 10 in favor, 18 opposed and 2 abstentions.

WHEREAS the Hebrew Home for the Aged at Riverdale Foundation, Inc ("Hebrew Home" or "Applicant") has applied for authorizations with respect to the construction of a 12-story CCRC facility on the northern – R4 zoned portion of its property and for permits and other zoning approvals pursuant to ULURP in connection with the proposed construction of a 6-story and a 4-story CCRC structure on the southern – R1-1 portion of its property (the "Application"); and

WHEREAS the Application, together with a proposed restoration plan relating to various heretofore made changes primarily in respect of the steep slope of the property, have thus far been presented as a unitary application and heard pursuant to ULURP; and

WHEREAS, following several prior hearings conducted over an extended period of time by Community Board No. 8, Bronx County ("Board 8"), through its Land Use Committee ("Land Use Committee"), a public hearing was duly noticed and conducted on June 11, 2018 by the Land Use Committee, a duly constituted Committee of the whole, on the foregoing and the record thereon was closed (other than for written submissions) following completion of statements by all persons wishing to be heard on the foregoing; and

WHEREAS following the June 11, 2018 Land Use Committee meeting further meetings were held with and among representatives of the applicant and representatives of the community organizations and individuals opposing the application (sometimes referred to herein as "Objectants") and written proposals and comments were exchanged between them; and

BRONX COMMUNITY BOARD NO. 8
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WHEREAS the Land Use Committee having considered the statements and submissions of those wishing to be heard on the Application, including those in favor thereof and in opposition thereto, as well as the several communications and proposals exchanged between representatives of the applicant and representatives of the Objectants, and following due deliberation and discussion be it

RESOLVED by the Land Use Committee that the Application is APPROVED ON CONDITION that, subject to the approval of each of Board 8 of the Application on the specific conditions hereinafter set forth, and the subsequent approval by the City Planning Commission and, as pertinent, the City Council and the Mayor, of the Application substantially the form presented and as here proposed to be modified or amended and the issuance of the requested authorizations, permits, approvals and requests made in and under the Application, as modified and amended, the Applicant agrees that:

1. With respect to the Northerly –R-4 portion of the premises and in connection with CCRC structure proposed to be erected thereon:

(a), The application shall, at an appropriate juncture in the proceedings and subject to the approval of the City Planning Department and Commission, be amended or modified to reflect that the proposed new northerly CCRC structure, shall be 9 stories plus such HVAC as may be located on the roof of that proposed structure, which HVAC shall be concealed and to the extent possible (bearing in mind the concealed HVAC) shall have a Green Roof. To the extent Applicant deems it appropriate or necessary in order to recoup any units lost by reason of the reduction of the height of the building, Applicant may also modify or amend its application to reposition and expand the structure in a generally westerly direction into the area adjacent to the Steep Slope, as long as such addition shall not include any physical incursion of the Steep Slope.

(b). An appropriate restriction shall be fashioned by the Applicant in conjunction with representatives of the Objectants and the Board limiting the height of any future building on the Northerly R-4 parcel so that it would not be taller than the structure referred to in 1(a) above plus its HVAC.

(c). The possibility and practicability of Green Roofs on other existing buildings (excluding sloped and other inappropriate roof buildings like the Stolz building) will be explored and to the extent feasible implemented in accordance with a schedule to be provided to the Board.

(d). An Advisory Committee of practicable size and qualification shall be designated by the Skyview Owners Association to advise on the design and related features of the Northerly CCRC structure.

(e). The Applicant shall formulate language, acceptable to the Board, that would restrict the use of the CCRC premises (both to the north and to the south) to facilities for elderly or infirm persons consistent with the Hebrew Home's current mission -- care of the elderly and those in need of rehabilitative care.

(f). An Advisory committee consisting of representatives of the homeowners on West 261st street shall be formed to consult with the Applicant's representatives concerning the movement of construction vehicles and equipment on West 261st Street during the construction period.

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(g). The Restrictive Covenant hereafter discussed or such other binding document as shall be acceptable to the Board shall provide in words or substance that no construction-related vehicles or equipment will be allowed to idle or park on either West 261st Street or Palisades Avenue and that Applicant will take all steps reasonable and necessary to insure that all construction-related vehicles and equipment and all vehicles belonging to construction related personnel shall be parked solely within the confines of Applicant's property or at a location remote from the site and from adjacent residential areas.

2. With respect to the Southerly - R1-1 portion of the premises and in connection with CCRC structures proposed to be erected thereon:

(a). The application shall, at an appropriate juncture in the proceedings and subject to the approval of the City Planning Department and Commission, be amended or modified to reflect a reduction in the height of the CCRC structures to be erected in the southerly- R1-1 portion of the premises from 6 and 4 story structures to 5 and 3 stories, respectively, and repositioning and expanding the structure further to the west into the area adjacent to the Steep Slope in substantial conformity with the accompanying sketch (Exhibit 1), as long as such addition shall not include any physical incursion of the Steep Slope.

(b). To increase visibility for neighbors to the east, the one-story connector between the Southerly and Northerly CCRC's will, to the maximum extent possible, be of glass or like translucent material.

(c). The Applicant shall upon issuance of the permits, authorizations and other approvals sought under or in connection with the application execute and file a perpetual Restrictive Covenant in substantially the same form and content as the document accompanying this Resolution as Exhibit 2, except to the extent that the form and content of such writing may be varied as the result of discussions that shall promptly be had between representatives of the applicant and counsel for the Objectants respecting refinements and as yet unresolved issues as outlined in the emails exchanged on June 15, 2018 and attached hereto as Exhibit 3, including whether a Restrictive Covenant, a Conservation Easement or some other form of writing shall be employed. Whatever document may ultimately be agreed upon shall be subject to review and approval by the Board and shall be subject to enforceability rights by the Board.

(e). Applicant has agreed to provide additional tree plantings of sufficient caliper (preferably of 3 inch caliper) to enhance and buffer the southern and eastern boundaries of the southerly portion of Applicants premises.

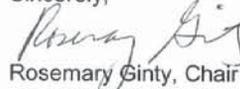
(f). Applicant has agreed to extend to the Southerly CCRC the use restrictions specified under paragraph 1 (e) above.

3. On June 15, 2018, representatives of the Applicant and of Objectants exchanged a series of emails, including an undertaking by Objectants "... to end their opposition ..." to the application on the terms stated in the email of Objectants' counsel (Albert Butzel, Esq.) to Applicant's counsel (Gary Tarnoff, Esq.) bearing a time stamp of 6:59pm on June 15, 2018. A copy of those June 15, 2018 emails as are relevant hereto is attached as Exhibit 3. To the extent that the said emails and reservations or undertakings therein expressed are at variance with the foregoing it is the intention and sense of this Resolution that the agreements expressed (in chronological sequence) in the Exhibit 3 emails shall be considered.

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4. The Board and its several Committees, particularly, the Traffic and Transportation Committee, the Environment and Sanitation Committee and the Land Use Committee, reserve their rights and responsibilities concerning the premises and project as well as relevant issues relating hereto as they may subsequently arise.

Sincerely,


Rosemary Ginty, Chair
Bronx Community Board No. 8

CC: Council Member Andrew Cohen
Council Member Ydanis Rodriguez
Council Member Fernando Cabrera
Borough President Ruben Diaz Jr.
State Senator Jeffrey D. Klein
State Assemblyman Jeffrey Dinowitz
Carol Samol, NYC Dept. of City Planning
Juton Horstman, NYC Dept. of City Planning

Exhibit A

Exhibit B

DECLARATION OF RESTRICTIONS

Declaration (the "Declaration"), made as of this ____ day of ____, 201 ____, by The Hebrew Home for the Aged at Riverdale Foundation, Inc., a New York not-for-profit corporation having an office at 5901 Palisade Avenue, Riverdale, New York, 10471 ("Declarant").

RECITALS:

WHEREAS, Declarant is the owner in fee title of certain land, with the buildings and improvements thereon, known as 5801 Palisade Avenue, Riverdale, New York, and identified on the Tax Map of the City of New York, County of The Bronx (the "Tax Map") as Block 5933, Lot 55, which is more particularly described in **Schedule "A"** annexed hereto (said land being herein called "Land," said buildings and improvements, together with any future additions, alterations, and replacement thereof being herein called "Buildings," and Hebrew Home Land and Hebrew Home Buildings, sometimes being referred to herein collectively as "Property"); and

WHEREAS, in connection with Declarant's application for land use approvals pursuant to City Planning Commission ("CPC") Nos. 180321ZSX, 180322ZAX, 180323ZAX, 180324ZAX, 180325 ZAX, 180326 ZAX and 180327 ZCX (collectively, the "Application") Bronx Community Board 8 (the "Community Board") has requested that Declarant agree to submit the Property to certain development restrictions.

NOW, THEREFORE, Declarant hereby declares and agrees that the Property shall be held, sold, transferred, conveyed, developed and occupied subject to the following restrictions, covenants, obligations and agreements, which shall run with the Property, and shall bind Declarant so long as it has any right, title or interest in the Property or any part thereof:

1. If the Property is developed, it shall be developed substantially in accordance with the site plan as approved by the CPC and/or the New York City Council (the "City Council") in connection with the Application (the "Site Plan"). Declarant shall construct no other buildings or enlargements on the Property, and shall make no applications to, or accept any approvals from, CPC or the New York City Department of Buildings ("DOB") for any other buildings or enlargements.
2. Nothing herein shall be construed to prevent Declarant from (a) demolishing any buildings or other improvements on the Property, (b) altering any buildings or improvements provided that such alteration does not constitute a change of use or cause the Property to exceed the lot coverage, height, floor area, or number of dwelling units or nursing beds identified for the Property on the Site Plan, or (c) altering or improving any mechanical or building systems as may be reasonably necessary for the operation of the Buildings.
3. Declarant shall not cause or allow trucks or other vehicles to idle on Palisade Avenue.

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4. The Buildings shall be occupied by older adults and used for programs and services related thereto.
 5. Under no circumstances may this Declaration be modified without the express written consent of the Community Board, the City Councilmember for District 11, the Bronx Borough President, and the New York City Department of City Planning.
 6. Declarant acknowledges that the Community Board, the City Council Member for District 11, the Bronx Borough President, and any homeowner that owns property located within one hundred (100) feet of the Property (a "Homeowner") are interested parties to this Declaration. Declarant consents to enforcement by the Community Board, the City Council Member for District 11, and the Bronx Borough President, and any Homeowner with the written support of any one of these three entities, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein. No person or entity other than the Community Board, the City Council Member for District 11, and the Bronx Borough President, and any Homeowner with the written support of any one of these three entities, shall have any right 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 on this Declaration.
 7. Declarant shall file and record this Declaration in the City Register's Office, indexing it against the Property, immediately upon the final approval of the Application by the CPC and/or the City Council, whichever constitutes a final approval under the Uniform Land Use Review Procedure (Section 197-c of the New York City Charter). Any amendment or modification of this Declaration shall be executed and recorded in the same manner as this Declaration.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first hereinafter set forth.

DECLARANT:

The Hebrew Home for the Aged at
Riverdale Foundation, Inc., a New York not-
for-profit corporation

By:
Title:

STATE OF NEW YORK)

)ss.:

COUNTY OF NEW YORK)

On the _____ day of _____ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person or entity upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Schedule A

Legal Description of the Land

PARCEL I

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Bronx County, City and State of New York, and bounded and described by the following:

BEGINNING at a point on the westerly vested line of Palisade Avenue (formerly Bettners Lane), 60' wide as Title Vested to the City of New York on October 6, 1960 as shown on the Final Map of the City of New York as revised, Section 26, Borough of Bronx. Said point of BEGINNING further described as being southerly from the point of curvature of the southerly line of West 261 Street and the said westerly vested line of Palisade Avenue, a distance of 1,172.14 feet and running thence from said point of BEGINNING the following several courses;

1. South 85 degrees 16 minutes 30 seconds West a distance of 950.73 feet to a point on the lands now or formerly of the New York Central & Hudson River Railroad Company and/or NYC Transit Company;

The following four (4) courses are along the said lands of the New York Central & Hudson River Railroad Company:

2. THENCE along said lands described above South 17 degrees 57 minutes 00 seconds East a distance of 621.00 feet to a point;

3. THENCE still along said lands described above South 72 degrees 03 minutes 00 seconds West a distance of 6.00 feet to a point;

4. THENCE along said lands described above South 17 degrees 57 minutes 00 seconds East a distance of 45.51 feet to a point of curvature;

5. THENCE still along said lands along a curve bearing to the right, having a radius of 6,215.00 feet, a central angle of 1 degree 57 minutes 10 seconds for an arc length of 211.83 feet to a point;

6. THENCE North 78 degrees 45 minutes 00 seconds East a distance of 98.50 feet to a point;

7. THENCE North 45 degrees 55 minutes 55seconds East a distance of 20.38 feet to a point;

8. THENCE North 64 degrees 37 minutes 35 seconds East a distance of 64.94 feet to a point;

9. THENCE North 86 degrees 17 minutes 31 seconds East a distance of 161.82 feet to a point

10. THENCE North 18 degrees 44 minutes 04 seconds East a distance of 30.96 feet to a point;

11. THENCE South 84 degrees 55 minutes 26 seconds East a distance of 136.24 feet to a point;

12. THENCE North 43 degrees 14 minutes 30 seconds East a distance of 27.89 feet to a point;

13. THENCE North 38 degrees 24 minutes 40 seconds East a distance of 23.00 feet to a point;

14. THENCE North 15 degrees 06 minutes 30 seconds East a distance of 26.90 feet to a point of curvature and the said westerly vested line of Palisade Avenue;

The following six (6) courses are along the said westerly vested line of Palisade Avenue:

15. THENCE along a curve bearing to the right, having a radius of 1,360.00 feet, a central angle of 7 degrees 19 minutes 15 seconds for an arc length of 173.77 feet to a point of tangency;

16. THENCE North 13 degrees 26 minutes 40 seconds East a distance of 226.12 feet to a point;

17. THENCE North 13 degrees 53 minutes 00 seconds East a distance of 116.00 feet to a point of curvature

18. THENCE along a curve bearing to the right, having a radius of 1,500.00 feet, a central angle of 5 degrees 23 minutes 50 seconds for an arc length of 141.30 feet to a point of reverse curvature;

19. THENCE along a curve bearing to the left, having a radius of 300.00 feet, a central angle of 13 degrees 41 minutes 30 seconds for an arc length of 71.69 feet to a point of compound curvature,

20. THENCE along a curve bearing to the left, having a radius of 600.00 feet, a central angle of 5 degrees 13 minutes 31 seconds for an arc length of 54.72 feet to the point or place of BEGINNING.

PARCEL II

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

BEGINNING at the stone monument at the southeast corner of the property formerly of Susan M. Allien at the southern boundary line dividing at the normal westerly side of Bettner's Lane the property formerly of Susan M. Allien from the property of Anna G. Outwater;

RUNNING THENCE westerly along said line 18 feet 11 inches;

THENCE north 40 degrees 22 minutes 0 seconds, west 33.33 feet, more or less;

THENCE northerly 43 degrees 14 minutes 30 seconds, east 33 feet;

THENCE north 38 degrees 24 minutes 40 seconds east 23 feet, more or less, to the normal westerly side of Bettner's Lane;

THENCE southerly along said normal westerly side of Bettner's Lane to point or place of BEGINNING.

Exhibit C

----- Forwarded message -----

From: **Albert Butzel** <akbutzel@gmail.com>

Date: Fri, Jun 15, 2018 at 6:59 PM

Subject: Re: Response to Albert Butzel

To: "Tarnoff, Gary" <gtarnoff@kramerlevin.com>

Cc: "andycohen@optonline.net" <andycohen@optonline.net>, "Moerdler, Charles G." <cmoerdler@stroock.com>, Rosemary Ginty <rosemary.ginty@gmail.com>, RCC <riverdalecommunitycoalition@gmail.com>, "Steven J. Chait" <stevenjchait@gmail.com>, Sherida Paulsen <paulsen@pksb.com>

Dear Mr. Tarnoff,

Thank you for your response to my earlier email.

Subject to working out some details, including the form and language of the open space restrictions and the "no opposition" clause, the terms that you have described in your letter (taken together with other commitments in the proposed MOU and earlier draft resolution) satisfy the client groups that have been negotiating with the Hebrew Home, and they are prepared to end their opposition on that basis.

We would ask that the Hebrew Home establish a small committee to address traffic issues, particularly during construction, in order to meet the concerns of neighboring residents.

We are grateful to the Hebrew Home and its trustees and negotiating team for their willingness to modify to meet some of the communities concerns.

Best regards,

Al Butzel

On Fri, Jun 15, 2018 at 5:16 PM, Tarnoff, Gary <gtarnoff@kramerlevin.com> wrote:

Dear Mr. Butzel:

We received your email at 3:20 pm today and respond as follows:

1. The Hebrew Home agrees to reduce the height of CCRC North to 9 stories.
2. The Hebrew Home agrees that the open space restrictions on the South Campus will be iron-clad. We agree that any alteration to a building on the South Campus will be within its own footprint. As to modifications of the Declaration, paragraph 5 clearly notes that the express written consent of the Community Board, the City Council member for District 11, the Bronx Borough President, and the New York City Department of City Planning is necessary.
3. The Hebrew Home agrees that the buildings on the South Campus will be 3 stories and 5 stories, respectfully. These buildings will not encroach on any steep slope.

-
4. The Hebrew Home agrees to move the north entrance to the Hebrew Home further to the west.
 5. The Home's proposal to limit opposition would not apply to violations of the conditions in the Memorandum of Understanding or to any violation of the Restrictive Declaration. We would expect, with appropriate language, that there would be no appearance in opposition so long as there is compliance with the commitments in the MOU and the Declaration and that there will be no litigation from any of the identified entities challenging the land use approvals.
 6. The Hebrew Home agrees that the proposed new plantings will provide further buffers on the south as well as the east.
- Finally, we wish to stress that we make these concessions in the spirit of compromise after consultation with the Hebrew Home's Board of Trustees, which has informed us that it will not authorize any further alterations to the Home's application.

Very truly yours,
Gary R. Tarnoff

Gary R. Tarnoff
Partner

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.7833 M 917.224.8492 F 212.715.8232
gtarnoff@kramerlevin.com

Bio

This communication (including any attachments) is intended solely for the recipient(s) named above and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

--

Albert K. Butzel
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1125 Park Ave, 9E
New York, NY 10128

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Fax: 212.831-4870
Email: akbutzel@gmail.com



NOTICE OF CERTIFICATION
Pursuant to the Uniform Land Use Review Procedure

Application #: C 180321 ZSX	Project Name: Hebrew Home for the Aged
CEQR Number: 18DCP134X	Borough(s): The Bronx
	Community District Number(s): 8
<i>Please use the above application number on all correspondence concerning this application</i>	

Docket Description:

IN THE MATTER OF an application submitted by Hebrew Home for the Aged at Riverdale, Inc., The Hebrew Home for the Aged at Riverdale Foundation, Inc., and Hebrew Home Housing Development Fund Company, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-901(a) of the Zoning Resolution to modify the use regulations of Section 22-13, to allow a long-term care facility (Use Group 3) in an R1-1 District (Block 5933, Lot 55), on property located at 5701-5961 Palisade Avenue (Block 5933, Lots 55, 210, 224, 225 and 230), in R1-1 and R4 Districts, within the Special Natural Area District (NA-2), Borough of the Bronx, Community District 8.

Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, N.Y. 10271.

Related Applications:	N 180322 ZAX N 180323 ZAX	N 180324 ZAX N 180325 ZAX	N 180326 ZAX N 180327 ZCX	
Applicant(s): Hebrew Home for the Aged at Riverdale, Inc. The Hebrew Home for the Aged at Riverdale Foundation, Inc. Hebrew Home Housing Development Fund Company, Inc. 5901 Palisade Avenue, Riverdale, NY, 10471			Applicant's Representative: Gary Tarnoff Kramer Levin Naftalis & Frankel, LLP 1177 Avenue of the Americas New York, NY 10036	
Contact: <i>Address questions about this application to the following DCP office:</i> DEPARTMENT OF CITY PLANNING Bronx Office Address: One Fordham Plaza, 5th Fl., Bronx, NY 10458-5891 Phone: 718-220-8500 Fax: 718-584-8628				
Public Review Timeline: On April 23, 2018 the above listed application was certified as complete by the Department of City Planning. The period for community board review begins on May 2, 2018 and must be completed by July 2, 2018				

**BOROUGH PRESIDENT
RECOMMENDATION**

**CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
Fax # (212)720-3356**

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

APPLICATION # C 180321 ZSX-Hebrew Home for the Aged

DOCKET DESCRIPTION

PLEASE SEE ATTACHMENT FOR DOCKET DESCRIPTION

COMMUNITY BOARD NO. 8

BOROUGH: BRONX

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE

EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

PLEASE SEE ATTACHMENT FOR THE BOROUGH PRESIDENT'S RECOMMENDATION


BOROUGH PRESIDENT

7/30/2018
DATE

**BRONX BOROUGH PRESIDENT'S RECOMMENDATION
ULURP APPLICATION NOS:
C180321 ZSX
Hebrew Home for the Aged**

DOCKET DESCRIPTION

C180321 ZSX

IN THE MATTER OF AN APPLICATION submitted by Hebrew Home for the Aged at Riverdale, Inc., The Hebrew Home for the Aged at Riverdale Foundation, Hebrew Home Housing Development Fund Company, Inc., pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-901 9a) of the Zoning Resolution to modify the use regulations of Section 22-13, to allow a long-term care facility (Use Group 3) in an R1-1 (Block 5933, Lot 55), on property located at 5701-5961 Palisade Avenue (Block 5933, Lot 55,210,224,225, and 230), in R1-1 and R-4 Districts, within the Special Natural Area District (NA-2), Borough of The Bronx, Community District #8.

SUMMARY OF REQUESTED ZONING ACTIONS

ULURP

- A special permit pursuant to ZR 74 – 901 to allow for the development of a Long-Term Care Facility in the R1-1 district on the south site.

NON-ULURP

- Authorization pursuant to ZR 105-42 to alter natural features
 - ZR 105-421 for modification of topographic features on Tier 1 sites.
 - ZR 105-422 for a development and site alteration on a steep slope.
 - ZR 105-424 for alteration of rock outcrops.
 - ZR 105-425 got modification of botanic environment and tree preservation and planting requirements.
- Height and Setback
 - An authorization pursuant to ZR 105-432 to modify height and setback regulations.
- Restoration Plan
 - A certification pursuant to ZR 105-45 for a restoration plan.

BACKGROUND

Approving the application would allow the conversion of the existing development into the first continuing care retirement community in New York City. The project site is located at 5701-5961 Palisade Avenue (Block 5933, Lot 55,210,224,225, and 230). The project site is bounded by Palisade Avenue to the east, the Metro-North Hudson Line rail tracks to the west, a line

approximately 380 feet south of West 261st Street to the north, and the southern boundary of Lot 55 to the south.

The applicant acquired the north site in December 1948, it is the location of the existing Hebrew Home development. It provides long term care, assisted living, rehabilitation services, housing, skilled nursing and specialized services including elder abuse prevention and an array of arts and cultural offerings.

The project site is split into a north and south site; the zoning district boundary between the R-4 district and the R1-1 district marks the boundary between the two sites. The project site constitutes a Tier 1 site under SNAD regulations with an average slope of 8.8%.

EXISTING NORTH SITE

The north site is zoned R-4 with a maximum Floor Area Ratio (FAR) of 1.29 for certain community uses. A maximum of 1,035,508 or 1,087,283 gross square footage is permitted.

- The North Campus contains:
 - 879 skilled nursing beds
 - 35 living assisted living units
 - 137 nonprofit residences for the elderly (NPREs)
 - 317 parking spaces

EXISTING SOUTH SITE

The South Site is 594,921 sf and zoned R1-1. South site currently contains five buildings including the Cardinal Spellman Retreat House, once a retreat destination for Catholic Church members (Use Group 4); an old home and connected chapel (Use Group 30, both currently vacant), as well as three utility buildings (see Table 1-1). Three driveways provide access to the south site from Palisade Avenue. To the north of the Cardinal Spellman Retreat House and accessible via northernmost driveway 107 surface parking spaces are located.

PROPOSED

The proposed CCRC will include (1) CCRC North, consisting of a new 12-story wing on the North Campus containing independent living dwelling units with parking below; (2) CCRC South, consisting of two new wings containing independent living dwelling units, one 6-stories and one 4-four stories, with parking below; (3) a connection to the existing Gilbert Pavilion, providing Assisted Living residences for residents of the CCRC who need these services; and (4) a connection to the existing buildings at the Hebrew Home, which will continue to provide skilled nursing beds for the residence of the CCRC who need these services. In total, the proposed CCRC will include 388 independent senior living units (271 units in the new North Campus wing and 117 units within these two South Campus wings). The Gilbert Pavilion, which

currently houses 144 skilled nursing beds, will be converted to house 70 new assisted living units. This conversion does not itself require any discretionary land use approvals. The Gilbane Pavilion, as renovated and converted, would ultimately be incorporated into the CCRC. The Goldfine Pavilion on the North Campus and the Retreat House and utility buildings on the South Campus will be demolished.

The CCRC North will contain 271 Independent Living units on floors 2 through 12. The units will include a mix of one- and two- bedroom apartments, some with balconies. Each floor includes 3 passenger elevators, a service elevator, trash rooms and exit stairs. Common areas for the Independent Living units, distributed between the first floor and terrace floor, will provide social, dining, cultural fitness, administrative and building support and infrastructure facilities and services to the CCRC North. Common areas will include the following: an arts and activity room where drawing, painting, and sculpture classes take place; a conference room; a lounge for informal meeting and conversation; a 90-seat bistro, for breakfast, lunch, dinner, and informal dining; an outdoor terrace for outdoor seating and dining; a multi-purpose room and chapel for cultural events , concerts and to serve as non-denominational chapel; a library with seating and reading tables; a main dining area with 280 seats; a small theater showing TV and movies; a juice bar; a wellness clinic for basic checkups and non-critical health consultations; a physical therapy area for treatment and rehabilitation; a fitness room with exercise equipment; and a hot tub and pool for laps and water aerobics.

The North Campus, in addition to the 271 Independent Living Unit in the CCRC North, will contain 607 skilled nursing beds (a 272 bed decrease from existing conditions as a result of the demolition of the Goldfine Pavilion and conversion of the Gilbert Pavilion); 105 assisted living units and skilled nurse associated services; and 137 non-profit residences for the elderly to be maintained at the Riverwalk building.

The CCRC South will contain 117 Independent Living units in the two wings, with 73 units in the six-story wing and 44 units in the four-story wing. The units will include a mix of one- and two- bedroom apartments, some with balconies. Each floor includes 2 passenger elevators, trash rooms and exit stairs. Common areas for the Independent Living units provide additional social and dining spaces for both the residents of CCRC South and CCRC North. CCRC areas will include activity areas for classes, games and other activities; and additional 140-seat dining area; and access to an outdoor roof terrace for activities and dining. The CCRC will also contain the Victorian Home and chapel, which will have accessory community facility uses and a tennis court.

ENVIRONMENTAL REVIEW AND ULURP CERTIFICATION

The application was reviewed pursuant to SEQR and CEQR and received a negative declaration. The City Planning Commission certified this application as complete on April 23, 2018.

BRONX COMMUNITY BOARD HEARING

Bronx Community Board #8 held a public hearing on the application on June 18th, 2018 and rejected the application with 18 voting against, 10 in favor, and two abstaining.

Community Board Chair Rosemary Ginty submitted a letter to my office on July 17, 2018, to clearly state the position of Community Board #8 on the ULURP application.

BOROUGH PRESIDENT'S PUBLIC HEARING

The Borough President convened a public hearing on the application on July 12, 2018. Representatives of the applicant were present and spoke in favor of the application. Nineteen members of the public provided testimony at the hearing, with eight speaking for, and 11 against the proposal. The hearing was left open to written testimony. Thereafter, the office received 21 written testimonies opposing the project.

BRONX BOROUGH PRESIDENT'S RECOMMENDATION

In 2016, New York City passed a series of amendments to the zoning regulation to encourage the construction and expansion of senior housing and elder care facilities. As part of the Zoning for Quality and Affordability (ZQA) targeted changes a new category was created allowing developers to build Continuing Care Retirement Communities.

The application set forth by the Hebrew Home for the Aged at Riverdale, Inc., proposes to develop the first combined Continuing Care Retirement Community (CCRC)/ Long Term Care Facility (LTCF) in New York City. Located at 5701-5961 Palisade Avenue, the proposed development would supply a range of housing to meet the needs of seniors in The Bronx and New York City, by providing skilled nursing beds, assisted living units and independent care units. Today, New York City is home to more than one million people over the age of 65, and by the year 2040 one in every five New Yorkers will be 60 years or older. Housing that accommodates the accelerated growth of our diverse aging population is a critical component in ensuring the health and well-being of our residents and communities.

The process for the Hebrew Home development began in 2013. In the five years since, the Hebrew Home has evolved and changed the proposal to better address concerns of the Riverdale community. Prior to the community board vote on June 18, 2018 and throughout the ULURP proceedings, I met with community stakeholders, elected officials, the community board and the applicant. As presented, there are many issues with this certified application, particularly as it relates to community concerns regarding height, design, open space, traffic, and exceptions to the Special Natural Area District. It was unfortunate that many of these issues could not be addressed at the community board level. It is my understanding, since then, the Hebrew Home has worked towards a Memorandum of Understanding (MOU) with representative community groups but have not been able to achieve full signature prior to the submission of this ULURP recommendation.

It is my full belief, based on the most recent language in the draft MOU presented to me, that the Hebrew Home has acted in good faith towards a resolution to issues raised. The changes made over time address several of the community concerns. In absence of a signed MOU, I will offer approval of this application if, and only if, the Hebrew Home agrees to the following conditions, as have been identified in the most recent draft MOU:

1. Reduction of the proposed 12-story CCRC building on the North Campus to a roof elevation height lower than 248'9", and a mechanical elevation height of 261'8", which would make this structure shorter than the existing Resnick Building to the north.
2. Reduction of the proposed CCRC South Campus buildings from six-stories to five-stories (172' rooftop and 189' mechanical elevation) and from four-stories to three-stories (150'8" rooftop and 167'8" mechanical elevation), respectively.
3. The addition of 60 shade trees and 24 evergreen trees.
4. Limit the one-story CCRC connectors to 132' elevation.
5. Provide public access to assure completion of the Hudson River Greenway.
6. The South Campus will remain as permanent open space beyond the maximum footprint of the South Campus buildings proposed here, as per a restrictive declaration. If any development related to the CCRC occurs on the South Campus, including a reduction in square footage and/or footprint, this provision will still apply. If it is decided that construction of a CCRC will not take place on the South Campus, then these provisions would be rendered moot and the site would revert back to the requirements as per the designated R1-1 zoning district.
7. Move the north entrance west of Palisade Avenue to reduce traffic along West 261st Street and Palisade Avenue.
8. Planting of green roofs throughout the proposed CCRC buildings.
9. Establishment of an advisory committee during the construction period that will consist of at least one representative from the following groups: Hebrew Home for the Aged, Riverdale Nature Preservancy, Skyview Owners Corporation, Riverdale Community Coalition, West 261st Street Homeowners Association and Bronx Community Board Number #8. The committee will meet as necessary but not less than four times per year until construction of CCRC North and CCRC South are completed or the project is discontinued. My office would reserve the right to participate on this advisory committee. The Hebrew Home will consult with this committee regarding construction, design and environmental impacts during the course of construction.
10. No construction vehicles will park on public or private streets surrounding the site.

I recommend approval of the application with the above conditions.

RESTRICTIVE DECLARATION

THIS RESTRICTIVE DECLARATION (this “**Declaration**”), dated as of _____, 2018 and effective as of the Effective Date (hereinafter defined), by **HEBREW HOME FOR THE AGED AT RIVERDALE (“HHAR”)**, a New York not-for-profit corporation having an address at 5901 Palisade Avenue, Bronx, New York 10471, **THE HEBREW HOME FOR THE AGED AT RIVERDALE FOUNDATION, INC. (“Foundation”)**, a New York not-for-profit corporation having an address at c/o 5901 Palisade Avenue, Bronx, New York 10471, and the **HEBREW HOME HOUSING DEVELOPMENT FUND COMPANY, INC. (“HDFC”)**, a New York not-for-profit corporation having an address at 5961 Palisade Avenue, Bronx, New York 10471 (each a “**Declarant**” and collectively, the “**Declarants**”).

WITNESSETH:

WHEREAS, HHAR is the fee owner of certain real property located in the Borough of Bronx, County of Bronx, City of New York and State of New York, designated for real property tax purposes as Lots 210, 224, and 225 of Block 5933 on the Tax Map of the City of New York (the “**HHAR Property**”);

WHEREAS, Foundation is the fee owner of certain real property located in the Borough of Bronx, County of Bronx, City of New York and State of New York, designated for real property tax purposes as Lot 55 of Block 5933 on the Tax Map of the City of New York (the “**Foundation Property**”);

WHEREAS, HDFC is the fee owner of certain real property located in the Borough of Bronx, County of Bronx, City of New York and State of New York, designated for real property tax purposes as Lot 230 of Block 5933 on the Tax Map of the City of New York (the “**HDFC Property**” and, collectively with the HHAR Property and the Foundation Property, the “**Subject Property**”);

WHEREAS, The Subject Property is more particularly described on **Exhibit A** annexed hereto;

WHEREAS, an affiliate of Declarants intends to develop the Subject Property by constructing three new building segments and additional site improvements, including the renovation of an existing building, demolition of existing structures, and accommodation of 90 additional parking spaces to facilitate the development of a 633,890-gross square foot (gsf) Continuing Care Retirement Community (CCRC)/ LTCF at the Subject Property (collectively, the “**Projected Development**”), as reflected in the EAS (hereinafter defined);

WHEREAS, in connection with the Projected Development, Declarants have filed with the City Planning Commission of the City of New York (the “**Commission**”) applications proposing: (a) a special permit pursuant to New York City Zoning Resolution (“**ZR**”) §74-901 (Long-term care facilities) for a Long Term Care Facility (LTCF) within an R1-1 zoning district, (b) authorizations pursuant to ZR §105-42 to alter natural features; (c) an authorization pursuant

to ZR §105-432 to modify height and setback regulations; and (d) a certification pursuant to ZR §105-45 for a restoration plan (collectively, the “**Applications**”);

WHEREAS, the Commission acting as lead agency for the City Environmental Quality Review Application No. 18DCP134X conducted environmental review of the 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 (“**SEQORA**”), and issued a Conditional Negative Declaration for the Final Environmental Assessment Statement (the “**EAS**”) prepared in connection with environmental review of the Applications on April 20, 2018 (the “**CND**”);

WHEREAS, at the time of the Commission’s Approval of the Applications the Commission found, as required pursuant to SEQRA, that the action will have no significant effect on the quality of the environment, once it is modified to include the Project Components Related to the Environment (“**PCREs**”) related to construction transportation that were identified in the EAS;

WHEREAS, to insure that the development of the Subject Property pursuant to the Final Approval (as defined herein) is consistent with the analysis in the EAS upon which the Commission has made its findings, and that the development of the Subject Property incorporates the PCREs as conditions of the Commission’s decision on the Applications, Declarants have agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration, including but not limited to the agreement of Declarants to (i) prohibit parking of construction workers’ private vehicles on the Subject Property during construction of the Proposed Development and (ii) provide off-site parking and a shuttle service for such construction workers to and from the Subject Property during construction of the Proposed Development;

WHEREAS, Declarants desire, 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 intend these restrictions to benefit the Subject Property; and

WHEREAS, pursuant to the certificate annexed hereto as **Exhibit B**, Fidelity National Title Insurance Company has certified that, as of the date of this Declaration, Declarants, Bank of America, N.A., and The Bank of New York Mellon, are the Parties-in-Interest in the Subject Property;

WHEREAS, all Parties in Interest have either executed this Declaration or waived their rights to execute this Declaration by written instrument, which instrument is intended to be recorded simultaneously with this Declaration;

NOW, THEREFORE, Declarants hereby declare that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarants and their heirs, successors and assigns.

ARTICLE I
CERTAIN DEFINITIONS

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

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

“**Approval**” shall mean approval of the Applications by the Commission relating to the Projected Development or otherwise with respect to the Subject Property.

“**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 herein defined) or (v) any other permit normally associated with the development of a building.

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

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

“**Chair**” 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.

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

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

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

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

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

“**Delay Notice**” shall have the meaning set forth in Section 4.01 of this Declaration.

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

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

“Effective Date” shall mean the date upon which the Final Approval becomes effective.

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

“EAS Requirement” shall mean any measure set forth in the EAS that is required in order for the Commission to find in the Commission’s Approval of the 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 that were identified in the EAS as practicable.

“Final Approval” shall mean approval of the 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 Applications and takes final action pursuant to New York City Charter Section 197-d approving the Applications, in which event “Final Approval” shall mean such approval of the 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 Applications.

“Force Majeure Event” shall mean occurrences beyond the reasonable control of a Declarant which delay the performance of a Declarant’s obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of a 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) 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; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction

or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the holder of a Mortgage that has succeeded to Declarant's interest in the Subject Property, or any other applicable party complies with the procedures set forth in 4.01

“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.

“Legal Requirements” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property.

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

“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 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.

“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.

“Project Components Related to the Environment”, or **“PCRE”**, shall mean the measures set forth in Article III of this Declaration that are identified in the EAS as components of the Projected Development that are required to avoid impacts to the environment.

“Projected Development” shall have the meaning set forth in the Recitals to this Declaration.

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

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

“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.

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

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

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 **Development of the Subject Property.** If the Subject Property is developed, in whole or in part, with the Projected Development, or portion thereof, Declarants covenant and agree that the PCREs set forth in Article III shall be implemented in accordance with the provisions of this Declaration.

ARTICLE III

ENVIRONMENTAL PROTECTION MEASURES

Declarant shall implement the following Project Components Related to the Environment (“**PCREs**”) in accordance with the EAS and as further set forth in this Article III for any development pursuant to Section 2.01 of the Subject Property, as such PCREs may be modified in accordance with the provisions of Section 3.03.

3.01 Project Component Related to the Environment –Construction.

(a) Declarant shall neither request nor accept a Building Permit from DOB until declarant has submitted a letter to the Chair certifying that: (i) Declarant or an affiliate of Declarant has entered into an agreement with a parking facility operator in Yonkers, NY to provide parking for construction workers during construction of the Proposed Development, (ii) construction workers working on the Proposed Development will not be permitted to park their vehicles on the Subject Property for the duration of construction of the Proposed Development, and (iii) Declarant or an affiliate of Declarant, will provide shuttle service for construction workers to and from such parking facilities and the Subject Property during construction of the Proposed Development, and the Chair has confirmed receipt of such certification letter to the Buildings Department.

(b) The Entity that engages a contractor to undertake construction of the Proposed Development, shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of Section 3.01(a)(ii) and 3.01 (a)(iii) with respect to Proposed Development construction work at the Subject Property.

3.02 **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 required by the EAS by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in Section 4.01, then Declarant shall not be excused from performing such PCRE that is affected by Force Majeure Event unless and until

the Chair has made a determination in his or her reasonable discretion that the failure to implement the PCRE 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 EAS.

3.03 **Incorporation of EAS Requirements in PCREs.** If this Declaration inadvertently fails to incorporate a PCRE, such PCRE shall be deemed incorporated herein by reference. If there is any inconsistency between a PCRE as set forth in the EAS and as incorporated in this Declaration as a PCRE, the PCRE as set forth in the EAS shall be applicable.

3.04 **Innovation; Alternatives; Modifications Based on Further Assessments.**

(a) **Innovation and Alternatives.** In complying with any PCRE set forth in Article III of this Declaration or by incorporation by inclusion in the EAS, 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, than those set forth in this Declaration, (such measures, "**Alternative PCRE Measures**") in each case subject to approval by DCP in accordance with the provisions of Section 7.03.

(b) **Elimination or Reduction Based on Further Assessments.** Where Declarant believes, in good faith, based on changed conditions, that a PCRE required under this Declaration could be reduced or eliminated without diminishment of the environmental standards that would be achieved by implementation of the PCRE ("**Elimination of PCRE**"), Declarant may, at its election, seek to reduce or eliminate the PCRE, where Declarant demonstrates to the reasonable satisfaction of DCP that the reduction or elimination of the PCRE would not result in the diminishment of the environmental standards that would be achieved by implementation of the PCRE, in each case subject to approval by DCP in accordance with the provisions of Section 7.03.

ARTICLE IV

FORCE MAJEURE

4.01 **Force Majeure.** If Declarant is unable to perform a PCRE required by the EAS by reason of a Force Majeure Event, Declarant may, upon notice to the Chair (a "**Delay Notice**"), request that the Chair, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chair shall thereafter determine whether a Force Majeure Event exists, and in all events shall, upon notice to Declarant no later than ten (10) days after its receipt of the Delay Notice, certify that a Force Majeure Event either exists or does not exist. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies that a Force Majeure Event exists, the Chair shall grant Declarant appropriate relief, including notifying DOB that a Building Permit, TCO or a PCO (as applicable) may be issued for any buildings, or portions thereof, located within the Subject Property. 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 arising by reason

of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence the PCRE, as applicable. 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. Declarant shall re-commence 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.

ARTICLE V

ENFORCEMENT; DEFAULTS AND REMEDIES

5.01 Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party-in-Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement under this Declaration shall be subject to the cure provisions and periods set forth in Article V hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any TCO or PCO, for any portion of the Projected Development on the Subject Property subject to the Applications; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any TCO or PCO for any use or improvement that exists on the Subject Property as of the date of this Declaration.

5.02 **No Enforcement by Third Parties**. Notwithstanding any provision of this Declaration to the contrary, only Declarant, and Declarant's successors and assigns, and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other Person 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 Applications. In any proceedings brought by the City against Declarant seeking to deny or revoke a Building Permit, TCO or PCO, with respect to the Projected Development on the Subject Property, or to impose a lien, fine or other penalty, or to pursue any other remedy available to the City, if the event or occurrence which is the basis of an allegation of a failure to comply by Declarant is associated with a particular Projected Development Site or portion(s) of a Projected Development Site developed on the Subject Property, then the City shall only deny or seek the revocation of

Building Permits, TCOs, or PCOs for such Site(s) or portion(s) of a site, and only seek to impose a fine, lien or other penalty on such Projected Development site(s) or portion(s) of a Projected Development Site, and any such event or occurrence shall not provide the basis for denial or revocation of the Building Permits, TCOs or PCOs, or the imposition of any fine, lien or other penalty, with respect to other Projected Development Site(s) or portion(s) of a Projected Development Site comprising a portion of the Subject Property for which no such failure to comply has occurred. No Person other than Declarant, any Mortgagee, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant or Mortgagee, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

5.03 Notice and Cure.

(a) Prior to the City instituting any proceeding or proceedings to enforce any of the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) days written notice of such alleged breach or other violation, during which period Declarant shall have the opportunity to effect a cure of such alleged breach or other violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect a cure during such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended or shortened in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure, as determined by the City

(b) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party-in-Interest shall fail to cure the alleged breach or other violation under this Declaration within the applicable grace period provided herein, the City may exercise any and all of its rights, including without limitation those delineated in this Section 5 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for a Force Majeure Event pursuant to Section 4.01 hereof.

ARTICLE VI

MISCELLANEOUS

**Effective Date; Recordation; Binding Nature; Liability; Governing Law; Severability;
Applications; Offering Plan; Indemnification; Acknowledgements; Representations;
Estoppel**

6.01 Effective Date; Recordation.

(a) **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date.

(b) **Recordation.** Promptly, and within ten (10) business days after the Effective Date, Declarant shall endeavor to file and record this Declaration (together with all of the exhibits hereto) in the Register's Office, indexing this Declaration against the Subject Property, and deliver to the Commission within ten (10) calendar days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register, promptly upon receipt of such documents from the register. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant, or by the City (as permitted in accordance with this paragraph), shall be borne by Declarant.

6.02 Binding Nature; Successors.

(a) The restrictions, covenants, rights and agreements set forth in this Declaration shall run with the land and shall inure to the benefit of, and be binding upon any respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided that no Mortgagee shall have any performance or payment obligations under this Declaration unless and until such Mortgagee succeeds to a possessory interest), provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor, legal representatives or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property, 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 6.02. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

(b) 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.

6.03 Limitation of Liability.

(a) The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant or its successors and assigns, and no other property of Declarant or its principals, partners, shareholders, directors, members, officers or employees or successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration.

(b) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such successor-in-interest is the holder of a fee interest in, or is a Party in Interest of, the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in interest's interest.

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

6.05 Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

6.06 Applications. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested City agency or department having jurisdiction over the Subject Property.

6.07 Indemnification.

(a) If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration, provided, however, that nothing in this Section shall impose on Declarant any indemnification obligations other than the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a

court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

(b) Declarant shall indemnify and hold harmless the City and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Declarant's default under this Agreement (including, without limitation, if Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of Declarant, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(c) The City shall indemnify and hold harmless Declarant and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's default under this Declaration (provided that the City is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of the City, its agents, servants or employees in undertaking its obligations under this Declaration unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Declarant, its agents or their employees.

6.08 **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.

6.09 **Right to Sue**.

(a) Nothing contained herein shall prevent Declarant from asserting any claim or action against the City, or any of its agencies or any of its officials, arising out of the performance by the City, or agency thereof, or failure of the City or agency thereof, to perform, any the obligations of the City, or agency thereof, under this Declaration or the exercise, by the City, or any agency thereof, of any of its rights under this Declaration.

(b) Nothing contained herein shall prevent the City of New York or any of its officials from asserting any claim or action against Declarant arising out of Declarant's performance of, or failure to perform, any of its obligations under this Declaration, or the exercise by Declarant of any of their rights under this Declaration.

6.10 **Approvals.** Wherever in this Declaration the certification, consent or approval of Declarant, the Chair, or the Commissioner is required or permitted to be given, it is understood that time is of the essence and such certification, consent or approval will not be unreasonably withheld or delayed.

6.11 **Acknowledgement of Covenants.** Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property.

6.13 **Further Assurances.** Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

6.14 **Estoppel Certificates.** Whenever requested by a party, the other party shall within ten (10) business days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Declaration is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

6.15 **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.

6.16 **Representations.** Declarant represents and warrants that there are no restriction of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligation, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently, or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

ARTICLE VII

AMENDMENT, MODIFICATION & CANCELLATION

7.01 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.

7.02 Notwithstanding anything to the contrary contained in Section 7.01 hereof, any change to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind.

7.03 The requirements set forth in Article III of this Declaration may only be modified pursuant to Section 7.01 of this Declaration and in accordance with this Section provided a

determination has been made that the Alternative PCRE or Elimination of a PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS. In the event that Declarant seeks to implement an Alternative PCRE or Elimination of PCRE, it shall set forth the basis for its determination that the Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS in a Technical Memorandum submitted to DCP. Upon the acceptance of a Technical Memorandum by DCP demonstrating that the Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS, the requirements of this Declaration with respect to the PCREs discussed in such Technical Memorandum may be modified to reflect the Alternative PCRE or Elimination of PCRE. If Declarant implements an approved Alternative PCRE or Elimination of PCRE, a notice indicating of such change shall be recorded against the Subject Property in the Register's Office, in lieu of modification to this Declaration. Declarant shall not apply for or accept Building Permits for Projected Development that does not implement the required PCREs set forth in Article III until the Chair certifies to DOB that a Technical Memorandum has been submitted to DCP demonstrating that the proposed Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS, and a notice indicating of such change has been recorded against the Subject Property in the Register's Office.

7.04 Notwithstanding anything to the contrary contained in this Declaration, if all Approvals given in connection with the 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 Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Chair so certified by the Register's Office. If some of the Approvals given in connection with the Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration.

ARTICLE VIII

NOTICES

8.01 Notices.

(a) All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If intended for Declarant, to: HEBREW HOME FOR THE AGED AT RIVERDALE
HEBREW HOME FOR THE AGED AT RIVERDALE
FOUNDATION, INC., or

HEBREW HOME HOUSING DEVELOPMENT FUND
COMPANY, INC.

c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471
Attention: President

With a copy to: Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attn: Gary Tarnoff, Esq.

If intended for the City, to: Director,
Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271

With a copy to: Office of the General Counsel
New York City Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271

If intended for DCP, to: Director,
Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271

With a copy to: Office of the General Counsel
New York City Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271

If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

(b) Declarant, DCP or their respective representatives, by notice given as provided in this paragraph, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE IX

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

HEBREW HOME FOR THE AGED AT RIVERDALE, a New York not-for-profit corporation

By: _____
Name: Daniel Reingold
Title: President and CEO

THE HEBREW HOME FOR THE AGED AT RIVERDALE FOUNDATION, INC., a New York not-for-profit corporation

By: _____
Name: Daniel Reingold
Title: President and CEO

HEBREW HOME HOUSING DEVELOPMENT FUND COMPANY, INC., a New York not-for-profit corporation

By: _____
Name: Daniel Reingold
Title: President and CEO

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

On the ____ day of _____ 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **Daniel Reingold**, 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

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

On the ____ day of _____ 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **Daniel Reingold**, 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

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

On the ____ day of _____ 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **Daniel Reingold**, 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

EXHIBIT A

LEGAL DESCRIPTION

Hebrew Home Property incorporating portions of Lots 224, 225, all of Lot 210

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

BEGINNING at a point in the westerly line of Palisade Avenue shown on the Final Map of the City of New York, as revised, Section 26, Borough of the Bronx, and legally opened, 60 feet wide, distant 381.50 feet southerly as measured along the said westerly line of Palisade Avenue from a point of curve, with a radius of 40 feet which connects the said westerly line of Palisade Avenue and the southerly line of West 261st Street; running thence South 1 degree 00 minutes 00 seconds East along the westerly side of Palisade Avenue, 78.82 feet, to the point and place of BEGINNING:

THENCE South 84 degrees 32 minutes 16 seconds West, 180.23 feet;

THENCE South 8 degrees 57 minutes 03 seconds West, 246.58 feet;

THENCE South 85 degrees 17 minutes 50 seconds. West 127.16 feet;

THENCE North 4 degrees 42 minutes 10 seconds West, 30.93 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 72.21 feet;

THENCE South 4 degrees 43 minutes 30 seconds East, 16.13 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 8.38 feet;

THENCE North 4 degrees 43 minutes 30 seconds West, 1.25 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 29.50 feet;

THENCE North 4 degrees 43 minutes 30 seconds West, 6.75 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 70.50 feet;

THENCE South 4 degrees 43 minutes 30 seconds East, 50.14 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 45.37 feet;

THENCE South 4 degrees 43 minutes 30 seconds East, 207.36 feet;

THENCE South 85 degrees 16 minutes 30 seconds West, 199.88 feet;

THENCE North 4 degrees 43 minutes 30 seconds West, 104.84 feet;

THENCE South 85 degrees 23 minutes 10 seconds West, 216.38 feet;
THENCE North 8 degrees 57 minutes 09 seconds West, 230.66 feet;
THENCE North 85 degrees 23 minutes 10 seconds East, 117.90 feet;
THENCE North 8 degrees 46 minutes 53 seconds West, 12.42 feet;
THENCE North 3 degrees 41 minutes 07 seconds West, 166.45 feet;
THENCE South 82 degrees 46 minutes 00 seconds West, 79.81 feet;
THENCE South 82 degrees 12 minutes 20 seconds West, 166.20 feet;
THENCE South 17 degrees 57 minutes 00 seconds East, 222.00 feet;
THENCE South 72 degrees 03 minutes 00 seconds West, 12.80 feet;
THENCE South 17 degrees 57 minutes 00 seconds East, 530.00 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 950.73 feet;
THENCE northerly, curving to the left on the arc of a circle having a radius of 600.00 feet and a central angle of 3 degrees 15 minutes 11 seconds, 34.07 feet;
THENCE along the same curve, with a radius of 600.00 feet, 9.68 feet;
THENCE North 03 degrees 48 minutes 50 seconds West, 294.12 feet;
THENCE North 00 degrees 11 minutes 10 seconds East, 136.35 feet;
THENCE North 02 degrees 41 minutes 14 seconds East, 115.50 feet;
THENCE North 01 degrees 00 minutes 00 seconds West, 51.84 feet to the point and place of BEGINNING.

Land Owned by Hebrew Home for the Aged at Riverdale portions of Lots 224 and 225

ALL that tract, piece or parcel of land, situate, lying and being on the west side of Palisade Avenue, City of New York, Bronx County, New York, bounded and described as follows:

BEGINNING at a point in the westerly line of Palisade Avenue as shown on the Final Map of the City of New York, as revised. Section 26, Borough of the Bronx, and legally opened, 60 feet wide, distant 381.50 feet southerly as measured along the said westerly line of Palisade Avenue from a point of curve, with a radius of 40 feet which connects the said westerly line of Palisade Avenue and the southerly line of West 261st Street; running thence South 1 degree 00 minutes 00 seconds East along said westerly line of Palisade Avenue, 18.64 feet to the point and place of BEGINNING:

THENCE South 84 degrees 26 minutes 00 seconds West, 223.18 feet;
THENCE South 9 degrees 00 minutes 35 seconds West, 80.88 feet;
THENCE South 85 degrees 23 minutes 10 seconds West, 214.74 feet;
THENCE South 4 degrees 36 minutes 50 seconds East, 18.00 feet;
THENCE South 85 degrees 23 minutes 10 seconds West, 100 feet;
THENCE South 4 degrees 36 minutes 50 seconds East, 220.00 feet;
THENCE South 85 degrees 23 minutes 10 seconds West, 134.00 feet;
THENCE North 4 degrees 36 minutes 50 seconds West, 117.00 feet;
THENCE South 85 degrees 23 minutes 10 seconds West, 219.55 feet;
THENCE South 85 degrees 23 minutes 10 seconds East, 117.90 feet;
THENCE North 8 degrees 57 minutes 09 seconds East, 230.66 feet;
THENCE South 85 degrees 23 minutes 10 seconds East, 216.38 feet;
THENCE South 4 degrees 43 minutes 30 seconds West, 104.84 feet;
THENCE South 85 degrees 16 minutes 30 seconds West, 199.88 feet;
THENCE North 4 degrees 43 minutes 30 seconds West, 207.36 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 45.37 feet;
THENCE North 4 degrees 43 minutes 30 seconds West, 50.14 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 70.50 feet;
THENCE South 4 degrees 43 minutes 30 seconds East, 6.75 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 29.50 feet;
THENCE South 4 degrees 43 minutes 30 seconds West, 1.25 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 8.38 feet;
THENCE North 4 degrees 43 minutes 30 seconds West, 16.13 feet;
THENCE North 85 degrees 16 minutes 30 seconds East, 72.21 feet;
THENCE South 4 degrees 42 minutes 10 seconds East, 30.93 feet;

THENCE North 85 degrees 17 minutes 50 seconds East, 127.16 feet;

THENCE North 8 degrees 57 minutes 03 seconds East, 246.58 feet;

THENCE North 84 degrees 32 minutes 16 seconds East, 180.23 feet;

THENCE North 01 degrees 00 minutes 00 seconds West, 60.18 feet to the point or place of BEGINNING.

Lot 230

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

BEGINNING at a point in the westerly line of Palisade Avenue as shown on the Final Map of the City of New York, as revised. Section 26, Borough of the Bronx, and legally opened, 60.00 feet wide, distant 381.50 feet southerly as measured along said westerly line of Palisade Avenue from a point of curve, with a radius of 40.00 feet, which connects the said westerly line of Palisade Avenue and the southerly line of West 261st Street;

RUNNING THENCE South 01 degree 00 minutes 00 seconds East along the westerly line of Palisade Avenue, 18.64 feet;

THENCE South 84 degrees 26 minutes 00 seconds West, 223.18 feet;

THENCE South 09 degrees 00 minutes 35 seconds West, 80.88 feet;

THENCE South 85 degrees 23 minutes 10 seconds West, 214.74 feet;

THENCE South 04 degrees 36 minutes 50 seconds East, 18.00 feet;

THENCE South 85 degrees 23 minutes 10 seconds West, 100.00 feet;

THENCE South 04 degrees 36 minutes 50 seconds East, 220.00 feet;

THENCE South 85 degrees 23 minutes 10 seconds West, 134.00 feet;

THENCE North 04 degrees 36 minutes 50 seconds West, 117.00 feet;

THENCE South 85 degrees 23 minutes 10 seconds West, 219.55 feet;

THENCE North 08 degrees 46 minutes 53 seconds West, 12.42 feet;

THENCE North 03 degrees 41 minutes 07 seconds West, 166.45 feet;

THENCE North 82 degrees 46 minutes 00 seconds East, 172.19 feet;

THENCE North 82 degrees 18 minutes 00 seconds East, 153.00 feet;

THENCE North 83 degrees 21 minutes 00 seconds East, 153.00 feet;

THENCE North 80 degrees 53 minutes 00 seconds East, 202 feet;

THENCE North 82 degrees 54 minutes 00 seconds East, 70.00 feet;

THENCE North 84 degrees 26 minutes 00 seconds East, 160.92 feet to the point or place of BEGINNING.

Lot 55

PARCEL I

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Bronx County, City and State of New York, and bounded and described by the following;

BEGINNING at a point on the westerly vested line of Palisade Avenue (formerly Bettners Lane), 60' wide as Title Vested to the City of New York on October 6, 1960 as shown on the Final Map of the City of New York as revised. Section 26, Borough of Bronx. Said point of BEGINNING further described as being southerly from the point of curvature of the southerly line of West 261 Street and the said westerly vested line of Palisade Avenue, a distance of 1,172.14 feet and running thence from said point of BEGINNING the following several courses;

1. South 85 degrees 16 minutes 30 seconds West a distance of 950.73 feet to a point on the lands now or formerly of the New York Central & Hudson River Railroad Company and/or NYC Transit Company;

The following four (4) courses are along the said lands of the New York Central & Hudson River Railroad Company:

2. THENCE along said lands described above South 17 degrees 57 minutes 00 seconds East a distance of 621.00 feet to a point;

3. THENCE still along said lands described above South 72 degrees 03 minutes 00 seconds West a distance of 6.00 feet to a point;

4. THENCE along said lands described above South 17 degrees 57 minutes 00 seconds East a distance of 45.51 feet to a point of curvature;

5. THENCE still along said lands along a curve bearing to the right, having a radius of 6,215.00 feet, a central angle of 1 degree 57 minutes 10 seconds for an arc length of 211.83 feet to a point;

6. THENCE North 78 degrees 45 minutes 00 seconds East a distance of 98.50 feet to a point;

7. THENCE North 45 degrees 55 minutes 55seconds East a distance of 20.38 feet to a point;

8. THENCE North 64 degrees 37 minutes 35 seconds East a distance of 64.94 feet to a point;

9. THENCE North 86 degrees 17 minutes 31 seconds East a distance of 161.82 feet to a point
10. THENCE North 18 degrees 44 minutes 04 seconds East a distance of 30.96 feet to a point;
11. THENCE South 84 degrees 55 minutes 26 seconds East a distance of 136.24 feet to a point;
12. THENCE North 43 degrees 14 minutes 30 seconds East a distance of 27.89 feet to a point;
13. THENCE North 38 degrees 24 minutes 40 seconds East a distance of 23.00 feet to a point;
14. THENCE North 15 degrees 06 minutes 30 seconds East a distance of 26.90 feet to a point of curvature and the said westerly vested line of Palisade Avenue;

The following six (6) courses are along the said westerly vested line of Palisade Avenue:

15. THENCE along a curve bearing to the right, having a radius of 1,360.00 feet, a central angle of 7 degrees 19 minutes 15 seconds for an arc length of 173.77 feet to a point of tangency;
16. THENCE North 13 degrees 26 minutes 40 seconds East a distance of 226.12 feet to a point;
17. THENCE North 13 degrees 53 minutes 00 seconds East a distance of 116.00 feet to a point of curvature
18. THENCE along a curve bearing to the right, having a radius of 1,500.00 feet, a central angle of 5 degrees 23 minutes 50 seconds for an arc length of 141.30 feet to a point of reverse curvature;
19. THENCE along a curve bearing to the left, having a radius of 300.00 feet, a central angle of 13 degrees 41 minutes 30 seconds for an arc length of 71.69 feet to a point of compound curvature,
20. THENCE along a curve bearing to the left, having a radius of 600.00 feet, a central angle of 5 degrees 13 minutes 31 seconds for an arc length of 54.72 feet to the point or place of BEGINNING.

PARCEL II

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

BEGINNING at the stone monument at the southeast corner of the property formerly of Susan M. Allien at the southern boundary line dividing at the normal westerly side of Bettner's Lane the property formerly of Susan M. Allien from the property of Anna G. Outwater;

RUNNING THENCE westerly along said line 18 feet 11 inches;

THENCE north 40 degrees 22 minutes 0 seconds, west 33.33 feet, more or less;

THENCE northerly 43 degrees 14 minutes 30 seconds, east 33 feet;

THENCE north 38 degrees 24 minutes 40 seconds east 23 feet, more or less, to the normal westerly side of Bettner's Lane;

THENCE southerly along said normal westerly side of Bettner's Lane to point or place of BEGINNING.

EXHIBIT B

PARTIES-IN-INTEREST CERTIFICATION

[See attached]